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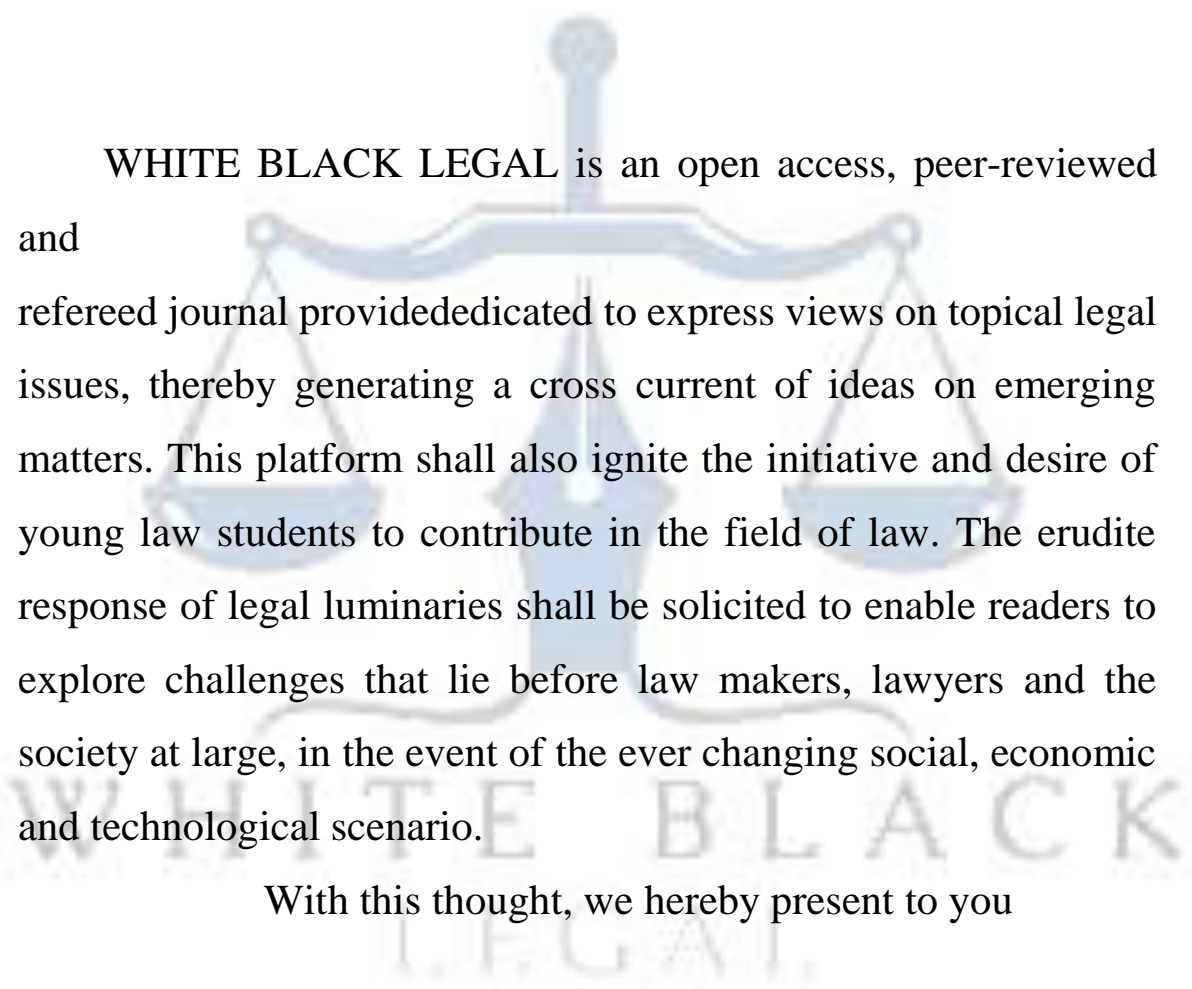


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CRIMINAL LIABILITY AND IMMUNITY OF DIPLOMATS UNDER INDIAN AND INTERNATIONAL LAW, LEGAL ISSUES AND CHALLENGES

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ABSTRACT

This research paper examines the intricate relationship between diplomatic immunity and criminal liability, focusing on both national and international perspectives. It analyses the legal frameworks established by India and international law to regulate the conduct of diplomats and balance their privileges with the need to address criminal offences.

The paper will explore the historical development of diplomatic immunity and its underlying principles. It will delve into the specific provisions governing criminal liability and immunity in the Vienna Convention on Diplomatic Relations, the primary international instrument on the subject. Additionally, the paper will discuss the domestic laws of India, including the Diplomatic Immunities and Privileges Act, 1978, and its relevance in the context of diplomatic offences.

The research will identify and analyse key legal issues and challenges arising from the interplay between diplomatic immunity and criminal liability. These may include the scope and extent of immunity, the procedures for waiver of immunity, and the potential abuse of diplomatic privileges. Furthermore, the paper will explore the implications of diplomatic immunity for victims of crimes committed by diplomats and for the maintenance of public order.

From a national perspective, the paper will examine the specific legal framework in India, including its domestic laws and their application to diplomatic offenses. It will analyse the effectiveness of Indian laws in addressing cases involving diplomats and ensuring justice for victims.

From an international perspective, the paper will discuss the evolving norms and practices related to diplomatic immunity and criminal liability. It will consider the impact of international conventions, customary law, and judicial decisions on the interpretation and application of these principles.

By examining these legal issues and challenges from both national and international perspectives, the paper aims to contribute to a comprehensive understanding of the complex legal landscape surrounding diplomatic immunity and criminal liability. It will provide valuable insights for policymakers, legal practitioners, and scholars engaged in international law and diplomatic relations.

Keywords: Diplomatic immunity, Criminal liability, International law, Indian law, Vienna Convention on Diplomatic Relations, Domestic laws, Legal issues, Challenges

INTRODUCTION

The principle of democracy is based on the belief that no one is above the law, and those who escape punishment are protected by international law. Diplomacy, a major element of international law, aims to develop and maintain international relations among nations. Its main goal is to resolve conflicts peacefully and avoid war, contributing to the progress of states worldwide. Diplomacy involves individuals or groups appointed by nations to travel to foreign countries for discussion and negotiation.

This practice has been recognized by society since long and has been legalized since 1961 under the Vienna Convention of Diplomatic Relations.¹

Under Art. 31, the Vienna Convention, a convention comprising 193 governments, offers a number of rights to ambassadors, their families, employees, and property.² Centuries of protection has been bestowed to us, yet it has been maltreated. Civil immunity restricts the conduct of diplomats and their families for private or business gain. If such is the case, they will have to appear in court in the host nation. In the event that they do commit a crime, they

¹ Denza, E. (2016). *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press.

² Subramanian, S. R. (2017). Abuse of Diplomatic Privileges and the Balance between Immunities and the Duty to Respect the Local Laws and Regulations under the Vienna Conventions: The Recent Indian Experience. *The Chinese Journal of Global Governance*, 3(2), 182-233.

are completely exempt from prosecution.

Over the years, diplomacy has taken on many different forms, including digital, open, secretive, public, and private. Through the establishment of colonies and their dispersal among lesser states, Europe has been instrumental in the development of this idea. As a result, conventional diplomacy has been turned into legislation. In some way, they have established the customary diplomatic practice that has become law. Additionally, scholars discovered that sacred Indian texts such as the Ramayana and Mahabharata contain instances of diplomacy, such as Lord Krushna and Lord Hanumana, who served as "Doot" a messenger was used in Hastinapur and Lanka respectively.³ While investigating researchers studying these scriptures discovered that they also discuss protection and the messenger's protection that the messenger ought not to be handled and their safeguard while acting in alien territory. As a result, this research also covers a number of instances in which countries have ratified bilateral and multilateral treaties, the Kyoto Protocol, the Millennium Development Goals, the Sustainable Development Goal, and several other accords. All of these serve as examples of how relationships may grow peacefully in the globe. In actuality, diplomacy is what gives international relations their life. When nations engage in diplomacy, diplomats play a crucial function to make it happen. Diplomats are often divided into three groups. and yet there are no distinctions between these groups in Conventions.⁴ Everybody It is the duty of diplomats to carry out their role in ensuring peace. They have advantages of inviolability while carrying out their peaceful duties, such that They, their property, and their belongings are not subject to inspection by the host state.

Classification of Diplomatic agents

Diplomatic agents accredited to a State differ in class. The Vienna Convention on diplomatic relations, 1961 under Article 14 divides diplomatic agents into three classes. They are:

- Ambassadors accredited to head of State.
- Envoys, ministers accredited to the head of State.
- Charges d' Affairs accredited to Ministers of Foreign Affairs.

³ Krishna, A. K., & Ramakrishnan, N. (2020). Balancing Diplomatic Immunity: An Indian View Beyond the Khobragade Position. *Diplomatic Immunity: Evolution and Recent Country Developments*, 99-115.

⁴ Denza, E. (2016). *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press.

Basis of Diplomatic immunity and privileges

Different international jurists have divergent views as to the basis for giving immunities to diplomatic agents. Their views led to the emergence of three important theories which are as follows:

- **Extra-territorial Theory:** This theory is also known as the **fictional theory**. According to this theory, diplomatic agents are considered not be within the territorial jurisdiction of the State to which they are accredited, but to all times within that of the sending State. Extra- territorially of diplomatic agents means that though diplomats physically present upon the soil of the country to which they are accredited but they remain for all purposes on the soil to which they represent.
- **Representational Theory:** According to this theory, diplomatic agents are regarded as personal representative of the sovereign of the sending State. Therefore, they are given the same degree of privileges and rights which are given to the head of sending State.
- **Functional Theory:** According to this theory, diplomatic agents are given immunities because of the nature of their functions. The duties which the diplomats perform are far from easy. In other words, their actions of duties are of typical or some special nature. They are allowed immunities from the legal and other limitations of the State to which they are accredited to effectively perform the tasks they are allotted.

1. FUNCTIONS, PRIVILEGES AND IMMUNITIES OF DIPLOMATS

Representing nations in other states is a constant activity of diplomatic missions across the world. Beginning in the 17th century, the custom of sending envoys to visit regions and carry out certain tasks changed throughout time. The 1815 Congress set down the roles, customs, rights, and immunities of ambassadors. One key component of national power and the supreme institution in international politics is diplomacy. Martin Wight and Morgenthau, two authorities in political science, stressed its significance. Diplomats now handle just goalkeeping duties, broadening their responsibilities. Specific diplomat classifications are outlined in the 1815 Convention⁵, albeit they have evolved over time to become more accommodating. The procedure stays the same and changes with the times.

The categorisation of diplomatic agents is covered in this article, with particular attention paid to the 1815 Convention and its evolution over time. It also covers the duties of diplomats,

⁵ Mackenzie, A. (2002). Faith in Diplomacy. *Caux: Caux Books*.

including their obligations to their sending state, their role in negotiations, and their guarantee of peaceful offers to host governments. Major diplomatic responsibilities including representation, negotiation, protection, and surveillance are also covered in this chapter, along with strategies for fostering cordial ties with recipient governments. With reference to the Vienna Convention on Consular Relations of 1963⁶, it also discusses the idea of consular functions and their immunity. The article also covers immunity and diplomatic privileges, emphasising the rationale for these benefits. This article also addresses the significance of inviolability for diplomats, who are exempted from criminal prosecution and possess inviolable means.

1.1 Functions

A diplomat's primary responsibilities include representing his country abroad, defending and preserving national interests, carrying out national policy, and keeping his government informed of any significant actions of the goal. A diplomat serves as a de facto authority on political, the country's economic circumstances. From the beginning of time, a kingdom was founded specific guidelines for their messengers, these messengers were required to follow their obligations in line with the established guidelines. Greeks, Romans, Indians, and Chinese their significant contribution to the creation of roles and responsibilities in antiquity diplomats in a world in transition.

Kautilya gave ambassadors a list of responsibilities that included conveying messages⁷, repeating replies, carrying out agreements or treaties, guaranteeing peaceful resolutions, lowering tensions, and gathering copies of secret agreements signed by kingdoms. Appointing diplomats was done by special missions or letters known as Letters de C'reance, which were often sent to the state that was to receive them. Renowned political philosopher Morgenthau⁸ made a substantial contribution to the field of diplomatic studies when he said that ambassadors serve as a two-way conduit between the centre and the outer world. He emphasised the legal, political, and symbolic roles that ambassadors play. In order to foster peaceful relations, a diplomat must convey their nation's legal proposition to the receiving state and forge international political ties with other nations. As they create their symbolic qualities,

⁶ Melissen, J., & Fernández, A. M. (Eds.). (2011). *Consular affairs and diplomacy* (Vol. 7). Brill.

⁷ Chakraborti, T. (2016). Contemporary Relevance of Kautilya's Mandala Theory and Diplomacy. *Online* dalam [http://www.academia.edu/33923280/KAUTILYAs_Concept_of_Diplomacy](http://www.academia.edu/33923280/KAUTILYAs_Concept_of_Diplomacy_Diakses_pada_tanggal_7) Diakses pada tanggal, 7.

⁸ Thompson, K. W. (2020). Philosophy and politics: The two commitments of Hans J. Morgenthau. In *Truth and Tragedy* (pp. 21-31). Routledge.

sovereignty, armed forces, and independent states.

1.1.1 Negotiation

International relations are complex and unpredictable, with diverse societal needs and demands constantly changing. Diplomats must adapt their diplomacy skills to address these challenges, focusing on negotiation as a key communication skill. Diplomats must be skilled in presenting their country's proposal to another nation, discussing the aim until achieving a proposal. They must also manage disputes, build relationships, and strengthen them. Diplomats must negotiate skillfully to avoid aggression and maintain the growing importance of international relations. During the Renaissance, first-sovereign units in China, India, and the Middle East sought friendly relations. Representatives were sent to countries to develop relations through structured negotiations. The US and NATO had a famous negotiable talk in 2011, where the US President committed to the Alliance to defend terrorism. In the COVID-19 pandemic, states were working to obtain vaccines for the COVID-19 pandemic⁹. Developed and wealthy countries have also used negotiation challenges to tie up deals with reliable pharmaceutical companies. All vital aspects of international relations are resolved through negotiation by diplomats, as the world's complexity is due to the diversity in every nation. Diplomats work to establish international friendly relations and achieve tasks in favor of their own nation.

1.1.2 Representation

A diplomat represents their own country at the host state, acting as a communication channel between the sending and receiving states. They must act according to their assigned work and prioritize the nation's interest. When a state decides to conduct negotiations with another state, it appoints representatives to conduct the negotiations. It is crucial to appoint the correct representative with the power to attend, participate, and negotiate in favour of the nation. Diplomats are the mouthpiece of the head of their own state and the Foreign Minister for communication to the state where they are dispatched. The Vienna Convention on Diplomatic Relations 1961 provides guidelines for diplomatic missions¹⁰, including promoting friendly relations, stabilizing economic conditions, and forming trade activities. For effective diplomacy, diplomats represent their own state according to the will of the sending state. If a

⁹ Biswas, N., Mustapha, T., Khubchandani, J., & Price, J. H. (2021). The nature and extent of COVID-19 vaccination hesitancy in healthcare workers. *Journal of community health*, 46, 1244-1251.

¹⁰ Langhorne, R. (1992). The regulation of diplomatic practice: the beginnings to the Vienna Convention on Diplomatic Relations, 1961. *Review of International Studies*, 18(1), 3-17.

diplomat feels their country needs negotiation or is unsure about a decision, they should consult with their own nation. A decision that contradicts the nation's interest should always be avoided.

1.1.3 Protection

Article 3 of the Vienna Convention of Diplomatic Relations 1961¹¹ outlines the protection of the interests of the sending state and its nationals in the receiving state under international law. Diplomats have various political, social, and financial responsibilities while representing their nation, including protecting national interests, contradictory decisions, host state laws, and human rights. They enjoy immunities at the receiving country, but these can sometimes lead to violations of human rights. Jurisprudential opinions on interest and rights vary.¹² Eminent jurists Ihering and Salmond agreed that interest is a synonym for "right," while Dias disagreed, stating that interest and rights are distinct concepts. Individual rights are given under statutory duties, while interest is a desire or determining factor. Basic human rights are inherent in individuals, but generally, interest and rights are synonyms. In Article 3(b) of the Vienna Convention 1961¹³, human rights are to be protected by diplomats during their national mission. The intervention of a diplomat on behalf of an individual or national right is required for the protection of rights.

1.1.4 Observation

A crucial attribute of a diplomat is their ability to observe. Diplomats are expected to keep an eye on any occurrences that may arise in the state where discussions and negotiations are taking place for the benefit of the diplomat's own nation. Diplomats must document their observations by writing reports for the sending state's government.

1.1.5 Promotion of Friendly Relations

The main purpose of diplomacy is to foster amicable relations between states. A journey through the history books will inform us that political international relations have always been developed via diplomacy among kingdoms. Messengers have been dispatched from Babylonia

¹¹ Hestermeyer, H. P. (2009). Vienna convention on diplomatic relations (1961). *Max Planck Encyclopedia of Public International Law*.

¹² Amoo, S. K., & Mapaure, C. (2021). The Relevance of Jurisprudence as a Course of Study. *Global Jurisprudential Apartheid in the Twenty-First Century: Universalism and Particularism in International Law*, 33.

¹³ Linderfalk, U. (2008). Who Are 'The Parties'? Article 31, Paragraph 3 (c) of the 1969 Vienna Convention and the 'Principle of Systemic Integration' Revisited. *Netherlands International Law Review*, 55(3), 343-364.

since 500 BC¹⁴ to forged ties with a different region.¹⁵ The primary goal of creating this The general tendency was to steer clear of hostilities and disputes on a global scale by in a calm manner. Friendship is the abbreviation for war, and it is widely endorsed by the world's principal governments. With no variations at all, every sovereign state is welcome to build its legal, political, and international ties with a different sovereign state.¹⁶

1.2 Diplomatic Privileges and Immunities

Granting diplomatic immunity and privileges is a deeply ingrained idea. In the receiving stage, the messenger is not allowed to be touched; this custom dates back thousands of years. Diplomacy cannot exist without privileges. defence of the envoy in the host country. The primary objective of offering Such immunity is necessary to conduct diplomatic relations without hindrance or the situation of fearing receipt. The recipient state's domestic legislation stipulates that it should refrain from interfering with the diplomat's mission This procedure also draws from customary international law that has been consistent and uniform since lengthy duration. A diplomat is shielded from prosecution in the He or she fully has immunity from any domestic court in the receiving application of receiving state's authority in accordance with international law. In the 1961 Vienna Convention on Diplomatic Relations¹⁷, the preamble provides a notion of granting such powers. Conventions emphasise that granting a diplomat protection and privileges will foster amicable relationships between countries, despite the differences in their legal and social systems Additionally, convention helps diplomats realise that the goal of such privileges and immunities are not granted for personal gain, but rather to guarantee the skilful performance of his diplomatic mission as a representative of sending state. The head of state's immunity is controlled by customary national legislation.

2. CIVIL, CRIMINAL LIABILITY AND IMMUNITY OF DIPLOMATS

2.1 CIVIL LIABILITY AND IMMUNITY OF DIPLOMATS

Diplomacy, as a convenient fiction that comprises the truth and integrity of sovereigns, has been a poor child of international relations carried by the world. It has been treated like a baby, and international law provided every essential to secure its functions. Diplomacy has continued

¹⁴ Meier, S. A. (2018). *The messenger in the ancient Semitic world* (Vol. 45). Brill.

¹⁵ Byrd, M. S. (2018). Babylon: Rise of a Complex Urban Civilization (ca. 3700–539 BCE). In *Places of Encounter, Volume 1* (pp. 39-56). Routledge.

¹⁶ MacCormick, N. (2018). Beyond the sovereign state. In *Relocating Sovereignty* (pp. 473-490). Routledge.

¹⁷ Langhorne, R. (1992). The regulation of diplomatic practice: the beginnings to the Vienna Convention on Diplomatic Relations, 1961. *Review of International Studies*, 18(1), 3-17.

to grow with the help of customary antique rules, which must always be considered when evolving international rules. According to Starke's, usage is the first stage of custom, and customs which are in society by open accepted hand running consistently then will be turned into law. This chain also happened with diplomatic practice. In earlier era, diplomats used this practice and achieved their prescribed mission through communication, discussion, and negotiation.¹⁸ While performing such duty, diplomats faced hurdles or sometimes issues were created by the diplomat. The Vienna Convention constitutes a legal binding on the states to help practice diplomacy on the basis of reciprocity. International laws have played a vital role player to strengthen the roots of contemporary diplomacy.¹⁹ Researches have shown that there exists a link between international laws and the practices of contemporary diplomacy. Diplomatic agents enjoy immunity from local jurisdiction of host state in civil and criminal matters. They are exempted from being a witness in civil, criminal, or any administrative code of the state where they are sent by their country. The crux of such immunities is mentioned in Art.31 of Vienna Convention.²⁰ Hence, diplomats are foreign elements by the state who are not subject to the jurisdiction of domestic court and other authorities of the officials and to some extent, their personal activities. Diplomatic missions generally done in traditional ways like principal communication link between sending and receiving country. Accordingly, the staff of diplomatic missions are also liable for privileges and immunities in the host state. This chapter mainly discussed civil and criminal rights of diplomats. The concept of civil immunity and liability of diplomats is uniform and traveling since ancient times. It covers with blanket of customary international law. Diplomats enjoy civil immunities in many cases like property, taxes, tort, family matters, etc., but the convention gives certain exceptions while enjoying civil immunity. The Vienna Convention on Diplomatic Relations 1961 provides shield to the diplomats from the jurisdiction of the state where they are performing their official assigned work. The development of diplomacy results in the evolution of Vienna Convention 1961. The diplomatic law is loaded with various provisions which give protection from receiving states like inviolability of diplomatic, inviolability of premises, immunity from local jurisdiction, immunity from giving witnesses, immunities from taxes and custom duties, immunity from inspection of personal baggage, freedom of communication, freedom of travel, right to

¹⁸ Berridge, G. R. (2022). *Diplomacy: theory and practice*. Springer Nature.

¹⁹ Saner, R., & Yiu, L. (2003). *International economic diplomacy: Mutations in post-modern times* (Vol. 84, pp. 1-37). Netherlands Institute of International Relations' Clingendael'.

²⁰ Van der Bruggen, E. (2003). Unless the Vienna Convention otherwise requires: notes on the relationship between Article 3 (2) of the OECD Model Tax Convention and Articles 31 and 32 of the Vienna Convention on the Law of Treaties. *EUROPEAN TAXATION-AMSTERDAM-*, 43(5), 142-156.

worship, immunity from local and military obligations. Most countries use civil code in their local judicial system, and the position of civil law systems is more likely based on their respective constitutions of country.

In **Asfar v Wong**, the UK Supreme Court declined to consider the Human Rights Law while interpreting the Vienna Convention on Diplomatic Relations 1961. The case focused on the financial and commercial activities of diplomats, which are prohibited from practicing anything for personal profit or interest. The court found that the diplomat exploited domestic workers for personal profit, which is out of the scope of the Vienna Convention on Diplomatic Relations 1961. In another case, the UK Supreme Court discussed the concept of modern slavery while discussing civil immunity of diplomats. The court held that diplomats enjoy civil and criminal immunity but do not give exemption in civil cases involving alleged modern slavery. In normal circumstances, domestic workers should not be engaged in commercial activities, as they are considered outside of the assigned functions of diplomats. The majority ruled that Mr. Basfar, a 'diplomat', mounted to modern form of slavery as he committed with his domestic worker to engage in commercial activity for personal profit. In **Ethiopian Airlines v Ganesh Narain Saboo**, the court discussed the concept of sovereign absolute, restrictive, and diplomatic immunity. It was held that states engaged in commercial activities are not entitled to immunity under international law. The Indian law highlighted restrictions and modifications on sovereign immunity, and countries are now more closely connected through trade and commerce transactions.

Diplomat immunity is granted to diplomats in four categories, with the last category stating that it is granted to family members, wives, children, and domestic workers of diplomats. In a case involving **Abdul Laziz v Mdedtro Dade City**, the court distinguished diplomatic immunity from sovereign immunity available for foreign diplomats. The court observed that while identifying a person as a diplomat, the plaintiff must prove their identity. The state department is keen to protect diplomatic immunity, so they also ensure that a person is a diplomat and enjoying diplomatic immunity in the correct state. A person and their family members who are enjoying immunity must have liability of insurance on a car with an accident made. If someone has been injured by a diplomat or their family member under immunity, they have direct cause of action against the insurance company. The United Nations Wage Garnishment Programme was introduced in 1999 to address issues where diplomats avoid fulfilling their liability towards their families. This is because taking care of their children and

wife is a paramount duty of an individual. In 1994, a New York Family Court directed a man to pay his dues to the wife and child for care, as he was enjoying immunity. In this case, the Hague convention served him summons, and the issue arose due to the fact that diplomats enjoy immunity.

The jurisdiction immunity for state and property under international law is based on customary international practice. The Vienna Convention 1961 provides privileges and immunities to diplomats, including those holding consular posts, special missions, missions to international organizations, delegations, or conferences. This convention only non prejudices with immunities enjoyed by the state under international law in aircraft or space objects operated by the state. Diplomats' position in office is determined by two rules: one stating that no measures are provided for their acts, but certain exceptions are made without infringing on their inviolability, and the execution does not lie on the diplomat's act, except in civil jurisdiction circumstances. Diplomats are appointed by the sending state, which is their native country, and must be accepted by the receiving state to perform their assigned task. The diplomatic system consists of two poles: the receiving pole and the sending pole. The sending state is responsible for engaging an individual for diplomatic missions, ensuring their representative abides by the receiving country's laws, domestic rights, and access to court from prosecution. They must also protect their representative through a code of conduct, which serves as official guidelines for the diplomatic mission.

Diplomats who commit crimes in the receiving state may face jurisdiction at their own national's land, while the sending state can try their own diplomat at its local court. Once in the receiving state, diplomats leave their diplomatic immunity and may be tried under their state's local law. If the sending state fails to maintain its code of conduct, it may take action. When a diplomat returns to the receiving state, it is their duty to ensure their security and safety, following the Vienna Convention on Diplomatic Relations 1961. The receiving state is not liable for holding a diplomat guilty, but it is more obligatory to protect them. Receiving states provide immunity for minor to major crimes, but this does not extend to acts involving personal purpose or profit.

2.2 CRIMINAL LIABILITY AND IMMUNITY OF DIPLOMATS

The text emphasizes the importance of international law in addressing human frustration and promoting freedom and fulfillment within society. It highlights the need for a unitary view of

human rights and the social dimension of law in court and litigation practice. The integral yoga of law and the people is inviolable, and law must relate to the small man's right to justice. International law, such as the VCDR 1961, serves as the cornerstone for international relations and diplomacy. However, it has faced criticism for its potential abuse of civilians, such as the exploitation of domestic workers by diplomats. The text also discusses the challenges faced by states in dealing with absolute immunity of diplomats, as well as the legal norms and restrictions that exist.

2.2.1 Jurisprudential Aspect of Criminal Liability

Understanding a society requires a coherent understanding of its law and legal doctrine, including social, moral, and cultural foundations. Jurisprudence provides a definition and legal concept of law, allowing for better understanding of the nature of law. Legal theory helps undertest the roots of legal values in society. The first principle of law, introduced by Dicey, states that no person can be punished or made to suffer except for a distinct breach of law established in an ordinary legal manner before the courts of the land. The rule of law is concentrated with every system of government, based on the exercise of wide, arbitrary, or discretionary power of constrain. This power may extend to laws that violate fundamental rights or describe laws that are vague or uncertain, making it difficult for citizens to plan their lives in harmony with the law.

2.2.2 State Practices in Relations to Criminal Liability of Diplomats

Developed Countries

European Union

The European Union (EU) has a unique approach to diplomacy, focusing on social and full patterns of action, contrasting with theoretical dichotomies between structure and agency for international relations. EU diplomacy involves a new setup to enhance security, resolve human rights issues, and enhance its development. The EU's main agenda is to establish European and national identity, which does not translate into homogeneity across the EU. Diplomacy is an application of intelligence and tact to conduct international relations between two sovereign independent governments. Bilateral relations between nations or EU states and non-EU states and third countries have developed, mainly following economic and political integration received through EU membership. EU diplomats enjoy diplomatic immunity, but may face difficulties while enjoying complete diplomatic privileges

United States of America

The immunities of diplomats are a subject of debate in the United States, with each state interpreting the law to enforce agencies. The Vienna Convention on Diplomatic Relations established that diplomats enjoy immunity and privileges, but if an action is found unlawful or a diplomat is about to commit a wrongful act, the state has the authority to stop the diplomat. The U.S. does not provide licenses for diplomats to commit crimes. The U.S. government introduced its own diplomacy law, the Diplomatic Relations Act 1978, under the guidance of the Vienna Convention on Diplomatic Relations. This act repealed the old one and introduced a new one, reducing unnecessary claims of immunity by diplomats and their native governments. The Foreign Sovereign Immunity Act 1976 was introduced to protect foreign governments from law suits in certain circumstances. The Act repealed the 1790 law and provided additional states to rectify abuse of diplomatic immunity. It classified the system of VCDR, regulating the degree of immunity of diplomats. The Act also asked diplomats on mission and their families to carry liability insurance at levels established by the President. However, the act failed to apply or restrict criminal immunity of diplomats, administrative officials, technical staff, or their families. Enforcement of the Diplomatic Relation Act can be achieved through persona non grata, settlement of disputes, and suing the sending state. Israel has also taken steps to restrict diplomatic immunity, but nations are still binding under customary law practice and the rule of VCDR. To curb misuse of immunities and privileges, it is necessary to implement policing new legislation and curtail the misuse of these privileges.

United Kingdom

Diplomatic immunity is a status preserved for foreign representatives, exempting them from arrest or prosecution in criminal or civil cases. In the UK, approximately 23,000 individuals are under this immunity. However, the UK Supreme Court did not give attention to diplomatic immunity in response to the commission of modern slavery by diplomats in **Basfar v Wong** case. The court made distinctions between modern slavery and commercial activity and employing domestic workers, which are not covered by diplomatic immunity. The UK government also intruded its own municipal law on diplomacy, the Diplomatic Privileges Act 1964, which specified that diplomats enjoy immunity from criminal proceedings. In the **Basfar v Wong** case, the court found that most claims by domestic servants were modern slavery, which is not acceptable by the British government against anyone. The court found that exploiting domestic workers by foreign representatives is a crucial problem and that the question of providing immunity in such situations is one of the important concerns in this

famous practice. In conclusion, diplomatic immunity is necessary for the proper functioning of diplomatic missions, and the UK Supreme Court has failed to take actions against diplomats who used their functions for commercial activities.

United Nations Organisation

Article 105 of the Convention on the Privileges and Immunities of the United Nations (1946) limits the privileges and immunities of UN officials, unlike the Vienna Convention on Diplomatic Relations 1961. The Convention outlines four categories of officials who receive immunities: high officials, UN officials, UN officials themselves, and experts on mission. High officials receive diplomatic immunity, while officials of the UN itself and experts on mission enjoy functional immunity. Article V, Sec18 of the UN convention states that officials are entitled to immunity from legal process in respect of words spoken or written and all acts performed in their official capacity. All staff members of the UN, regardless of nationality, residence, place of recruitment, or rank, fall under the category of UN officials.

Developing Countries

South African Practice

Diplomatic immunity is a universally accepted principle in international law, primarily affecting diplomats in political affairs. South Africa introduced the Diplomatic Privileges Act in 1951, based on customary international law. In 1989, South Africa adopted both the Vienna Convention on Diplomatic and Consular Immunities and made changes to its own law. The Diplomatic Immunities and Privileges Act 2001 provides full protection to the Vienna Convention on diplomatic relations, including family members of diplomats, heads of state, special envoys, and foreign representatives. The Minister of Foreign Affairs is responsible for notifying those enjoying diplomatic immunity and registering their names in the Official Gazette. The immunity and privileges are more granted to representatives of another country in South Africa than to South Africa's mission in that state.

Indian Practice

India established diplomatic law on October 15, 1965, based on the Vienna Convention (VCDR 1961). India actively operates international relations and has numerous embassies worldwide. The Indian Diplomatic Relations (Vienna Convention) Act, enacted on October 15, 1965, aims to enforce obligations arising from international conventions. The act's preamble gives effect to the home international convention, while section 2 states that the provision of the convention

will have effect regardless of other laws. Section 4 restricts states from removing privileges from their diplomatic missions if they breach VCDR 1961 rules. The act also emphasizes reciprocal duty, with India acting in accordance with immunities and expecting its mission in other states to follow the same. Section 8 discusses the inviolability of diplomats and their premises, a topic that India has experienced numerous cases on.

Sri Lanka

Sri Lanka adopted the Diplomatic Privileges Act 1996 in 1996, which provides diplomatic immunity to diplomats on mission in the country. This act is more similar to the Indian Act than South Africa and does not require registration to identify diplomats or provide insurance mechanisms to protect citizens from abuse. Diplomats will enjoy civil and criminal immunity on behalf of the sending state, according to the Vienna Convention on Diplomatic Relations 1961. However, the act does not provide exemption from jurisdiction for offenses like motor accident rules. All missions must comply with employer contributions and employees to their home ministry. In cases of disputes between local staff and diplomats, diplomatic immunity is dealt with by the domestic court of the country.

CONCLUSION AND RECOMMENDATIONS

Diplomacy is a cornerstone of public international law, developed through customary rule. It provides immunities to diplomats, such as immunity from prosecution, interrogations, search and seizer, and other privileges. These immunities play a vital role in maintaining peace and security between nations. However, absolute immunity has diverse nature and can create legal challenges and issues before international security management. To safeguard the security at receiving states, it is necessary to restrict the absolute criminal immunity practice of diplomats. This research focuses on the criminal liability and immunity of diplomats, focusing on absolute criminal immunity given to diplomats in foreign countries where it may be misused due to their personnel acts. This research also analysed ancient diplomacy practices and how states treated diplomats during colonization. The researcher also examined European international practice and how Europe successfully expanded its colonies over weaker territories, introducing diplomatic practice globally. During colonisation, international relations were mainly based on Christianity and religion of other states, with Europeans starting and developing this practice according to their interests. This found that diplomacy to an extent is biased, providing protection to representatives of foreign states irrespective of the crime committed. this research

explores the concept of diplomacy, discussing various theories and types, classifying diplomatic envoys, and explaining the definition of Vienna Convention of Art.3. This research also discusses the functions and duties of diplomats during diplomatic missions, emphasizing the importance of maintaining peace and adhering to the law of the host country. They also discuss various ways diplomats can achieve their diplomatic functions, such as negotiation, representation, protection, and observation. This research discusses the concept of inviolability, which states that every diplomat is inviolable from arrest and premises, creating tyranny where legal authority cannot reach. This research also discusses the meaning and concept of privileges and immunity granted to diplomats, as well as the concept of sovereign immunity of state, it also discusses the civil liability of diplomats and the reasons behind absolute criminal immunity. This research found that the customary rule allows for exemptions for diplomats to act or perform a duty on their personal interest, but this exemption is not available for diplomats who commit crimes out of their assigned work. This difference creates a vacuum in the law of diplomacy. This research then discusses the criminal liability concept and the reason why diplomats enjoy absolute criminal immunity. They find instances of wrong, dull, and heinous crimes committed by diplomats, such as modern slavery, trafficking, rape, sexual assault, murder, kidnapping, smuggling, domestic violence, child abuse, hit and drive accidents, and more. These incidents are dangerous and have a deep impact on society.



WHITE BLACK
LEGAL