

LEGALFOXES LAW TIMES

DIPLOMATIC IMMUNITY: A PERFECT ESCAPE PLAN?

By Akshat Mittal

Abstract

Imagine a world where heinous crimes are committed but the suspect cannot be arrested even if there lays good amount of evidence against him. Now what if someone tells you that what you've imagined is actually true, that there exists such a world and you are living in it. Wouldn't it be shocking to discover, hard to believe that how can justice be mocked so easily? Only two words are enough to answer this question i.e. "Diplomatic Immunity." The concept is recognised to be a way of showing respect & dignity to the foreign government officials, to promote friendly relations, to strengthen the economic, culture and scientific bonds between the Nations, carrying the same spirit Vienna Convention on Diplomatic Relations was formed in the year 1961. It is expected from a diplomat to honor the local laws & authorities of the Nation in which the one is present but it is well said that expectations are always tend to hurt. Similarly, there have been many unfortunate occasions on which the diplomats have abused their immunity to great extent. These abuses may include cases like smuggling of drugs/illegal trade, espionage, money laundering, sexual preying, murder, terrorist level threats, trafficking, slavery, vehicular offences, tax evasions, etc. The idea of protecting the diplomatic functions of the States may be fundamental but it is indispensable to safeguard the interests of the victim of a diplomat. The call to re-develop and to cover the loopholes in the laws governing the concept of Diplomatic Immunity shall be made recognised.

The Paper focuses on highlighting the various incidents pertaining to the misuse of the Diplomatic Immunity. The Author will also be suggesting various ways in which the problem of misuse may be tackled. The scope of the study however is limited to the incidents involving India and Indian Diplomats. The research also offers the study of relevant provisions of the Vienna Convention on Diplomatic Relations of 1961.

Keywords: Diplomatic Immunity, Unfortunate Abuse, Reformation of laws, Justice for Victims.

TABLE OF CONTENTS

1. INTRODUCTION	3
1.1. HISTORY & BACKGROUND.....	4
1.2. NEED FOR THE STUDY	5
2. REVIEW OF LITERATURE.....	6
3. ABUSE OF DIPLOMATIC IMMUNITY	7
3.1. MANSOOR ALI, SENEGAL (2003)	8
3.2. JALIL ABBAS JILANI, PAKISTAN (2003)	8
3.3. MAJED HASSAN ASHOOR, SAUDI ARABIA (2015).....	9
3.4. DEVYANI KHOBRA GADE, INDIA (2013).....	10
3.5. RAVI THAPPAR, INDIA (2015)	10
3.6. DECODING MATERIALITY	11
4. MEASURES TO COUNTER SUCH MISUSES	12
4.1. <i>PERSONA NON GRATA</i> : LONE ALTERNATIVE TO RECOURSE.....	12
4.2. LYNCHED RESISTANCE TO BE SURPASSED BY GLOBAL INITIATIVES..	13
5. CONCLUSION & RECOMMENDATIONS.....	14

1. INTRODUCTION

“Diplomacy is a game of chess in which the nations are checkmated.” – Karl Kraus.

Diplomatic Immunity is defined by Webster’s Dictionary as, “an international law that gives foreign diplomats special rights in the country where they are working.”¹ Further it was noted that these foreign diplomats cannot be arrested as long as they are working in other country. In other words, it can also be said that a person who is a diplomat, meaning an ambassador or official representative of a State when carries out the operations of the representing State in a foreign State is protected by the principle of International Law against the police authorities and legal jurisdiction of the State of assignment. Such doctrine of International Law is referred to as “Diplomatic Immunity.” Generally, the Diplomatic Immunity Law is governed and regulated by the Vienna Convention on Diplomatic Relations, 1961 [hereinafter “the Convention”]. The convention was duly signed by almost every Nation on April 18, 1961 and came into force on April 24, 1964.² It was agreed upon to honor the principles established by the UN Charter so as to promote equality of sovereign States & friendly relations, and to maintain international peace & security irrespective of different constitutional systems, the purpose of which was to ensure efficiency in performance of diplomatic functions & missions.³ **Article 29**⁴ of the Convention guarantees diplomatic agent immunity from both criminal & civil jurisdiction of the receiving State and by the virtue of **Article 37(1)**⁵ extends this immunity to the family of a diplomat. Further the private residence and premises of mission of a diplomat is also safeguarded from the jurisdiction of local authorities.⁶ The immunity is extended for the diplomat & his family even

¹ Diplomatic Immunity as defined in Merriam-Webster Dictionary; <https://www.merriam-webster.com/dictionary/diplomatic%20immunity#> (last visited 05.11.2020)

² Holger P Hestermeyer, *Vienna Convention on Diplomatic Relations (1961)*, OXFORD (Jan. 2009); <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1004>

³ Preamble to the Vienna Convention on Diplomatic Relations, 1961

⁴ **Article 29** – “*The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.*”

⁵ **Article 37** – “(1) *The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.*”

⁶ **Article 31** – “(1) *The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.*”

when they are in or passing through a third state.⁷ The Convention when adopted became the touchstone for regulation of diplomatic relations. Even those States which were not a party by then, conformed to the rights & duties laid out in the convention. The International Court of Justice in *United States Diplomatic Staff*⁸ gave the tag of “unequivocal endorsement” to the Convention and recognised the importance of it in the general international law. Even though Vienna Convention is regarded as one of the surest & most broadly based upon “multilateral regimes” in regulating international relations, it is safe to mention that it has its own ambiguities and cannot be said to be comprehensive as it doesn’t cover all the areas of diplomatic practice.⁹

1.1. HISTORY & BACKGROUND

The Preamble to the Vienna Convention of 1961 states that, “Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents.”¹⁰ This clearly depicts that the inviolability of diplomat envoys has always been given a good amount of recognition by civilizations throughout the history. One can easily recall the ancient times of Monarch States, the messengers of the King were always guaranteed a safe passage in order to ensure a system of information exchange and contact.¹¹ Free movement was necessary in order to discuss the matters of war, peace and trade.¹² One illustration of such practice can also be traced back to ancient Indian epic *Ramayana*, the incident where the King Ravana had ordered to kill Hanuman, the younger brother Vibhishana interferes and points that, “In all Countries, and always, ambassadors are not sentenced to death.”¹³ But later on the Diplomat Hanuman was witnessed putting almost whole of Lanka on fire. It is the traditional religious mechanism which have always been given utmost importance in providing hospitality to such guests, later it became a part of customs and

⁷Article 40 – “(1) If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.”

⁸ [1979] I.C.J. 61 I.L.R. 504: *Infra*.

⁹ Jonathan Brown, *Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations*, 54, 37 Int'l & Comp. L.Q. 53 (1988).

¹⁰ Preamble to the Vienna Convention on Diplomatic Relations, 1961

¹¹Marsha L. Frey, DIPLOMATIC IMMUNITY ENCYCLOPEDIA BRITANNICA (2013), <https://www.britannica.com/topic/diplomatic-immunity> (last visited Aug 17, 2020).

¹² Amanda M. Castro, Abuse of Diplomatic Immunity in Family Courts: There's Nothing Diplomatic about Domestic Immunity, 355, 47 Suffolk U. L. Rev. 353 (2014).

¹³KRISHNAN ARAVAMUDAN, PURE GEMS OF RAMAYANAM 773 (Illustrated ed. 2014), https://books.google.co.in/books?id=CJe9BAAAQBAJ&redir_esc=y (last visited Aug 16, 2020).

was recognised to be the right of such diplomat to be treated with respect & dignity, and in case if any such ambassador or diplomat was subjected to mistreatment, the States have even called upon Wars on such issue. The example of Genghis Khan and the Mongols invading and destroying the Khwarezmid Empire because of the ill-treatment of their ambassadors is one ancient scenario. The first law regarding diplomat's immunity arose in Europe as the Act of Anne, 1708 which granted that, "All writs and processes to arrest or imprison ambassadors or their servants were null and void."¹⁴ Later on including the ambassador's property into the ambit of immunity, Crimes Act, 1790 was passed by the American Congress. The need for the adoption of a common law was recognised in the early 1900s when it was witnessed that almost every country had made separate rules and procedure to govern diplomats due to which complications in the matter increased. Some was having very broad interpretations whereas some were having narrow scope. The opinion that the law should be made to favour the missions and not the diplomats raised the need for International uniformity on the subject which led to forty Countries came together, agreed upon and signed the Vienna Convention in 1961.¹⁵ It codified the separate pieces of diplomatic relations law into a single code which is binding upon the party states and affirmed that every question arose thereafter has to be regulated under the provisions of the present Convention following all the rules of customary international law.¹⁶

1.2. NEED FOR THE STUDY

Recently, there have been various events all around the world where diplomats have been seen increasingly disregarding their duties as dignitary or representative of a State and using their Diplomatic Immunity as shield to escape penalties. Diplomatic Immunity as recognised by Vienna Convention of 1961 is necessary for the promotion of international peace but the balance between such important reasons and protection of interests of victims of the diplomats shall be achieved.

Many a times it has been witnessed that the International Law had permitted these diplomats a perfect plan of escape from criminal & civil liability for the wrongs they have committed in the State in which they are being hosted. The Paper will address the growing international concerns & will focus on cases of misuse of Diplomatic Immunity particularly highlighting the judicial

¹⁴*Supra Note 12.* Amanda M. Castro, 353

¹⁵*Supra Note 12.* Amanda M. Castro, 356-357

¹⁶*Supra Note 03.*

decisions in the same regards and will suggest some various reforms or practices that can be adopted to combat the increasing abuse of the law of diplomatic relations.

2. REVIEW OF LITERATURE

The present topic of the study had its roots in the great ancient times and since then a lot of principals have evolved. For the purposes of the present study, the author produced the follow pieces of literature in order to provide a brief outlook of the previous observations of the topic:

- ❖ **McClanahan (1989)** observes that a diplomat and his property is to be treated in the receiving state as it is treated in the territory of the sending state. This theory is known as the extraterritoriality theory.¹⁷ He further explains the theory of functional necessity which suggests that immunity and privileges shall be restricted to only those aspects which are essential for the successful operations of the functions assigned to the diplomat.¹⁸
- ❖ **Ross (1989)** defines diplomatic immunity as “a situation where members of diplomatic missions are shielded from legal processes.”¹⁹
- ❖ **Hickey & Fisch (1990)** commenting upon the exemption of diplomats from criminal jurisdiction has stated that, “it is settled principle of law that a diplomatic agent can under no circumstance be prosecuted in the receiving state for any criminal offence.”²⁰ They also clarified that this absolute immunity is not lost even the crime is committed in his personal capacity.
- ❖ **Peter (1997)** has defined Diplomacy as “the official activity of a given state’s external relations in pursuing, through peaceful means, the objective and task of its foreign policy

¹⁷ McClanahan G.V. (1989), Diplomatic Immunity: Principles, Practices, Problems. Hurst, London; https://www.researchgate.net/publication/342130616_The_Privileges_and_Immunities_of_Diplomatic_Envoys_Under_International_Law

¹⁸*Ibid.*

¹⁹ Ross, M. S (1989), Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities, American University Journal of International Law & Policy,4(1), 173-205.

²⁰ Hickey, J.E. and Fisch, A (1990), The Case to Preserve Criminal Jurisdiction Immunity Accorded Foreign Diplomatic and Consular Personnel in the United States, Hastings Law Journal, 41(2), 351-381; https://repository.uchastings.edu/hastings_law_journal/vol41/iss2/3 (Accessed on 07/06/20)

in protecting its rights and interests as well as those of its citizens abroad.”²¹ He considered diplomatic relations to be essential for the maintenance of the economic, political and cultural integrity between nations. He saw it to be a way to foster peaceful interactions.

- ❖ **Groff (2000)** explained the concept of diplomatic immunity from the perspective of personal representation theory. He interpreted that a diplomat being a representative of a sovereign state is entitled to same privileges as the sovereign.²²
- ❖ **Bayliss & Smith (2005)** emphasized that rules regarding diplomatic immunity have to be respected by both the sending and the receiving states as they are equal under the international law, in case contrary there would international chaos. He further stated that, “As much as diplomacy has grown to encompass IGO, NGO, MNC and summit diplomacy, diplomatic exchanges at state level are still key components of international relations and a *modus operandi* in the form of diplomatic immunity is still relevant.”²³



3. ABUSE OF DIPLOMATIC IMMUNITY

The Vienna Convention explicitly states that it shall be the duty of a diplomat to respect the laws and norms of the receiving State and shall by no means interfere in the internal affairs of such State.²⁴ Therefore, these diplomats’ representatives are expected to be on their best behaviour while in the foreign State as if and so they tend to violate the spirit of the Convention, then their

²¹Malanczuk Peter, 7th Ed, (1997) Modern Introduction to International Law, Routledge, London, p. 123; <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.852.9583&rep=rep1&type=pdf>

²² Groff, J.D (2000). A Proposal for Diplomatic Accountability Using the Jurisdiction of the International Criminal Court: The Decline of an Absolute Sovereign Right. Temple International and Comparative Law Journal, 14

²³ Bayliss, J, and Smith, S., (Ed). (2005), the Globalization of World Politics: An Introduction to International Relations. Oxford: Oxford University Press, p. 30; <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.852.9583&rep=rep1&type=pdf>

²⁴Article 41(1) of Vienna Convention on Diplomatic Relations, 1961

careers may be seriously embarrassed and compromised. But nonetheless, there have been many unfortunate incidents where these protected diplomats have violated laws which are regarded as violations even in their own countries. These cases have been of offences related to sexual relations, murder, terrorism, money laundering, smuggling, espionage, etc. Some of them shall be studied in detail as follows:

3.1. MANSOOR ALI, SENEGAL (2003)

In May 2003, Mansoor Ali, a 24 year old son of then Senegalese Ambassador to India, Ahmed el Mansour Diop, was alleged to have committed murder of his driver named Dilawar Singh. The accusation was that the driver was killed in a scuffle over car keys in a 5-star Hotel at Delhi. However charges were denied by Ali's father on the ground that the driver was highly inebriated which is why his son asked him for the car keys as the driver was in no condition to drive, followed by a quarrel between the two, the driver getting his head hit on some heavy object and lost his life on the spot.²⁵ Diplomatic Immunity as under the Vienna Convention was pleaded by the father and flew his son out of India.²⁶ However, later on a legal opinion was sought by the Ministry of External Affairs and it was observed that the Convention only provides automatic protection to the minor children and if the family member of a diplomat is an Adult then a special permission of the host government shall be required for the purposes of claiming the immunity.²⁷ Thereafter, police registered a case against Mansoor Ali on the charge of Culpable Homicide not amounting to Murder.²⁸

3.2. JALIL ABBAS JILANI, PAKISTAN (2003)

A Pakistani envoy and a topmost diplomat as he was the In-charge of the Affairs of the Pak High Commission to India, was alleged to be running a "spy den" in Delhi. He was accused of running an active espionage and being involved in increasing terrorism in the State of Jammu & Kashmir. It was alleged that surveillance reports were the proof of him paying money to All Party Hurriyat

²⁵ Ians, *Of Cases of Diplomatic Immunity and Diplomatic Tension*, BUSINESS STANDARD (Sep. 09, 2015, 21:42); https://www.business-standard.com/article/news-ians/of-cases-of-diplomatic-immunity-and-diplomatic-tension-115090901344_1.html

²⁶ TNN, *Senegal envoy leaves with murder accused son*, TIMES OF INDIA (Jun. 30, 2003, 21:12); <https://timesofindia.indiatimes.com/india/Senegal-envoy-leaves-with-murder-accused-son/articleshow/52392.cms>

²⁷ Anonymous, *MEA seeking legal opinion on Mansoor Ali*, ZEE NEWS (May 26, 2003, 00:00); https://zeenews.india.com/home/mea-seeking-legal-opinion-on-mansoor-ali_100862.html

²⁸ *Supra Note 18*. Business Standard

Conference (considered to be Kashmiri Separatists).²⁹ India expelled him and four other embassy staff, the response of which was duly met by Pakistan by expelling India's acting commissioner and four members of his staff.³⁰ However, in 2012, Jilani returned back to India as Foreign Secretary of Pakistan and was surprisingly welcomed by rolling out red carpets for him, even though the actions were discouraged by the Ministry of External Affairs but Diplomatic Immunity worked out very well for him.³¹

3.3. MAJED HASSAN ASHOOR, SAUDI ARABIA (2015)

One of most controversial recent incident was of the Saudi's Embassy First Secretary who left India after having been accused of enslaving and raping two Nepalese maids in his apartment at Gurgaon, Delhi by him and other Saudi Nationals.³² The women were rescued by the Delhi Police, as per their statements, they were being held against their will, starved, assaulted sexually repeatedly for at least 15 days period.³³ The offenders flew back home on the account of Diplomatic Immunity and the claim that it was the Indian Government who was indeed violation of the International law by conducting investigation into the diplomat's residence which is as per the Vienna Convention is protected and is out of the scope of jurisdiction of the host's laws.³⁴ Saudi Arabia's government didn't change its stand and the offenders were never brought to justice and considering the situation of India in those times, the case was not at all in the hands of the Nation. It struck a triangular crisis for India, given the good bilateral relations with Nepal and safeguarding the integrity of those women. And on the same, the Nation couldn't afford to kick start tensions in Saudi Arabia considering the lives and work of millions of Indians living in the oil-rich country.³⁵

²⁹ Rakhi Bose, *What is Diplomatic Immunity? Here Are 6 Times It was used by and against India*, SCOOP WHOOP (Oct. 27, 2016, 17:39); <https://www.scoopwhoop.com/What-Is-Diplomatic-Immunity-Here-Are-6-Times-It-Was-Used-By-And-Against-India/>

³⁰ Amy Waldman, *India and Pakistan Expel 5 Diplomats Each*, THE NEW YORK TIMES (Feb. 09, 2003); <https://www.nytimes.com/2003/02/09/world/india-and-pakistan-expel-5-diplomats-each.html>

³¹ Sandeep Dikshit, *Unwanted then, he gets the red carpet now*, THE HINDU (Jul. 06, 2012, 12:41); <https://www.thehindu.com/news/national/unwanted-then-he-gets-the-red-carpet-now/article3607632.ece>

³² Anonymous, *Saudi diplomat accused of rape leaves India*, BBC NEWS (Sep. 17, 2015); <https://www.bbc.com/news/world-asia-india-34276049>

³³ Anonymous, *A diplomatic failure*, THE HINDU (Mar. 28, 2016, 20:00); <https://www.thehindu.com/opinion/editorial/a-diplomatic-failure/article7665653.ece>

³⁴ *Supra Note 22*. Scoop Whoop

³⁵ *Supra Note 25*. BBC News

3.4. DEVYANI KHOBRADE, INDIA (2013)

Serving as the Deputy Consul General at the India Consulate in New York, U.S.A., Devyani Khobragade was alleged to be violating principles of Human Rights and to be against US tenets and was arrested on the ground that she had committed fraud in obtaining her work Visa and that she was not paying her Indian servant as per the standards of US but India. The arrest laid to the “major diplomatic row” between the two countries.³⁶ India in response considered the incident to be an insult to the entire Nation on the account of the statements of Ms. Khobragade that, “she was repeatedly handcuffed, stripped and kept with common criminals and drug addicts.” And further, India denied entertaining the visit of US Congress Delegation and also has demanded the surrender of all US diplomats working in India.³⁷

However, to safeguard Khobragade, Indian Government transferred her to their Permanent Mission in the United Nations.³⁸ This step was made because Khobragade originally could claim only limited immunity as being Deputy Consul; she was regulated by the Vienna Convention on Consular Relations, 1963. But the level of charges levied by US authorities required full blanket immunity. Therefore, the transfer made Khobragade eligible for Diplomatic Immunity.³⁹

3.5. RAVI THAPPAR, INDIA (2015)

In 2015, the Indian Ministry of External Affairs has called back its High Commissioner to New Zealand in order to avoid another diplomatic row like Khobragade. Sharmila Thappar wife of Ravi Thappar, the diplomat was accused of assaulting a member of kitchen staff. The staff told the police that he was “kept in slavery.”⁴⁰ The Indian Government was quick in making all the arrangements and the fact that the only demand the victim made was to be sent back home at the earliest and not filing charges against the wife turned into their favour.⁴¹

³⁶Web Desk, *Devyani Khobragade, whose arrest led to India-US spat, made envoy to Cambodia*, THE WEEK (Oct. 01, 2020, 12:00); <https://www.theweek.in/news/india/2020/10/01/devyani-khobragade-whose-arrest-led-to-india-us-spat-made-envoy-to-cambodia.html>

³⁷D.P. Satish, *Devyani Khobragade incident: Both sides of the story*, NEWS 18 (Dec. 17, 2013, 14:16); <https://www.news18.com/news/india/devyani-khobragade-incident-both-sides-of-the-story-656584.html>

³⁸*Supra Note 22*. Scoop Whoop

³⁹*Supra Note 18*. Business Standard

⁴⁰Jayanth Jacob, *How MEA avoided row with New Zealand after recalling envoy Thappar*, THE HINDUSTAN TIMES (Jun. 29, 2015, 09:43); <https://www.hindustantimes.com/india/how-mea-avoided-row-with-new-zealand-after-recalling-envoy-thapar/story-SCYzRHARd8H1dUotHyF1mM.html>

⁴¹*Ibid.*

3.6. DECODING MATERIALITY

The aforementioned incidents are couple of those which came to bigger screen and got spotted. As per the news reports and surveys, there were around 27 diplomats who were involved in one or the other allegations in the year 2014-15. The common charges involved harassment or ill-treatment of domestic help, corruption, etc.⁴² Though few reports have shown this number to be 43 as for the year 2015 and constantly increasing from 6 complaints in 2012, 10 in 2013 and 27 in 2014 to 43 in 2015. These complaints have been received mostly from the United Kingdom followed by Afghanistan, Austria, Canada, Italy, South Africa, etc.,⁴³ in response, the Indian Ministry has claimed to be putting a stricter mechanism for vigilance and instituting prompt action against these erring agents. Spokesperson for the Ministry of External Affairs has assured in an interview that Action is being taken against all of the 43 reported cases.⁴⁴ But unfortunately, till today no further updates has been received and the picture of issues revolving around diplomatic immunity has been left ignored for other concerns. After the Khobragade outrage, actions and propels were taken up by the Government to address the general ill treatment of domestic help problem but was again stuck in the files of the Ministry of Finance due to one or other implications.⁴⁵

In an International Study, it was also observed that in small developing nations; a new trend is following that is of the diplomatic passports. Apparently, it may be the future that the misuse of diplomatic powers will raise to a higher level as currently there are many corrupt government officials who are providing these fake passports. The concern at present times is not only of immunity but has also become of being a good status symbol which comes from being a diplomat of a nation. Prime Minister of Thailand registered as a company director in Hong Kong

⁴²HT Correspondent, *Thappar to Khobragade: Troubled overseas world of Indian diplomats*, THE HINDUSTAN TIMES (Jun. 28, 2015, 14:30); <https://www.hindustantimes.com/india/thapar-to-khobragade-troubled-overseas-world-of-indian-diplomats/story-orNWHaoXlrmrqLOVdUVIVI.html/>

⁴³Dipanjan Roy Chaudhary, *Indian diplomatic missions: MEA puts in place mechanism for prompt action against erring officers*, THE ECONOMIC TIMES (Jun. 30, 2015, 11:19); <https://economictimes.indiatimes.com/news/politics-and-nation/indian-diplomatic-missions-mea-puts-in-place-mechanism-for-prompt-action-against-erring-officers/articleshow/47858276.cms>

⁴⁴FP Staff, *Ravi Thappar controversy: How India avoided a Khobragade-like diplomatic situation in New Zealand*, FIRSTPOST (Jun. 29, 2015, 12:56); <https://www.firstpost.com/world/ravi-thapar-controversy-how-india-avoided-a-khobragade-like-diplomatic-situation-in-new-zealand-2316670.html/>

⁴⁵*Supra Note 35.*

with the use of Cambodian diplomatic passport.⁴⁶ A former agent of US State Department and the chief security officer of Stratfor have stated that, “You certainly can purchase a diplomatic passport as long as you have the right access and the willingness to pay for it.”⁴⁷ Following which a new kind of couriers have come into the market which are popularly termed as “Diplomatic Pouches.”⁴⁸ These packages are stamped with the official seal of a sovereign nation, they may be range in size from a backpack to a container but will never be a subject to inspection or seizure at border crossings as they are guarded by the diplomatic law.⁴⁹

4. MEASURES TO COUNTER SUCH MISUSES

The need to protect ambassadors of the sending country to reside in limits of receiving country gave rise to concept of Diplomatic privileges. It is essential to ensure a safe working environment for a diplomat to successfully carry out the operations assigned i.e. the basic protections from harassment, detention or arrest, influence from the receiving state, etc. which may bring prejudice to his duties. To promote such purposes, the codification of Vienna Convention of 1961 was done but what has become more grave concern is that states which adopted and ratified are themselves violating it. Even though in the present study, only cases related to India have been considered but no country in the world is immune from such incidences. The violation of the present law is somehow possible which means that there exists various loopholes using which the States are manipulating the law.

4.1. PERSONA NON GRATA: LONE ALTERNATIVE TO RECOURSE

For starters, there is no strict provision available to the receiving states in order to immediately counter the violations, the last resort or the maximum measure available is the declaration of *Persona Non Grata* as under **Article 09**⁵⁰ of the Convention of 1961,⁵¹ which means that in case

⁴⁶Rene Chun, *Dodgy diplomats: how envoys misuse their immunity*, THE GUARDIAN (Dec. 02, 2019, 14:58); <https://www.theguardian.com/us-news/2019/dec/02/envoys-diplomatic-immunity-misuse-crime>

⁴⁷*Ibid.*

⁴⁸Article 27 of the Vienna Convention on Diplomatic Relations, 1961

⁴⁹Anonymous, *The Diplomatic Pouch: A Hands-Off Exception to Border Inspection*, STRATFOR (Mar. 10, 2018, 15:36); <https://worldview.stratfor.com/article/diplomatic-pouch-hands-exception-border-inspection>

⁵⁰Article 09 – “(1) The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.”

diplomat's behaviour is found to unsatisfactory or involvement of political signals is observed then the receiving state can unilaterally terminate functions of the diplomat in its territory and upon such termination, sending state is obliged to call back its representative before the deadline as set by the receiving state.⁵² However as far as the responsibility and authority of the sending state is concerned, it is available through the Convention that sending state may waive the immunity granted to its representative by an express means.⁵³ But as observed in various cases, regrettably, this option is rarely used.⁵⁴

Even though there is need for new set of laws, States are not very much interested to put in much effort towards the regulation of Diplomatic Immunity. Although it is not the case that there have not been suggestions to curb the problem of such abuses of the Diplomatic Immunity but each suggestion is negated with the dangerous effects of the reciprocity effect. The states are doubtful in holding principles of 'Functional Necessity' superior to that of the Diplomatic Immunity as one or the other time, each state is a receiving as well as a sending state. For example, if India takes stricter action against the foreign diplomats then there may be chances that foreign nations keeping stricter vigilance on the Indian Diplomats.⁵⁵

4.2. LYNCHED RESISTANCE TO BE SURPASSED BY GLOBAL INITIATIVES

The only way to counter such problems of misuse of privileges is the consolidated global efforts. United Nations is required to come out with effective amendments to the present laws.⁵⁶ What is important is that to tackle the problem as a whole and not only a specific issue such as of espionage. It should be seen as problem where principles of Diplomatic Immunity and Human Rights are in conflict. The universality of the Human Rights shall be kept in notice while reforming the laws. The solution is to understand the fact any individual may be a diplomat

⁵¹Anonymous, *Diplomatic Immunity – significance and limits*, FEDERAL FOREIGN OFFICE (Feb. 05, 2020); <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/internatrecht/diplomatic-immunity/2303758?openAccordionId=item-2303750-1-panel>

⁵²Anonymous, *What is a persona non grata?*, FEDERAL FOREIGN OFFICE (Dec. 12, 2019); <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/internatrecht/persona-non-grata/2287776>

⁵³Article 32 of the Vienna Convention on Diplomatic Relations, 1961

⁵⁴Leslie Shirin Farhangi, *Insuring against Abuse of Diplomatic Immunity*, 1986 Stanford L. Rev. 1517 (1986).

⁵⁵ Lori J. Shapiro, *Foreign Relations Law: Modern Developments in Diplomatic Immunity*, 1989 Ann. Surv. Am. L. 281 (1989).

⁵⁶Rosalyn Higgins, *The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience*, CAMBRIDGE UNIVERSITY PRESS (Feb. 27, 2017); <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abuse-of-diplomatic-privileges-and-immunities-recent-united-kingdom-experience/AADB7D1D0A90B16BE0FEFBB3A649FC17>

cannot be so privileged to be immune from facing the consequences of violating the basic Human Rights.⁵⁷ As there cannot be any judicial reforms in this field, the responsibility lies on the shoulders of the executive and legislative branches. They may re-interpret the Vienna Convention in such a way to fit the modern ways and on the same curbing the problems of misuse by restricting the horizons of diplomatic immunity.⁵⁸ For example, the problem of diplomatic pouches, as **Article 27** provides cannot be “opened or detained,” but it is nowhere mentioned that an electronic scanning of such packages is prohibited. Thereby, through electronic scanning the chances of smuggling may be tackled at a large rate.⁵⁹

The problems of Diplomatic Immunity are plenty considering the prevalent scenarios worldwide and fortunately, solutions to these problems are also plenty but implementation of such solutions is the real deal. It is only possible by way of integrated International effort.

5. CONCLUSION & RECOMMENDATIONS

“A Diplomat is a person who can tell you to go to hell in such a way that you can actually look forward to the trip.” – Caskie Stinnett.

A well-known principle in international law is the principle of diplomatic immunity. Diplomacy, in truth, is a basic reality of international life, and without it, international life is at risk. In other words, it is very important, be it commerce, prosperity, safety or cultural ties, for the fostering of friendly relations between countries. The Vienna Conventions, known as the United Nations' main achievement, were born out of the appreciation of these facts. That being said, it is alarming to note that diplomatic abuses and violations have been increasing in the past few years. It is recognized that the violation by diplomats and governments of rights and immunities constitutes one of the biggest hurdles to the continued progress of the Vienna Conventions.

A double sided coin is the Diplomatic Immunity. On the one hand, in a host country, it preserves the life and integrity of a diplomat, especially in times of emergency. On the other, however, the various international violations of the law by prominent diplomats and their families have

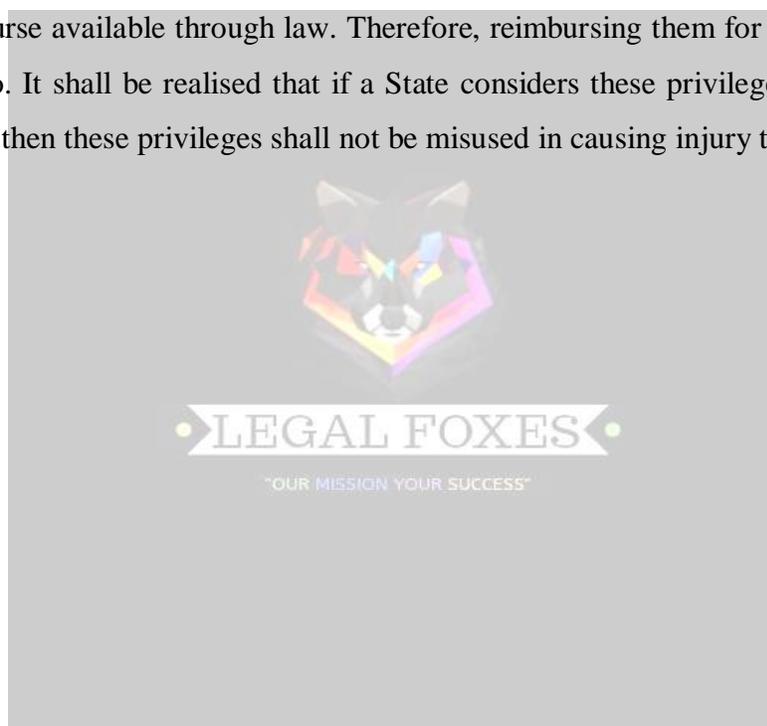
⁵⁷Tamer Abd Elhamid Mohamed Mortada, *The abuse of Diplomatic Immunity*, (2016); https://democraticac.de/?p=28063#_ftn11

⁵⁸*Supra Note 47.*

⁵⁹*Supra Note 48.*

contributed to significant criticism of the Vienna Convention. Instead of being only an escape weapon in the hands of powerful criminals, many analysts and legal experts should strive to rework the provisions of the treaty to make the legal tool more effective for its purpose. But considering the present situation that time seems to be far away to become a reality.

In the meantime it is strongly recommended that United Nations should establish an International Fund for providing compensation to the victims of these diplomats.⁶⁰ It is owed to the wide interpretations and short comings of the law that the foreign envoys escape their liabilities but such costs shall not be bear by the victims of such incidents who are completely innocent and may be unaware to the denial of the justice they deserved. At present these victims have no remedy or recourse available through law. Therefore, reimbursing them for their loss is the least the State can do. It shall be realised that if a State considers these privileges to be essential for their diplomats, then these privileges shall not be misused in causing injury to the other.



⁶⁰*Supra Note 47.*