

Diplomatic Relations - Privileges and Immunities

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Abstract:

Diplomatic Relations are in the nature of an Agency contracts, where the persons of a foreign nation are treated as agents of the said nation who would be protecting the interests of their citizens and maintain cordial relation with the country they are functioning. Diplomatic Immunities and Privileges allow such agents of a foreign nation to remain immune from the local laws and attach few privileges to them. These Immunities and privileges are extended to them in both Civil and Criminal liabilities to the extent that they can be tried only by the Principal Country only and not the host country laws of such agents. The 1961 and 1963 Vienna Convention on Diplomatic Relations (VCDR) and Consular Relations Act 1968 are the International Rules governing the Diplomatic Immunities. The Diplomatic Immunities and Privileges doesn't extend to spies, undercover operations or any other as aspects of non-Diplomacy in nature. Off late there has been many instances where such Immunities and Privileges has been misused or abused in the host country, but to dismay all that the host country could do in this regard was, is just to ask such diplomats to leave the nation as it binding upon them under the VCDR. The Vienna Convention does not give diplomats carte blanche for misconduct. Diplomatic immunity does not place diplomats above the law and diplomats are obliged to conduct themselves in accordance with the laws of the receiving state. In the event of misconduct, however, only the sending state has the authority to take action, for instance by recalling the diplomat or waiving his/her diplomatic immunity.

Long ago, diplomats acted as a form of guarantee for the good conduct of the sending state. If that state did not conduct itself appropriately, its diplomat would be held responsible. Sometimes the consequences could even be fatal. Nowadays, the opposite applies: if a diplomat breaks the law, responsibility lies in the first place with the sending state.¹

Key Words: Nations, Agents, Liabilities, Immunities, Privileges.

Diplomatic Immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and to a large extent their personal activities.

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¹ <https://www.government.nl/topics/embassies-consulates-and-other-representations/diplomatic-immunity#:~:text=Diplomats%20who%20represent%20their%20country,they%20hold%20their%20diplomatic%20post.>

Diplomatic immunity is a legal immunity that grants diplomats safe passage and protects them from prosecution or any other form of legal proceedings from laws of the host country. It however does not stop the host country in expelling the diplomat in question. Following the Vienna Convention on Diplomatic Relations of 1961, diplomatic was codified and ratified by most of the countries of the world. Nowadays many principles of diplomatic immunity are considered to be customary. Diplomatic immunity was developed to allow for the maintenance of government relations, including during periods of difficulties and armed conflict.

The people working in the following positions and organizations are eligible for diplomatic immunity.

1. Members of Diplomatic Missions – They are the main link of communication between the host country and the country that sends them. Hence the staff of diplomatic missions are provided the highest levels of immunity in the host country.
2. Diplomatic Agents – They enjoy complete immunity from the host country's criminal jurisdiction.
3. Members of administrative and technical staff of diplomatic missions.
4. Members of service staff of diplomatic missions.
5. Personnel on temporary duty at diplomatic missions.
6. Members of Consular Posts.
7. Members working in International Organizations.

'Diplomatic Representative' Or 'Diplomatic Agent'. special importance is given to such person in international law. Such type of person have many Immunities and privileges. And having some duties which are understood by brief explanation as following as under-

Classification Of Diplomatic Agent-The diplomatic agent have been classified according to their status and functions, it was again dropped by 1961 convention on Diplomatic relations. THUS, at present, the classification of diplomatic envoys is as

follows:²

1) Ambassador And Legates- Ambassador and legates are the diplomatic agents of first category. they are the representatives of the completely sovereign states. They are either appointed as ambassador or permanent representative appointed by pope are called legates.

2) Ministers Plenipotentiary And Envoys Extraordinary: Minister plenipotentiary and envoys extraordinary are the diplomatic agents of secured category and as compared to the diplomatic-agents of the first category, they enjoy less privilege and immunity.

3)-Charge-D-Affaires: Charge-d-affaires are the diplomatic agents of the last category. The main reason for this is that they are not appointed by the head of the state. they are appointed by the foreign ministers of states. in right and status they are considered below the minister resident.

It was made clear in Article-14(2) of the Vienna convention on diplomatic relation that apart from precedent and etiquette, there is hardly any difference between the diplomatic agents of above mentioned categories. Obviously, there is no difference so far as their privilege and immunity are concerned.

These Immunities and privileges are as follows-

1)- Inviolability- In international law, diplomatic agents have been given sufficient personal security. This immunity is recognized under Vienna convention 1961. In Article 29 Of the said convention it has been said that "Diplomatic agents will enjoy physical inviolability. He will not be liable to any form of arrest or detention. Honourable treatment will be given to him by taking or keeping state and every efforts shall be made to maintain his freedom and reputation as intact."

But if the behaviour and conduct of diplomatic agent is found to be objectionable and if charge is imposed upon him of interference in internal affairs of keeping state, then he may be declared as PERSONA NON GRATA and may be asked to leave the country (Article- 9 and 43 of Vienna convention 1961), Indian diplomatic agent in Pakistan RAJESH MITTAL was tortured by officers of intelligence agency of Pakistan on 25th may 1992 and with the result, India declared two Pakistani diplomatic agents in India as PERSONA NON GRATA and was asked to leave India is an good example of this.

² <https://www.legalserviceindia.com/legal/article-1309-diplomatic-agent-and-its-immunities-and-privileges.html>

2) Immunity From Civil Administrative Jurisdiction: It is well established principle of international law that the diplomatic agents enjoy immune from civil and administrative jurisdiction.

Under this immunity:-

- 1)- no suit can be filed against diplomatic agent for recovery of debt;
- 2)- he can not be arrested in action for debt recovery;
- 3)- his property can not be ceased and sold.

3) Immunity From Criminal Jurisdiction: Diplomatic agents have also been given immunity from criminal jurisdiction. Under Article 31 of Vienna convention 1961, it has been provided that "diplomatic agents shall be immune from the criminal jurisdiction of the state". It means that the keeping state shall not prosecute and penalize any diplomatic agent under any circumstance. Even he can not be arrested. But it does not mean that he can behave as he likes in keeping state. It is his duty that he should obey all rules and laws of keeping state and should not do such act which is inconsistent with the internal system of keeping state. If any misconduct is done by him, the keeping state may suspend him and ask him to leave the country.

For example- in 1995 the first secretary sultan Mahmood DEHADER in AFGAN embassy was suspended by government of India in Delhi in consequence of criminal charge and misconduct and was sent back to Afghanistan . This immunity is not available to children and relatives of diplomatic agents who are not residing with them.

There are many examples in the past where cover provided by diplomatic immunity has been grossly misused.

1. Saudi diplomat was accused of raping 2 Nepalese women in India, left without facing any trial.
2. In 1967, a Burmese Ambassador shot dead his wife in Sri Lanka, he was not prosecuted by the law as he enjoyed diplomatic immunity.
3. In 1981, son of Ghanian United Nations (UN) diplomat was accused of committing various crimes like rapes and robberies in New York.

4) Immunity Regarding Residence: There is inviolability of residence of diplomatic agent. Entry in house and even his house can not be searched. if there is any person

hidden in his house to whom the police wants to arrest, normally the diplomatic agent surrenders such person to the police.

5) Immunity From Giving Evidence In The Court: Diplomatic agent is immured from presenting himself for giving evidence in the courts. He can not be made bound for giving evidence in the court. In Article-31(2) of Vienna convention, it has been said "No Diplomatic Agent Will Be Made Bound For Giving Evidences In A Court As Witness". But if any diplomatic agent wants to give evidence at his own then he will be allowed to present himself in a court for giving evidence.

6) Immunity From Payment Of Taxes: In international law, diplomatic agent are immune from payment of taxes and customs duties. According to Article 34 and 36 of Vienna convention "A Diplomatic Agent Shall Be Immune From Payment Of All Types Of Taxes And Duties". But if any diplomatic agent wants to pay taxes in exchange for enjoyment of facilities of water and electricity he will be allowed to pay. But if does not pay any tax , no legal action will be taken against him.

7) Immunity From Police Rules And Regulations: Diplomatic agent are immune from police rules and regulations. If he obeys these rules: it will be treated as his good manners towards the state for maintenance of good relations.

8) Right Of Worship And Devotion To God: Diplomatic agent have right to worship according to his own consciousness is his embassy. But he does not enjoy the right to preach his own religion and to make the citizens of keeping states bound to participate in his worship and devolution.

9) Immunity From Local And Military Obligations: According to Article-35 of Vienna convention 1961, the diplomatic agent have been immune from local and military obligations.

10) Right To Exercise Control And Jurisdiction Over Their Officers And Families.

11) Freedom Of Communication For Official Purpose: This freedom has been conferred upon by Article-27 of Vienna convention on the diplomatic relations, 1961. This Article provides that they have freedom to communicate with their home-state in connection with their functions and duties.

12) Right To Travel Freely In Territory Of The Receiving State: This new right has, for the time, been introduced in Article-26 of the Vienna convention on Diplomatic relations, 1961. Article 26 provides that diplomatic agents can travel in the territory of the receiving state subject, of course, to the condition that they cannot go to the prohibited places or the places which are important from the point of view of the

security of the receiving state.

13) Immunity From Social Security Provisions: According to Article 33, a diplomatic agent shall with respect to services rendered for the sending state be exempt from social security provisions which may be in force in the receiving state.

14) Immunity From Inspection Of Personal Baggage: Article 36(2) of Vienna convention 1961 provides that the personal baggage of a diplomatic agent be exempt from inspection.

In the history of international relations, bilateral ties between nations were terminated due to violations of diplomatic immunity on 2 occasions which are given below.³

1. Diplomatic ties between Libya and Britain were terminated after a Libyan staffer shot dead a British policewoman in 1984.
2. In 1979, the hostage crisis of US diplomats in Iran led to termination of diplomatic ties between US and Iran.

Conclusion: Diplomatic relation absolves the government officials of a nation from Civil and Criminal Liability. The VCDR and Consular Rights provide the international rules relating to Diplomatic relations. These rules provide for set of government officials who get Immunity and Privileges, who are clothed with such Privileges and Immunities that even though they are physically present in a foreign nation they oust the local jurisdiction of laws and are subject of their home land laws. The government of the local jurisdiction who has the consular office has the only option of asking the diplomats to leave the country or show its distress by asking for a closure of the consular office, which is in present times seems detrimental to the Sovereignty of the member nation. We have public servants performing public duties and get immunity for the same locally and are liable for exceeding their public duties or for acts of non-public nature. It takes a lot of efforts to bring it to convention level these thoughts and only time may decide upon it.

³ <https://byjus.com/free-ias-prep/the-immunity-for-diplomats-some-key-issues-the-saudi-case-raises/>