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Law of Foreign State Immunity: Its Changing Patterns

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ABSTRACT

The legal doctrine on basis of which the state or a sovereign of a particular state are "immune" from any civil or criminal legal action is called as Sovereign Immunity. This concept has been prevalent since ancient times with phrases like ' the king can do no wrong' and have continued presently through sovereign immunity in the form that a government can do no wrong. This principle exempts a particular state from taking responsibility and the aggrieved party is generally not provided with justice. This concept has been interpreted differently across the globe. Usually this principle depends upon the relation between the nation, existing treaties for the same, the laws of the nation, international standing of the issue etc. This paper attempts to understand this principle by comparing its existence in three different countries. The concept has evolved differently in all the countries due to various factors like international standing, relation with other countries, type of government, policies of the state to name a few. This principle has many advantages and disadvantages which will be examined based on the attitude of these three countries with respect to sovereign immunity.

I. INTRODUCTION

Certain institutions and persons are exempted or immune from the foreign Municipal court's jurisdiction in international law. Fundamentally this immunity extends to the sovereign states and its heads, diplomatic agents, its institutions, international organisations, and their respective agents and officials.[3] It is a well-known principle of International Law that the sovereign states are not adjudicated based on the conduct of another state and the immunity extends to liability in both civil and criminal matters.

The concept of immunity of sovereign or state has emerged from the principle of immunity

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[3]Paschal Oguno, *The concept of immunity under International law : An Overview,* International Journal of Law, (2016), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi90ozq__pAhXD63MBHcOPCrAQFjADegQIARAB&url=http%3A%2F%2Fwww.lawjournals.org%2Fdownload%2F46%2F2-5-19-322.pdf&usg=AOvVaw3y0YWGwkTL9LGq7wZnWPUT.

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which was granted to a person of the Monarch. The customary law in relation with immunity was iterated by Lord Browne Wilkinson as "in any event the head of state is granted the same immunity as that of the state itself. The diplomatic representative is also given the same immunity, by recognition of the state which is represented by him. This immunity is extended to all acts, regardless of whether they are related to the benefit of the state. The Immunity is allowed as ratione personae."[4]Personal immunities or 'Immunities ratione Personae' is a based on the notion that any action taken by the Head of a State or its diplomatic agents must be exempted from foreign jurisdiction.[5]

The concept is based on equality between states and deals with issues related to of a foreign sovereign being pleaded in local courts of another nation. The maxim of par in prem non habet imperium.[6]

In International Law all States, International Organisations have rights and liabilities but, for institutions to function properly certain protections are needed. In the case of *Mighel v Sultan of Jehore*[7] it was held that "an Independent Foreign Sovereign does not come under the jurisdiction of a local court, unless he submits to it. Until the Jurisdiction has not been invoked such submission cannot take place."It is based on the principles of Equality of the Sovereigns, Dignity and Independence.

In civil matters there is generally no controversy for the scope of state immunity but there is one in criminal matters. In the International Military Tribunal of Nuremberg recognised that individuals may be held criminally liable for offence committed by them against International Law. A commission of 1950 created by United Nations in 1946 stated the following principles "A person who is head of a state or a representative official commits an offence under the International law does not absolve him from criminal liability from International law." [8] This is also based on Article 7 of the Charter of Nuremberg Tribunal. The 1954 International Law commission Draft code of offences against Peace and Security of Mankind,provided"that the fact that the person acted as a head of state does not exempt him from liability of after committing an offence as defined under the Code."[9]

The International attitude towards state immunity can be divided into absolute and restrictive.

[4]*R v. Bow Street metropolitan stipendiary Magistrate and others, exparte Pinochet Ugarte*, 2 All E.R. 97, House of Lords, 1999.
[5]There is immunity of diplomatic agents for private acts in International Law. Vienna Convention of diplomatic relations, 1961.Art 31 Para 1.
[6]S Knuchel. *State Immunity and the Promise of Jus Cogens*'. Northwestern University School of Law Volume 9, Number 2 (Spring 2011) Northwestern Journal of International Human Rights.
[7]*Mighel v Sultan of Jehore,* Queen's Bench, 1893, 149.
[8]Hatch v. Baez, & Hun 596, Lord Hutton quoted this at p.258.
[9]International Law commission Draft code of offences against Peace and Security of Mankind,1954. Art III.

Initially there was only absolute immunity, and this is still prevalent in some areas like China and Hong Kong. This means that there will be no impleading of a foreign state without its consent. Although with growth of state's activities and in commercial matters, if absolute immunity is given to state them advantage over the private enterprises who are engaging with that particular states. This led to shift from immunity being given absolutely to the concept of restrictive immunity which many counties gave their support to. There is now a distinction between acts whose nature is sovereign and whose is commercial, and these are known as jure imperii and jure gestionis respectfully. The same has been upheld in the case of The ***Victory Transport v. Commiseria General Transports***[10]and various other judicial decisions.[11]

Nevertheless, it has to be understood that restrictive immunity is not a desecration of immunity of a state but an approach to ensure that there is equality between states and private businesses in relation to commercial activities without any undue advantage at the loss of the private investors.

There have also been several questions as to whether by applying the sovereign immunity in Civil suits against Foreign State for Human Rights Violation is being affected. The States usually answer this is negative.

There are few exceptions to immunity which have been set in the Convention, and if they are applied then the state cannot claim immunity in a foreign State's court. commercial transactions, wavier of immunity, state sponsored terrorism etc. are examples of exceptions which would lead to immunity not being accepted. These are further explained in a detailed manner in the below mentioned citation.[12]

There should be an emphasis on the fact that "at every opportunity in a case of District Court versus a foreign state… the court should satisfy itself one of the expectations have been met"[13]

II. VARIOUS FORMS OF SOVEREIGN IMMUNITY ACROSS THE WORLD

Immunity is thus a well-founded principle, but it has been interpreted in a different manner by the courts of various countries and usually there is clear distinction as to when a State is held responsible or not. However, there are still few differences between how each country is

[10]*Victory Transport v. Commiseria General Transports,* 35 ILR 110.
[11] Ibid 1.
[12] While the "Immovable property" exception in § 1605(a)(4) is infrequently invoked, it was recently interpreted by the U.S. Supreme Court to include an action to establish the validity of a tax lien. *See Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193 (2007).
[13]*Verlinden BV v. Central Bank of Nigeria*, 461 U.S 193, (2007).

interpreting it and the factors related will will be explained in this chapter.

(A) UNITED STATES OF AMERICA

Along with the British Common Law, the doctrine of sovereign immunity has been exported to the British colonies in America. Since then, the doctrine of sovereign immunity has evolved eventually. **Justice Holmes** defended-the sovereign immunity on the ground that there could be no legal right as against the state which makes the law and the courts on which the right depends.[14]

The doctrine of sovereign immunity is a peculiar characteristic of Anglo- American jurisprudence. This doctrine has long and widely been acclaimed in the United States as an important element to the sovereignty of a nation or state, transcending definitional categories and extending to the legal definitions of sovereignty developed with respect to many kinds of sovereign entities.[15]Firmly rooted in federal common law, the doctrine of immunity shields the federal government as well as the states from nonconsensual suit, except in certain narrowly prescribed circumstances.

The doctrine of sovereign immunity has been a concept of contest among the significant values of constitutionalism. The concept of "sovereign immunity" is dynamic but not static. This is because the judges make choices regarding the characterization *(how broad or narrow)* in response to legislation. The meaning of this doctrine is contest

The doctrine of sovereign immunity has been recognized under the federal law in respect to foreign nation-states, American Indian nation tribes and external entities to the constitutional system of the Government. From a jurisprudential perspective, this doctrine is a recognized sacrosanct corollary of the sovereign authority. Specifically, if an entity possessing an independent and inherent basis to exercise sovereign authority and is established under the federal law, it shall innately gain immunity from the suit except under certain circumstances.

In respect to jurisdiction and execution, sovereign immunity is a mere legal doctrine formulated to safeguard the sovereignty and dignity of the States.[16]

It proposes that a foreign State cannot be brought before the courts of another State

[14]*Bernard Schwartz: Administrative law*, 2nd ed., Page. 568-569

[15]By "definitional categories," I refer to those recognized with respect to different types of sovereign entities. As set forth more fully below, sovereign immunity has been recognized in the United States as inherent to the sovereignty of states, the federal government, American Indian tribes, and foreign nations, each of which derives its sovereign authority from different sources.

[16]*Ulen & Co. v. Bank Gospodarstwa Krajowego*, **261** App. Div. **1,** 24 N.Y.S.2d 201 (Sup. Ct. 1940), the court

concerning its acts and property without its express consent.[17]This proclamation continues from the common belief to compel a State to accept the jurisdiction of another would be considered as a principle of violation of the doctrine of the equality of States based on the maxim *par in parem Imperium non habet.*

In the case *Schooner Exchange v. McFaddon*[18], the absolute theory of sovereign immunity of States *ratione personae* has evolved into a judicial absolute by Chief Justice Marshall. This doctrine has not only emerged as a commonplace of legal theory, but has also been constantly applied without making any substantial modifications in the present time.[19]

In spite of the similarity existing between the American, English and German laws, the American law has few features that are not seen in both English and German law. There are two notable features in the American law. Primarily, the judicial decisions proliferate in which it is has been explicitly mentioned that the determination of the Executive as to whether or not immunity exists is conclusively dependent upon the Courts.[20]

Subsequently, in *Piascik v. British Ministry of War Transport*,[21] the State Department advised the court that the defendant was a department of the British Government and, thus, was immune from the legal proceeding in the jurisdiction of the courts of the United States of America. Likewise, in *F.IV. Stone Engineering Co. v. Petrdleos Mexicanos*,[22]- the Supreme Court of Pennsylvania held that as the State Department acknowledged the defendant as a instrumentality of the Government, of the Republic of Mexico, the Court shall be bound by that recognition given by the State.

Secondly, the American courts showed reluctance towards granting sovereign immunity to the corporations that are partially or wholly controlled by the foreign governments by means of stock ownership. The Court in Hannes v. Kingdom of Roumania Monopolies Institute has

[17]*Mexico v. Rask*, 118 Cal. App. 21, 4 P.2d 981' (1931); National City Bank v. Republic of China, 348 US. *356 (1955);* Guaranty Trust Co. v. United States, 304 U.S. 126 (1938); Principality of Monaco v. Mississippi, 292 U.S. 313 (1934)

[18]*Schooner Exchange v. McFaddon*,11 **US.** (7 Cranch) 116 (1812)

[19]*Puente v. Spanish Nat'l State*, **116 F.2d** 43 (2d Cir. 1940), *cert. denied,* 314 U.S. 627 (1941); The Navemar, 102 F.2d 444 (2d Cir. 1939); Ervin v. Quintanilla, 99 F.2d *935* (5th Cir.), *cert. denied*, 306 U.S. *635* (1938); Bradford v. Chase Nat'l Bank, 24 F. Supp. 28 (S.D.N.Y. 1938), *aff'd sub nom.* Berger v. Chase Natl Bank, 105 F.2d 1001 (2d Cir.), *aff'd*, 309 **US.** 632 (1939). French Republic v. Board of Supervisors, 200 Ky. 18, 252 S.W. 124 (1923). For English cases, see Krajina v. The Tass Agency, [1949] 2. **All** E.R. 274; Gaekwar of Baroda State Ry. v. Hafiz Habib-ul-Haq, 65 Indian App. 182 (P.C. 1938) (Contract made for the supply of sleeping cars for a state railway was a public act and, hence, exempted from the jurisdiction of the British Courts.)

[20]*Miller v. Ferrocarril del Pacifico de Nicaragua*, 137 Me. 251, 18 A.2d 688 (1941),

[21]*Piascik v. British Ministry of War Transport*, 54 F. Supp. 487 (S.D.N.Y. 1943)

[22]*Stone Engineering Co. v. Petrdleos Mexicanos*, *352* Pa. 12, 42 A.2d 57 *(1945)*

reiterated this principle[23]. In this case the Court declined to grant sovereign immunity on the grounds that the doctrine established in the American law does not extend this immunity to the corporations even under circumstances where the corporation is wholly operated and governed by foreign governments. This doctrine has been applied in several cases on the basis that suit against corporation does not intend to be a suit against stockholders, thus making the concept of sovereign immunity non applicable.[24]

Despite the law of sovereign immunity being mostly built on the theory that the State cannot be sued as it is presumed that it can do no wrong,[25] the period of post war observed a rising prominence upon the individuals' rights. This is mainly for the reason that the State can no longer be delegated with the protection of civil and political rights.[26]

The *Foreign Sovereign Immunity Act* of the United States came into force in the year 1975. This Act represents the first effort of codification of the law governing litigation with respect to foreign states and their instrumentalities operating in the United States of America. This Act defines a foreign State to include "its political subdivisions; agencies and instrumentalities". The term "an agency or instrumentality of foreign State" as defined in the Act, further takes into its account the entities of a foreign State having separate legal personality. It is an organ of a foreign State or of a political subdivision and an organ whose majority of shares is held by the foreign state or its political subdivision.

(B) INDIA

Like in USA, the doctrine of sovereign immunity came to India with the Common law. This doctrine in UK was based on the saying that 'the King can do no wrong'. This concept has eventually been embedded in the Indian judicial system. The common law jurisprudence has adhered to absolute application of sovereign immunity. But, India has made attempts to make certain modification and impose restrictions upon the application of foreign state immunity through the provisions enumerated under the Civil Procedure Code, 1882.

In the pre constitutional era, the doctrine of Sovereign Immunity began with the judgment given in the case of Peacock C.J. in P. and *O. Navigation Company v. Secretary of State for*

[23]*Stone Engineering Co. v. Petrdleos Mexicanos*169 Misc. 544, 6 N.Y.S.2d 960 (1st Dep't 1940).

[24]Krajina v. The Tass Agency, [19491 2 All E.R. 274 (C.A.); *Amtorg Trading Corporation v. United States,* 21 **C; C.P.A.** (Customs) **532,** 71 F.2d 524 (1934); *United States v. Deutsches Kalisyndikat Gessellscbaf, 31 F.2d 199 (S.D.N.Y. 1929); Coale v. Society Co-operative Suisse des Carbon,* 21 F.2d 180 (S.D.N.Y. 1921).

[25]Block, *Suits Against Government Officers and the Sovereign Imnunity Doctrine, 59* H~Av. L. REv. **1060** (1946).

[26]*Lauterpacrr, International Law* ***A.n*** *Hu1itN* ***RIGHTS***(1950)

India.[27] The Court has used the terms "Sovereign" and "Non-sovereign" in determining the liability of the East India Company with regards to the tort committed by the servants. In this case, the provisions enumerates in the Government of India Act, 1858 were under judicial interpretation before the Calcutta Supreme Court. C.J. Peacock has come to a decision binding the vicarious liability of the East India Company by differentiating its functions into "sovereign" and "non-sovereign".

After this landmark decision, the courts articulated two conflicting views. From these views, the Madras High Court in the case of *Hari Bhan Ji v. Secretary of State*[28] gave the most crucial decision. In this case, the Madras High Court held that the immunity of the East India Company can be extended only to the acts which falls under the 'acts of state', which can otherwise be said as the difference between sovereign and non-sovereign functions. However, there was no proper classification between sovereign and non-sovereign functions.

In the post-independence era, after the Constitution came into force, in the case of *State of Rajasthan v. Vidyawati*,[29] the Court declined the plea seeking immunity of the State and mentioned that the State is liable for the tortuous act of the driver just like any other employer.However, in *Kasturi Lal v. State of U.P*,[30] the Supreme Court gave a different perspective and the whole situation was embroiled in confusion. In this case, the Supreme Court has applied the same rule laid down in P.S.O. Steam Navigation case.

The Section 86 of CPC has recognized 'foreign state' as the 'head of state'.[31] This Section also provides for the former princely states of India.[32] However, the Section does not account for letters of administration[33], probate proceedings[34], proceeding in industrial tribunal[35] etc.

As the Section 86 does not have clear provisions with respect to the corporation managed by a foreign ruler, the Court in its judicial pronouncements have extended the immunity to corporations and as well as other legal entities.[36] In *Mirza Ali Akbar v. United Arab*

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[27]*O. Navigation Company v. Secretary of State for Indi*a, 5 Bom HCR App 1
[28]*Hari Bhan Ji v. Secretary of State*, (1882) 5 ILR Mad. 273
[29]*State of Rajasthan v. Vidyawati*,AIR 1962 SC 933
[30]*Kasturi Lal v. State of U.P*,AIR 1965 SC 1039
[31]Art. 367 of the Constitution of India.
[32]In Superindent of Government Soap Factory, *Bangalore v. The Commissioner of Income Tax* , A.D. 1941-42 held that the Princely State of Mysore was not an indepen- dent sovereign state and so that it was not entitled for the privilege of foreign sovereign immunity. However that privilege of immunity to rulers of Indian princely states is kept intact by virtue of section 87-B of the Code of Civil Procedure 1908.
[33]*Indrajit Singhji Vijay Singhji v. Rajendra Singh Vijay Singh* , A.I.R. 1956 Bom. 45.
[34]*Mussoorie Electric Tramway Co. Ltd. v. President* , Cou Regency Nabha State , A.I.R. 1936 All. 826: Madan Lai v. Ruler of Ramp ur Stat
[35]*59. Harìnagar Sugar Mills v. Shyam Sunder* , A.I.R. 1961 S.C. 1669; Bhagwat Singhji v. St
[36]*German Democratic Republic v. Dyanamic Industrial Undertaking Ltd M* A.I.R. 1972 Bom. 27; Royal Nepal Airlines Corporation v. Manorama Mehar Singh , A.I.R. 1966

Republic,[37] the Supreme Court held the purpose of Section 86 (1) is to change the doctrine of immunity to a certain extent recognized under the International Law. This section provides that foreign States can be sued within the municipal Courts of India with the consent of the Central Government and when such consent is granted as required by S. 86(1), it would not be open to a foreign State to rely on the doctrine of immunity under International Law.

However, the effect of those changes is restricted to proceedings that fall under the ambit of Section 86 of CPC. In other circumstances, the Indian courts have the liberty to apply general principles of international law. If in the eyes of the courts the principle of restrictive immunity has not elevated to the status of general international law, they may apply the existing precedents on law of sovereign immunity.

The general practice of the Central Government appears to be that it is hesitant when it comes to granting consent to sue a foreign state. This tendency of the Government has hindered the Indian courts to pronounce final opinion on the doctrine of foreign state immunity. On various events, the Supreme Court opined that the Central Government must exercise the power under section 86(1) in consonance with basic principles of the Indian Constitution.

The present international state practice and the approach of the International Law Commission with regards to the doctrine of foreign state immunity are in favor of restrictive immunity. Section 86 of the Indian Code of Civil Procedure virtually takes away the right of Indian courts to develop the law of sovereign immunity in accordance with the development of international law.

On 12th January 2007 India has signed the United Nations Convention on Jurisdictional Immunities of States and their Property. However, India has neither ratified nor accepted, approved, acceded to the aforementioned treaty. Unlike other countries, such as UK and US, India has no separate legislation in this respect. The United Nations Convention on Jurisdictional Immunities of States and Their Property[38]2004, adopted on 2 December 2004[39]is the first modern multilateral instrument, which made an attempt to enunciate a comprehensive approach towards the subjects of sovereign immunity from suits in foreign

[37]*Mirza Ali Akbar v. United Arab Republic*,A.I.R. 1966 S.C. 230

[38]Adopted by the General Assembly of the United Nations on 2 December 2004, but not yet in force. See UN General Assembly resolution 59/38, available at: http://untreaty.un.org/ilc/texts/instruments/english/conventions/4_1_2004_resolution.pdf .The Convention is available at http://untreaty.un.org/English/notpubl/English_3_13.pdf

[39]For the time being, the 2004 UN Convention is not in force. It has been signed by 28 countries (including the United States and the United Kingdom) but ratified by only 6 (Austria, Iran, Lebanon, Norway, Portugal and Romania). 30 ratifications are required for the Convention to enter into force.

courts.[40]

(C) IRAN

The concept of sovereign immunity has been perceived differently by different countries but there have been many issues with the ambit of the principle especially when related to cases of violations of human rights. The US has in many scenarios has dodged the principles scope by introducing limitations such as anti-terrorism etc.

The Iranian Parliament also passed a similar law[41] which was providing the Iranian nationals with the right to sue foreign states before Public Courts of Tehran's , in cases where there was damage which was caused by actions of foreign nations which have violated International Law, treaties, the domestic laws being applied extra territorially, the sanctions of Untied Nations being applied in an excessive way.[42]

Iranian government has established laws which are negative in form i.e. they are passed to act as a deterrent for violations which have been done by other States against the Sovereign Immunity of Iran. There is a legislation which is directly aimed at the United States.

International crimes of terrorism which have been committed against the Iran, the first-degree criminal courts have jurisdiction to try these regardless of where they are committed as per Article 12 of the Law on Combating Financial Support of Terrorism enacted in 2016.[43] This can be interpreted as lifting of sovereign immunity even though there is no specific mention of foreign States under Article 12.

The 2012 Act of Jurisdiction of the Judiciary of the Islamic Republic of Iran to Try Civil Cases Against Foreign Governments[44] provides that all national and eligible people can file suits with the Public and Revolutionary Court of Tehran for collecting damages against foreign States which have performed actions which were in violation with the sovereign immunity of Iran. This law was passed as a counter to terrorism and International Law

[40]*UNGA Resolution* 59/38 (Dec.2, 2004). The text of the convention as approved by the General Assembly was annexed to the resolution. For the developments in the negotiations of the Convention and the approach taken by the Asian and African States see *Yearbook of the Asian-African Legal Consultative Organization*, Vol. I (2003), II (2004) and III (2005) (AALCO Secretariat, New Delhi).

[41]The legislation on "The Judiciary's Jurisdiction To Hear Claims Against Foreign States," available at http://rc.majlis.ir/fa/law/show/809987.

[42] Hossein Sharifi Tarazkouhi and Sasan Modarres Sabzevari, *A Judicial Strategy to Understand 'Measures Contrary to International Law' in the Iranian Legal System* (Case Study: EconomicSanctions), 57 International Law Review 29, at 30 (2017).

[43] Law on Combating Financial Support of Terrorism of 29 Mar. 2016, http://rooznamehrasmi.ir/Laws/ShowLaw. aspx?Code=10219 (in Persian), archived at https://perma.cc/DWC7-J72J.

[44] Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran to Try Civil Cases Against Foreign Governments of 8 May 2012, http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=715 (in Persian; all translations by author), *archived at* https://perma.cc/7VR4-ZHCW

violations.

The Foreign Affairs Ministry maintains a list of all the claims against the Foreign states which have been given by the courts so that the States can be subjected to the same. The countries who provide assistance to the States who have violated the SovereignImmunity of Iran are also subjected to these counter measures.[45]

The court will look into the comparable judgements of the foreign government in question to assess the level of damages. The Assets of the governments are not immune under the Act to be paid for damages unless there is a treaty which is binding on Iran or International Agreements contrary to it. After the Judgement has been enforced the costs of attorney and litigation are deposited with the National Treasury of Iran.[46]

The victim or his descendants should be Iranian nationals and the victim should be employed with the Iranian government when the damage was caused, for the Public and Revolutionary court to assert personal jurisdiction in scenarios when there are civil cases which are brought against foreign states.[47] A special international division has been created under this Act for the Public and Revolutionary Court.[48]

The President of Iran stated that the Law Intensifying Countermeasures Against the US Government's Terrorist Activities of 1989 was needed for punishing and arresting Americans and their agents who the Iranian Courts have sentenced.[49]

The law is considered as valid and enforceable with the purpose of Intensifying Countermeasures "as long as the President of the Untied States has the power to take decisions which are inhuman against Iranian Nationals and has not done any action to abrogate the same.[50]

An Iranian Businessman was awarded half a billion dollars as damages by the Tehran court in 2003 as he was abducted by the United States agents for string operation of 1992. The court accused the US investigators of imprisoning, using battery, force, abuse and physiological injuries. The United States disregarded the writ, and the Tehran court rejected the attachment of embassy as cannot be sold for judgement. The deputy prosecutor stated that on basis of

[45]Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran. Art. 1-3.
[46]Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran. Art. 4,5,8,9.
[47]Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran. Art. 6,7.
[48]*International Court Will Hear Cases Related to Criminal Activities of Foreign Nationals and Lawsuits Brought by Private Persons Against Foreign States and Nationals*, Ekhtebar (July 14, 2013), http://www.ekhtebar.com/دادسرای-امور-بین-الملل-تشکیل-خواهد-شد/#more-4199 (in Persian)
[49]Law Intensifying Countermeasures Against the U.S. Government's Terrorist Activities of 1 Nov. 1989, sole art., http://rc.majlis.ir/fa/law/show/91723 (in Persian)
[50] Ibid 16

International Laws, embassies of nations cannot be confiscated or sold.[51]

This legislation has also been used as a tool for negations, the head of judiciary of Tehran has expressed that the decisions have been used as a negotiation for restitution by the Untied States for some Iranian properties, for exchange of prisoners etc.[52]

This legislation is far reaching in its essence as it also includes violations of international law, the question before the courts is how to approach the same. This is essential as because of established customary laws, the courts will have to comparatively analyse for identification of the practices of the state and opinion juris. This will be humongous particularly related to defining terrorism both groups and individual which is one of the main subjects of the legislation. This term will be treated and interpreted ambiguously by the Iranian Courts as there is no customary International Law on the matter.

Across the globe Iran is one of the few countries who passed legislations to narrow the extent of sovereign immunity. The legislations not only cover states supporting terrorism, but also violations of international law. However, there are several ambiguities in it, one of the main one being what laws should the judge take into consideration, due to lack of access it is unclear what will be applied but mostly it appears to be international law.

III. CONCLUSION

Under the American law, the Courts have adopted the doctrine of sovereign immunity as part of an attempt to help define a line between judicial and legislative power. In instances where there is enough room for analyzing the questions of jurisdiction and remedies, the abstract idea of sovereign immunity (an idea whose constitutional provenance its at best unclear) or the fear of confrontation and noncompliance (a concern perhaps more understandable in the early years of the constitutional system) shall not restrict the Courts from interpreting their jurisdiction so as to fulfill the promise of *Marbury* that the law provide remedies to address violations of legal rights.

However, nations like Iran have restricted the scope of the applicability of sovereign immunity. The Iranian law accommodates only those actions against the State that account for terrorism and it also covers for the acts of the State that are in violation of the international norms and enactments. The law suffers from many unresolved vagueness.

The present international state practice as well as the approach of the International Law

[51]Michael Theodoulou, Tehran Court Rules Against US, Christian Science Monitor (Feb. 3, 2003), http://www.csmonitor.com/2003/0203/p06s01-wome.html, archived at https://perma.cc/7LNX-VD9D;
[52]Tehran's head of judiciary's recent statement, Mehr News Agency, (9 October, 2017), available at https://www.bahesab.ir/time/conversion/ (last visited on December 10, 2017).

Commission with regards to the doctrine of foreign state immunity is in favor of restrictive immunity. Section 86 of the Code of Civil Procedure takes away the right of Indian Courts to develop the law of sovereign immunity in accordance with the advances made in the international law. In India, this doctrine has been subject to many changes as there is no Code exclusively dealing with this concept.

There is constant evolution in the context of doctrine of sovereign immunity. Over many years, we have seen historians questioning and interpreting it. In the present scenario, there is a need for the State to exercise extraordinary powers in order to ensure the effective functioning of the nation. When there is no proper definition or application of these doctrines, in certain circumstances it can be lethal. So, there must be elaborative circumstances defined in order to grant sovereign immunity with regards to the acts done. To ensure efficient delivery of justice system, relentless use of this doctrine shall be avoided and streamlining the application of state immunity will fetch efficient results

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