

# ***Diplomatic Immunity and its Role in Building Peaceful Culture in Human Society***

## ***(A Descriptive Study from the Perspective of Islamic Law and Pakistani Legislation)***

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### **Abstract**

*It is undeniable fact that diplomatic immunity which is being exercised by various countries all over the world, has been highlighted in both Muslim and western countries. It was initiated by the Holy Prophet (Peace be Upon Him) by developing the foundations and rules to protect diplomats from any type of detriment, damage and harm to their lives or properties. Some privileges and protocols were granted to them so that they may perform their duties in a peaceful and harmonious environment in the host countries without any fear, horror and distress. The principles which were devised in Islamic law provide full protection to diplomats in every sort of environment including war and chaos as well. This study highlights the concept of diplomatic immunity from perspective of Islamic law and Pakistani legislation focusing on the principles devised for the protection of diplomats. This study also investigates how principles and rules of diplomatic immunity may protect the rights and privileges of diplomats. The role of diplomatic immunity for building peaceful and harmonious culture is highlighted as well. This study ends in some findings and recommendations by indicating that diplomatic immunity plays vital role for making peaceful cultural in human society.*

**Keywords:** *Diplomatic Immunity, Peaceful Culture, Islamic Jurisprudence, Pakistan, legislation.*

### **Introduction**

It is irrefutable reality that the concept of diplomatic immunity was initiated in the era of the Holy Prophet (Peace be Upon Him), and it was exercised in the era of his companions as well. It is evident that the Holy Prophet (Peace be Upon Him) systematized all sort of matters relating to diplomatic immunity and emphasized on granting protocols, privileges and rights to envoys by strengthening mutual ties with other nations in a

harmonious and peaceful environment. On the other side, the concept of diplomatic immunity was introduced in Western world when 1961 Vienna Convention<sup>1</sup> and the 1964 Vienna Convention on Consular Relations (VCDR) were initiated through which diplomatic privileges were granted to diplomats and the protection of their rights were ensured so that they may perform their diplomatic duties in a co-existence and peaceful environment beyond any type of hostility, hatred and discrimination of races and ideologies of different people from different tribes.

### **The Concept of Diplomatic Immunity**

The concept of diplomatic immunity is too much old which is based on adherence to mutual respect among states. Going through the historical background of this concept, it is observed that diplomatic immunity was defined by both Islamic and western scholars. It was materialized from the mutual respect of representatives who used to deliver for certain tasks assigned to them by their rulers. The aim of the development of this concept was to strengthen mutual friendly ties among different nations. The concept of diplomatic immunity in Islam was imitated in the era of the Holy Prophet (Peace be Upon Him) through interaction with different tribes including Jews, and this concept was exercised by extending invitations to kings from different communities for transmitting the message of Islam to others. On this base, the Holy Prophet (Peace be upon Him) entered into various conventions, accords and agreements with different communities and tribes. The agreement carried out between the immigrants of Makkah and the residents of Madinah is considered a unique model for those who intend to devise laws for diplomatic immunities.

As for the concept of diplomatic immunity in western world is concerned, its roots go back to 1961 Vienna Convention, and the 1963 Vienna Convention on Consular Relations (VCDR) that granted privileges and immunities from some matters including detention and prosecutions etc. However, various concepts of diplomatic immunity were highlighted by western and Muslim scholars indicating that it is principle through which some certain rights and privileges were granted to diplomats for performing their duties in a certain environment for strengthening mutual ties among the states. . Some concepts of diplomatic immunity are presented as under:

#### **In Encyclopedia Britannica:**

Diplomatic immunity means the immunities which are exercised by foreign states and their representatives from the country in which they are resident. The inviolability of diplomatic envoys has been acknowledged by

most societies and countries in the history<sup>2</sup>

### **Anne Arundel County's Standpoint**

Anne Arundel County termed immunity as comprehensive personal inviolability which is enjoyed by a diplomat as he may not be arrested except in extraordinary circumstances, and his residence may not be entered and it is one of the principles of international law.<sup>3</sup>

To sum up, it is established that the concept is too much ancient and it was exercised by various states. From the Islamic perspective it was initiated by the Holy Prophet (Peace be upon Him) by entering various agreements, accords, treaties and conventions. This concept was introduced in the western world through the Western world when the 1961 Vienna Convention and the 1964 Vienna Convention on Consular Relations (VCCR). These conventions were the best development for providing various diplomatic immunities to diplomats working in their host states for various purposes including establishing mutual ties among the countries. It is worth noting that the rights and immunities which are provided according to these conventions are not absolute as these laws can be compromised with some certain exceptions and under certain circumstances.

### **The Concept of Diplomatic Immunity in Islamic law**

The concept of diplomatic immunity was discussed by many scholars as Dr. Sohail Husain Al-Fatalwi highlighted that the idea of immunity is linked to the concept of diplomacy in terms of its usage. It emerged with the emergence of Islamic diplomacy.<sup>4</sup> In this context it is observed that the Holy Prophet entered into various treaties between the people of Madinah and the Immigrants from Makkah and other tribes who were living in the soil of Madinah including Jews. Additionally, the Holy Prophet (Peace Be upon Him) also launched his diplomatic mission by extending his invitation to the kings of Roman and Persian including other tribal leaders of the Arabs to embrace Islam through diplomatic channels. However, diplomacy was being exercised in the era of the Holy Prophet (Peace be Upon Him) in an ideal and perfect way as the spread of Islam was taken place day by day through diplomatic channels.

It is proved by going through the Islamic history that various sort of protocols, privileges and rights were granted to envoys by the host Islamic communities and states, in addition to that their rights were protected by taking different initiatives by Muslim leaders. Many laws were devised in Islamic law for protecting the rights of diplomats aiming at creating harmonious coexistence and peace among people belonging to various tribes.

The principles of diplomatic immunity are derived from various

Qur'anic verses and some are presented here. Allah Almighty said:

” يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۚ ”

O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! The noblest of you, in the sight of Allah, is the best in conduct. Lo! Allah is Knower, Aware.<sup>6</sup>

This Qur'anic verse explains the purpose of the creation of human being indicating that Allah Almighty has created human and made these people nations and tribes so that they may know each other. It is established here that introduction among various nations is the initiative towards establishing relations by using negotiations and diplomatic channels. Diplomats play their vital role in establishing ties among nations and strengthening communications among them. On this, it is essential to grant some privileges and protocols to diplomats so that they may perform their duties in a peaceful ways without out any horror and fear. And at the same time it is necessary to protect their diplomatic immunity rights for making peaceful culture in human society. It is worth noting that protection of the rights of diplomats contributes to resolve a lot of outstanding issues among the states through their negotiations and diplomatic dialogue which create a peaceful culture in the host states in particular and in human society in general.

Allah Almighty said:

”فَقُولَا لَهُ قَوْلًا لَّيِّنًا لَّعَلَّهُ يَتَذَكَّرُ أَوْ يَخْشَىٰ”<sup>7</sup>

And speak unto him a gentle word, that peradventure he may heed or fear.<sup>8</sup>

Pondering over the above mentioned Qur'anic verse, it is perceived that the Holy Prophets Musa and Harun (AS) were enjoying the divine immunity which was granted to them by Allah Almighty about the safety from assault which may take place by Fir'aun. This immunity permitted both Musa and Harun (AS) who were performing as diplomat to Fir'aun for performing his task i.e. sending the divine message to him. This is the best evidence from which diplomatic immunity principles can be derived.

To sum up, it is observed that, the actual source from where diplomatic immunity can be derived from the Holy Qur'an and Sunnah which are the fundamental sources of Islamic laws. There is another origin from where the principle of diplomatic immunity can be derived is a Hadith reported by Abu Sa'id al-Khudri that the Holy Prophet (Peace Be upon Him) said:

Do not cause harm or return harm. Whoever harms others, Allah will harm him. Whoever is harsh with others, Allah will be harsh with him.

In this Hadith a basic principle is derived that the human being should not cause harm to others and also they should not remove their harm by causing harm to others. This is a clear evident which proves the principle of immunity which can be adopted during performing diplomatic duties for making a peaceful culture in the human society. The principles of diplomatic immunity also requires that nothing should be taken place which causes harm to others and on the other side no one from the host state is allowed to harm diplomats as well keeping in view that the diplomatic immunities should not be breached, and the diplomatic sanctity and inviolability of an envoy should be well-maintained. He must be treated with respect and honor by the state.

Ahmad Slim highlighted the adherence of the Holy Prophet (Peace Be Upon him) to the rights of envoys as he used to take care of them keeping in view their role in strengthening mutual foreign relations among the states. The immunity of the diplomats in Islam is not based on courtesy, but it depends upon the sanctity of blood in Islam and the principle of forbidding the killing of the Apostles. However, the principles for diplomatic immunities which is considered a faithful diplomacy were made in the light of Sharia and the directions of the Holy Prophet (Peace be Upon Him) .

On the other hand, efforts were being made for promoting diplomatic relations by using diplomatic channels, and the principles and rules for diplomatic immunity were being established. Vienna Convention on Diplomatic Relations, 1961, and Vienna Convention on Consular Relations, 1963 were emerged for making principles, protocols, and laws for providing diplomatic immunity to diplomats and consular of states for performing their diplomatic duties inside their host states. It is worth noting that the Vienna Convention on Diplomatic Relations, 1961 is deliberated as the tangible beginning for making the principles and rules regarding present diplomatic immunity which are being exercised by various countries in the world. Vienna Conventions on Diplomatic Relation, 1961 from Article 22 to Article 32 emphasizes on various steps towards the protection of the rights granted to diplomats on the base of diplomatic immunity including steps which should be taken to protect the premises of the mission against any type of damage or harm or destruction, and prevent any trouble threatening the peace of the mission. The host state should also provide all required facilities for the performance of all jobs of the mission.<sup>10</sup>

### **Pakistan's legislation for Diplomatic Immunity**

Before discussing the legislation of Pakistan for devising laws and principles for diplomatic immunity, it is essential to know the base through which efforts were made for enacting rules and principles by the government of Pakistan. Keeping in view the need for strengthening the diplomatic ties with other countries Pakistan joined two leading conventions i.e. Vienna Convention on Diplomatic Relations, 1961, and Vienna Convention on Consular Relations, 1963 for carrying out diplomatic affairs and legislated rules, principles, protocols, and laws for providing diplomatic immunity to diplomats and consular of states who are performing their duties inside Pakistan. So, first law relating to diplomatic immunity was introduced through an ordinance titled "Diplomatic and Consular Privileges Ordinance, 1972.

### **Salient Feature of the Diplomatic and Consular Privileges Act, 1972**

The Diplomatic and Consular Privileges Act 1972<sup>11</sup> granted specific privileges to diplomats and consular working inside Pakistan. This Act contains six provisions which protect the rights of diplomats and consular, and it contains various types of diplomatic immunities. Some of them are as under:

1. Inviolability of Premises
2. Inviolability of the person of the diplomatic Agent
3. Immunity from taxes
4. Immunity from public services
5. Immunity of diplomatic baggage
6. Protection of official communication
7. Privileges to the family of a diplomatic agent
8. Continuation and cessation of immunities

It is established from Salient Feature of the Diplomatic and Consular Privileges Act, 1972 that Pakistan has taken all steps towards the protection of the diplomatic immunities for protecting the rights, privileges and protocols of the diplomats working inside the country so that peaceful culture may be built in the country, and anything should not happen which causes harm, damage and impairment to the dignity of diplomats. Pakistan joined two leading conventions i.e. Vienna Convention on Diplomatic Relations, 1961, and Vienna Convention on Consular Relations, 1963 aiming at dealing with diplomatic affairs by its legislation towards establishing principles, rules, protocols, and laws for providing diplomatic immunity to diplomats and consular of states so that they may perform their diplomatic duties inside

Pakistan with in an environment based on peace, harmony, and coexistence. It is evident that Pakistan is adherent to all laws which provide the protection of rights and privileges of diplomats, and at the same time the diplomats are bound to abide by all principles and laws which were made for the protection of their rights. Such type of adherence must be taken place in this regard as it leads to create an environment which contributes to achieve the goal of establishing peaceful culture in the state. It is recognized that respect of all rights, immunities and privileges contributes to create peaceful environment among diplomats and the host countries like Pakistan. Additionally, Pakistan should promote the peaceful culture through the provision of principles and laws relating to diplomatic immunities and privileges.

### **Findings and Recommendations**

1. It is established through this current study that the concept of diplomatic immunity is an ancient concept which was introduced in Islam and western world.
2. The concept of diplomatic immunity was imitated by the Holy Prophet (Peace be Upon Him) through entering in various treaties, agreements and accords with other tribes including Jews.
3. The concept of diplomatic immunity has been derived from various Quranic verses which provide principles for diplomatic immunities and emphasize promoting ties through communication and dialogue with others.
4. The concept of diplomatic immunity was discussed by western scholars indicating that the concept of diplomatic immunity was developed which resulted into the emergence of Vienna Convention on Diplomatic Relations, 1961, and Vienna Convention on Consular Relations, 1963.
5. Pakistan joined the Vienna Convention on Diplomatic Relation, 1961, and Vienna convention on Consular Relation, 1963 for dealing with its diplomatic affairs which resulted into the emergence of The Diplomatic and Consular Privileges Act 1972.
6. The diplomatic and Consular Privileges Act 1972 contains different immunities and privileges which were granted to the diplomats who work in the host country like Pakistan.
7. Principles and laws of Diplomatic immunities play vital role for creating an environment of coexistence based on peaceful culture provided that both diplomats and host state are adherent to all laws devised for diplomatic immunities.
8. Diplomatic immunities which are enjoyed by diplomats are

prerequisite for promoting friendly ties among the states provided that the implementation of the laws and principles relating to the diplomatic immunities is ensured by both i.e. diplomats and the host state.

9. Laws of Diplomatic immunities should be revised by the concerned authorities according to the requirements of current situation and contemporary issues being emerged day by day.
10. All rights, privileges, protocols and immunities for diplomats should be protected for creating peaceful culture in the host country in particular and in human society in general.
11. For building a peaceful culture and environment, it is necessary that the protections of all type of immunities and privileges should be ensured.
12. The provision of diplomatic immunities to the diplomats contributes to promote cohesive and coordinated behavior towards the establishment of the strong ties among the states.
13. The concept of Diplomatic Immunity is significant for the promotion of welcoming and strong ties among the states in different fields.
14. The basic aim for the provision of diplomatic immunities is to enabling diplomats to perform their functions by playing their vital role as representatives of their state.
15. All rights, privileges and protocols should not be considered absolute as they may be compromised keeping in view the available current situation and scenario.



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