

THE DOCTRINE OF STATE IMMUNITY & HUMAN RIGHTS VIOLATIONS OF FOREIGN STATES

BY NIRANJINI VIVEKANANTHAN*

I. INTRODUCTION

The doctrine of State immunity connotes an exemption from legal process granted to a foreign state by a forum state through its courts of law, in respect of the institution of proceedings, attachment of property or enforcement of judgments. However, this does not embrace an immunity from the substantive law of the forum state. Once the foreign state waives its immunity, the forum state would assume jurisdiction if it has subject matter jurisdiction over the matter in issue or if it is an appropriate forum or that the matter is justiciable.

The doctrine of state immunity is based on the principle of sovereign equality, independence and dignity of states (*par in parem non habet jurisdictionem*).¹ Further, it is based on the principle, that the forum state should abstain from interfering in the internal affairs of a foreign state by adjudicating over its public acts.²

The two approaches which prevail in this regard, are the absolute and the restrictive theories of state immunity. According to the absolute theory of state immunity, unless and until a state waives its immunity, it could not be sued in a courts of law of a forum state. Restrictive view of state immunity entails a distinction between the private or commercial acts and public or sovereign acts of a foreign state in order to accord immunity for the latter category of acts. The trend adopted in the recent codifications of state immunity is, to admit

* LL.B (Hons), M.Phil, Attorney-at-Law; Senior Lecturer, Faculty of Law, University of Colombo, Sri Lanka.

¹ I. Brownlie, *Principles of International Law*, 4th ed., (1990), Clarendon, Oxford, p. 324.

² *Ibid.*, pp. 324-325.