

Diplomatic Privileges and Immunities Theory and Practice

An essay in view of the crisis in the Indian subcontinent

Anand Nukala

I dedicate this paper to my wife and her parents for their unparalleled love, affection and devotion displayed towards me in the last three years, which made me what I am.

The recent deterioration in the diplomatic ties between India and Pakistan is a cause for great concern and calls for a restoration of the norms of statecraft in the region. Diplomatic privileges and immunities have been known since time immemorial and States considered that the person of the envoy was sacrosanct. This rule was originally based on religious grounds but in later years the following theories were put forward to explain these principles:

1. The Ex-Territoriality Theory
2. The Representative Theory
3. The Functional Efficiency Theory

Irrespective of the theoretical foundation, diplomatic agents and their staff are given certain privileges and immunities. An unjustified violation of these privileges and immunities is detrimental to harmony in mutual relations of the concerned States. This essay is in defence of adherence to diplomatic norm and it strongly advocates diplomatic practice as an instrument of conflict resolution and dispute settlement as codified by The Vienna Convention with special reference to the rule of inviolability. Violation of the norms of diplomacy lowers the official standing of the erring States in the civilized world and is likely to pose a threat to peace and harmony at a global level. Mutual expulsion of diplomatic officials has not been prescribed as a means of conflict resolution. This has to be very clearly understood by the States concerned. It is no exaggeration that the mutual hostility between India and Pakistan has been aggravated by this unhealthy practice and it would be in order to state that the first step towards peace would be strict adherence to the prescribed norms of diplomatic practice. However, it is important to assert, as in the *Lac Lannoux* arbitration, that *consultations and negotiations between the two states must be genuine, must comply with rules of good faith and must not be mere formalities. Unjustified breaking off of conversations, delays and non-consideration of proposals are all instances of violation of the rules of good faith.*

"Let us never negotiate out of fear. But let us never fear to negotiate."

John F. Kennedy, Inaugural Address, 20 January, 1961.