Introduction

There are two theories regarding implementation of international law in national jurisdiction i.e. dualism and monism. The constitution of Pakistan, 1973, has envisaged dualist system of implementing international law which means that any international convention after ratification by government of Pakistan will not be enforced inside it until the same convention has been incorporated in national laws through legislation by the legislature of Pakistan.

Governing affairs relating to diplomatic relations, there are two main stream conventions along with protocols, i.e. Vienna Convention on Diplomatic Relations, 1961, and Vienna Convention on Consular Relations, 1963 (hereinafter referred to as conventions). Pakistan has acceded to these conventions soon after its adoption by the international community, therefore, she has to legislated on the subject to incorporate it in their national laws so that the rights and privileges could be availed inside Pakistan by diplomats and consular of states working in Pakistan.

The first law on the subject was introduced through an ordinance, i.e. the Diplomatic and Consular Privileges Ordinance, 1972, which was repealed by the Diplomatic and Consular Privileges Act, 1972. For purpose of clarity, ordinance is the legislative power of the president and that of governors of provinces to legislate on any items given in respective lists attached to the constitution in situations where there is dire need of law and the legislative bodies are not in session, and such ordinances are for specific period of time. Act, on the other hand, is that...
law which is passed by competent legislature after discussion and undergoing specific procedures, which lasts for indefinite period of time until amended or repealed by another law. It is also important to clarify that there are plenty of ordinances which are not subjected to time limitations, such ordinances are issued during emergencies where constitution was either suspended or held in abeyance, and then later on the same ordinances were given blanket protection by passing amendments in constitution after its restoration, such as the eight amendment, giving validation to the ordinances issued during General Zia’s time, and seventeenth amendment, giving validation to ordinances passed by General Musharaf.

**Diplomatic and Consular Privileges**

In Pakistan, the Diplomatic and Consular Privileges Act, 1972 (hereinafter the Act) grants certain privileges to foreign diplomats and consular. Preamble to the Act provides purpose of the Act which is to give effect to the Conventions. Preamble to any Act merely provides purpose of that Act, and it may be reverted for interpretation only on matters which are not covered by the express provisions of that law. The Act contains six provisions and two schedules. Only important provisions are discussed in the following lines. The Act has mentioned that only those immunities are given to diplomats and councilors which are mentioned in the schedules. It has further provided that waiver of privileges to diplomats would be taken as waiver granted by that state. It is a little deviation from the language used in the Conventions, where the waiver will be granted by the sending states of their diplomats and consular, but the Act, in fact, has shifted this to a specific person of the.

The Act says that if it appears to the Federal Government that the privileges granted to Pakistani diplomat in another country is less than the privileges granted by the government of Pakistan to the diploma of that country then the government has the right to withdraw the excessive privileges. It is provided in the Act that the Federal Government has the authority to deny certain privileges and a certificate stating reasons for denial may be issued by the Federal government.

The First Schedule to the Act has reproduced, in verbatim, some of the provisions of the Vienna Convention on Diplomatic Relations. Important

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provisions relating to immunities are discussed here in the following lines.

**Inviolability of Premises**

Article 22 of the above referred convention has been reproduced in verbatim in the First Schedule to the Act, which sets out that the premises of the mission shall be absolutely inviolable, which means that the premises of the mission in no circumstances be entered to by any one for any purpose except with the permission of the head of the mission. All things including vehicles and furniture etc will therein will be absolutely protected and will not be searched or attached. It will be the duty of the receiving state to take appropriate measures to protect such premise. Article 30 of the Convention as reproduced in the First Schedule give the same protection to private residence of the diplomatic agent as is given to premise of the mission. The word appropriate is subject to further interpretation, and there are interpretations to the word in domestic legal dictions, which means anything done by people of ordinary prudence in a given situation, but interpretation relating to factual positions is always open to political underpinnings. For example if the United States embassy in Islamabad is attacked by violent mob, and the government took steps like use of tear gas and even use of weapons, but still the mob was successful to enter the premise and caused damage therein. In such incident the question regarding appropriateness of steps to protect the premise would be important not only legally but politically as well. There is no clarity in the convention and in the Act as to what would be the agreed standards of appropriateness.

**Inviolability of the person of the diplomatic Agent**

Diplomatic agent includes the head of the mission, and members of the diplomatic staff. Article 31 has been reproduced in the Act, which grants absolute immunity to diplomatic agents, but immunity will not be available in civil nature matters which are personal in nature and not linked to diplomatic mission. Diplomatic agents are not to be forced to give testimony. It is interesting that the sending state may waive the immunity granted to their diplomatic agents, and the Act has clearly mentioned that such function of the state of right of waiver may be exercised by her diplomatic agent. This situation may give rise to complexity, as it is to
be decided by the sending state through its own authorized person or an institution whether to waive or not, and not by the receiving state to accept the waiver by the person of the diplomatic agent. There is conflict on the question of waiver between the convention and the Act. It is further provided that immunity granted by receiving state does not exempt the diplomatic agent from the jurisdiction of the sending state.

Immunity from taxes

Article 34 of the convention and the Act has given privilege to diplomatic agents not to give taxes, except indirect taxes which are mentioned in prices of goods. Their personal properties, and private incomes are not exempted from taxes.

Immunity from public services

Diplomatic agents shall not forced for public services including military services by the receiving state.

Immunity of diplomatic baggage

The personal baggage of a diplomatic agent is privileged. Personal baggage shall not be searched, unless there is ground of presumption that it contains unlawful materials. The search or inspection shall be made in the presence of the diplomatic agent or his representatives. In such cases the formation of presumption is vital for inspection of the baggage, and contains room for further elaboration as to how seriousness of grounds for presuming that the baggage is containing something prohibited by the law of the receiving state need interpretation.

Protection of official communication

The receiving state shall provide all sort of protection to diplomatic communications provided the communication is official one. The diplomatic mission may use all sorts of communication methods, but if wireless transmitters are used then permission of the receiving state will be essential. The convention and the Act both, however, are not clear as to how it will be determined that a communication is official or non official, because, the communication if allowed for determining as official or non-official will lose of secrecy.
Privileges to the family of a diplomatic agent

Under article 37, which is reproduced in the Act, provides almost the same immunities to the family of a diplomatic agent provided they are not national of the receiving state.

Continuation and cessation of immunities

The diplomatic immunities commence the moment such diplomat enter the receiving country or the relevant ministry of the receiving country receive information of such person as diplomat. And the immunities cease the moment the function of a person enjoying privileges have come to an end.

Immunities for the Consular

The Second Schedule to the Act has reproduced in verbatim some of the privileges and immunities contained in the Vienna Convention on Consular Relations, 1963. Consular enjoy, almost, the same privileges and immunities as are available to diplomats, though, with very minor differences. Some of the important provisions are discussed in the following lines.

Inviolability of the Consular premises

Consular premises shall be inviolable, and the receiving state shall not enter the premises used by consular, except with permission of the head of the diplomatic mission or consular post. In case of emergencies like fire etc the receiving state may enter such premise for tacking protective measures, and consent of the diplomatic mission may be assumed in such matters. The nature of inviolability of the premise of the diplomatic mission as mentioned in First Schedule is more absolute than the inviolability of the premise of the consular as is mentioned in the Second Schedule.

Personal inviolability of consular officers

Consular officer shall not be arrested or detained during criminal trials, except when the charge is of a serious crime, however, upon conviction by a competent court such consular will be subjected to the prescribed punishment.
The personal inviolability of the person of the diplomatic agent is different from the personal inviolability of the person of the consular, diplomats are absolutely immune from criminal jurisdiction, while the consular immunity will not be availed in case of grave crimes. Members of consular post may be called up to give testimony, but if they decline to appear, no coercive measures be applied to compel them to appear as witness.

Immunity from taxes

Consular are exempted, just like members of the diplomatic mission, from all sorts of taxes, except indirect taxes such as taxes included in the price of items, and taxes on private immovable property etc.

Protection of communication

Consular official communications are completely protected, and they may use any means of communications, except wireless communications. Wireless communications are allowed with permission of the receiving state only.

The consular bag shall neither be opened nor detained. Nevertheless, if the competent authorities of the receiving state have serious reasons to believe that the bag contains something other than the correspondence, documents or articles. They may request that the bag be opened in their presence by an authorized representative of the sending state. If this request is refused by the authorities of the sending state the bag shall be returned to the place of origin.

This immunity of consular bag is different from the one granted to diplomatic bag, where the diplomatic bag in case of doubts will not be returned to its place of origin.

Rest of the privileges of consular and diplomats are the same, therefore, no need to rewrite them.

State immunity

Pakistan grants immunity to states from jurisdiction of its court unless they submit to such jurisdiction either out of an agreement or the nature of transaction is purely commercial. States are not immune from court jurisdiction if the transaction is related to services or employment. This

immunity should not be mixed with the immunities and privileges granted to diplomats and consular as discussed above. This immunity relates to matters which fall outside the ambit of diplomatic and consular relations.

**Status of foreigners in Pakistan**

Anyone who is not citizen of Pakistan is declared foreigner. Citizenship may be claimed under the Citizenship Act of Pakistan, 1951 by any of the means such as; birth, descend migration, and naturalization. Citizens of Pakistan are admitted to certain rights such as the right to assemble, the right to speech, the right to move freely etc, and such rights are not available to foreigners. In the Constitution of Pakistan, however, in relation to fundamental rights, two words are used that is ‘person’ and ‘citizen’. The word ‘citizen’ used in certain provisions of the above said constitution clearly refers that such rights are available only to citizens, but in certain provisions instead using the term ‘citizen’ the term ‘person’ is used, which means that the rights contained in such provisions are not confined to the citizens alone but extend to all persons who may happen in Pakistan. For instance, the right to be treated in accordance with law, protection from double jeopardy and the right to fair trial are rights which can be availed even by foreigners.

The Foreigner Act, 1946, has created power for the federal government to determine time and place of arrival of foreigners, their departure from Pakistan, the duration of stay, the place of residence etc. Federal government powers include the determination of items to be used by foreigners and even to specify as to what people the foreigner will meet or will not meet. Foreigners are not allowed to purchase immovable property in Pakistan. Owners of aircraft, vessels, hotels, houses etc are duty bound to forward information regarding journey or stay of foreigners at their properties.

The federal government reserves the power to exempt any one or group of foreigners from the operation of the provisions of the above referred Act. Anyone violating the provisions shall be detained and penalized. The Registration of Foreigners Act, 1939, and rules made there under, foreigners are required to submit prescribed information to a prescribed authority. Such information is about their identity and purpose of visit in

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8 Ibid
Pakistan. In a prescribed manner, they are issued a registration card which serves as their identity, and all foreigners are required to carry registration card issued to them by concerned authority for purpose of inspection, as long they remain in Pakistan. Anyone failing may be detained and penalized.10

Conclusion

Diplomats and consular, working in Pakistan, are given protection under the laws as discussed above. The main document granting privileges and immunities to diplomats and consular is the Diplomatic and Consular Privileges Act, 1972. The Act has only reproduced the provisions of the two conventions on diplomatic and consular immunities, with negligible change.

For the purpose of argument, laws are always subject to change and improvement in accordance with the changing needs and complexities of issues. In legal discourses, crimes are committed by natural persons in their individual capacity against society, and the nature, definition and content of crimes, largely, are the same in civilized societies. For instance murder, hurt, theft etc. are crimes in all societies, and crimes are committed by humans. Further, it is one of the accepted principles of law that it is ‘the criminal intent which is punished not the criminal act’. Crimes, from view point of legal philosophy, cannot be associated to artificial persons or legal entities such as corporations, institutions, governments etc. An employ of an institution if commits a crime then the institution is not bound to protect that employ. In civil nature cases the institution can defend its employ, but, not in criminal matters, for obvious reason that a crime presupposes the formation of a criminal intent which a natural person can form but not an artificial person.

In relation to diplomatic and consular privileges, giving protection from criminal jurisdiction is against the basic norm of legal philosophy. If the purpose of granting such privilege is non-reliance on the criminal judicial system of a receiving state, then instead of surrendering a basic norm, the jurisdiction for doing justice in such matters may be given to third party or other neutral forum.

From careful reading of the law on diplomatic immunities and consular privileges, it appears that a heavy reliance has been placed on the customary international practices. Customary practices are an important source of international law, but, since such customary practices are not

10 Ibid
well identified for immediate use, rather they be hunted down and extended to situations, therefore, the conventions and the Act needed to be modified by supplanting customary practices, both international and national, to increase the ambit of diplomatic and consular immunities in clear understandable and enforceable manner from time to time.

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5. The Diplomatic and Consular Privileges Act, 1972, PLD 1972 (5), Central Statue,
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