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ANALYSING THE SOVEREIGN IMMUNITY TREND IN INDIA

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Abstract:

This paper explores the doctrine of sovereign immunity in India by examining its origins, evolution, and current application in both domestic and international legal contexts. Sovereign immunity, originally derived from absolutist notions of state power, has undergone significant transformation, particularly in the democratic era, which demands greater state accountability. The study highlights key judicial developments in India that have progressively limited the scope of sovereign immunity, distinguishing sovereign acts from commercial activities. It also investigates the impact of constitutional provisions like Articles 298 and 300, which facilitate state participation in trade while ensuring legal accountability. Further, the paper delves into international arbitration and the enforcement of arbitral awards, emphasizing India's shift toward restrictive immunity, fostering a conducive environment for trade and commerce. By critically analysing the interplay between sovereign immunity, state responsibility, and modern governance, this paper argues for a balanced approach that upholds both state interests and individual rights, promoting legal and economic equity.

Keyword: Sovereign immunity, State liability, Government Contract

1. Introduction:

The question of state responsibility evokes a serious concern in any democratic society where state assumes a role of Welfare state. The concept of welfare state requires the state to participate actively and intensively in non-governmental activities such as banking, transport, trade, infrastructure etc. but when it comes to attributing the liability in case of any mishappening or non-performance, it may create a chilling effect on such functions. In a country where rule of law is followed every person is liable for any tort or offence committed against state or other individual, on the same logic the state may also be dragged into litigation on account of any wrong committed by state. This concept is called as state liability. But in

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certain cases, the state is not liable for acts or wrongs committed by it. In the context of India, A. 298 of the Constitution lays down that state can carry out any trade or business in its executive power or it can hold dispose of a property or can undertake contract for that purpose. Further A. 300 of the Constitution envisages that the government can sue or be sued in its name provided certain conditions are fulfilled. Certain provisions are also provided in other domestic laws like S.79 of Civil Procedural Code, 1908. These provisions provide immunity to the state so they can escape from the liability. These provisions act as defence for state when the state is alleged to have been committed a wrong against other individual. Similar provisions also exist in other states. One of such protection available to state is sovereign immunity.

It can further be classified into two categories

1. Sovereign immunity of state in domestic law
2. Sovereign immunity of the state in private international law

The concept of Sovereign immunity has gone through drastic change in the recent times as an effect of various judicial developments and changing notions of laws and governance and particularly as an effect of growing national and international trade by government owned entities. While this colonial tool was used to subjugate the populace, the Indian courts considered it as discomfort and against the notion lawful accountability. The courts often said that this doctrine is undemocratic and has no place in democratic society but the doctrine still continues in the vastly ambiguous form. The doctrine has no mention in constitution or any domestic law and is purely a produce of judicial developments of common law. The courts have been repeatedly challenged with a task of its interpretation and effect owing to its vast ambiguous nature. In fact, the courts have tried to distinguish between the sovereign and non-sovereign acts, to establish the accountability of the state in such cases.

Thus, this paper undertakes to analyse the application of sovereign immunity doctrine by examining legal developments. The first chapter attempts to understand the origins of the doctrine in both national and international context and its various jurisprudential justifications while the second chapter focuses on its evolution of the doctrine. It further gives an insight into the contractual liability of the state when it undertakes commercial activities. In doing so the author is attempts to argue that India by limiting or restricting the concept of absolute sovereign immunity actually leading the development of both domestic as well as international law to facilitate the trade and commerce.

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2. Origin

2.1 The Origins of the Doctrine in domestic law:

The doctrine though initially inspired by roman law under concepts of "The prince is not bound by the laws" and "the prince has the force of law" owes its existence largely to English common law. It believed to be grown in the reign of King Edward I. The doctrine is based on the preposition that the king is sovereign and therefore he is not answerable to his own courts, that he enjoys a superior power over his subjects without any kind of scrutiny upon how he exercises such power. Early jurists like Bodin, Austin, Hegal supported this absolutist concept of sovereignty and advocated for absolute concentration of power in king, the monarch.[1] Blackstone's commentary "the law also ascribes to the king in his political capacity absolute perfection. The king can do no wrong: ... "The king, moreover, is not only incapable of doing wrong, but even of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness."[2] also supports the equivalence of king as to of God and further extends the immunity to all those who work under the royal seal or carries his orders. The personal immunity granted to a king further extended to the crown as a result of rise of notion of nation state.

The theory of sovereignty can be broadly classified into two main schools, the absolutist and the restrictionist. Initial jurists like Hubbes, Immanual Kant are the fiercest proponents of absolutist view. They advocated that sovereign is incapable of breaching the law as he himself is a source of law and that if he is subjected to the compulsion, 'there would no longer be a supreme head, and the series of members subordinate and superordinate would go on upwards ad infinitum'[3] Its growth could also be attributed to the quest for colonial expansion in the 19th century. This sovereign eventually started to control not just the law or the policies but also the commercial matters in their controlled colonies. Any dispute arising out of such matters was negated on the ground of sovereign immunity of the crown. In these changing circumstances the questions related to the absolutist theory started to emerge particularly in the instances where the act was sovereign was brought before the courts. As a result, most courts started to take a view of restrictionist approach by placing certain restriction upon this absolute immunity to the acts of sovereign. The courts differentiated the sovereign's 'acta in jure imperii' from it

[1] Andrew Edward, Jean Bodin on Sovereignty, Republics of Letters: A Journal for the Study of Knowledge, Politics, and the Arts 2, no. 2 (2011)
[2] George W. Pugh, Historical Approach to the Doctrine of Sovereign Immunity, 13 La. L. Rev. (1953)
[3] Immanuel Kant, The Principles of Political Right, Frederick, Olafson, Society, Law, and Morality (Englewood Cliffs, NJ: Prentice-Hall, Inc. 1961)

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his 'acta in jure gestionis', into which such trading activities fell.[4]

This ideas of restrictionist are perhaps just a few centuries old, scholars like Grotius and John Lockie are the proponents of this school of thought. Grotius believed that the sovereign's power are not free from limitation. Locke further claimed that sovereign is also subjected to natural law and thus not free from limitations. He in fact believed that king can do wrong in performance of his duties as a guardian of state when he acts contrary to the natural law.[5] Further the changing forms of the governance and the growth of democratic states aggravated this view. The law makers and courts gradually realised that absolutist form of sovereign immunity is no longer practical in the new world order and thus its effects started to be diminished.[6]

2.2 The Origin of the doctrine in Private International law:

As already stated, Bodin, Austin, and Hegel are considered to be the early pioneers of sovereign immunity. Bodin's work in 16th century highlights his support to the absolutist view of sovereign immunity. He wrote "It is the distinguished mark of the Sovereign that he cannot in anyway be subject to the commands of another".[7] Further in 19th century owing to the quest of colonist expansion the idea of absolute sovereign immunity strengthened an attitude against impleading a foreign sovereign before a local court. Austin advocated that the sovereign's power is indivisible and illimitable.[8] Courts in US and UK took a view that "Sovereigns have made an implied contract to respect each other's independence and dignity."[9]

The Historical origin of this rule can be found in the era when most States were ruled by kings who in sense had personified the state. In that period the one sovereign, if he tries to exercise his power over another sovereign, was either indicative of superiority of one over another or the hostility between the two equals and the peaceful coexistence could only be achieved through the mutual respect of each other's. Thus, the absolutist view of sovereign immunity does not cause any practical big problems until the sovereigns were largely occupied with the tasks of war or conquest and the commercial activities was out of his operational domain. This

[4] Lakshman Marasinghe, The Modern Law of Sovereign Immunity 664-684, The Modern Law Review Volume 54
[5]Mayer D, Sovereign Immunity and the Moral Community 411-434, *Business Ethics Quarterly* 1992
[6] Neel Maitra, Sovereign Immunity in The Oxford handbook of the Indian Constitution (Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta ed., 2016)
[7] BODIN, Si Books of the Commonwealth, Oxford: Blackwell's Political Texts (M. J. Tooley ed., 1955)
[9] R. W. M. Dias, Jurisprudence, Lexis Law Publishing (Va) edition (1985)

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role of him changed in 19th century onwards where the sovereign states started taking interest in trading activities. By the time of 1920 to 1930 the questions like whether this extended function of the state can be challenged and can the sovereign state be made a party in foreign courts started looming. The courts also started to enquiring about the notion of the absolutist view which was developed in different circumstances was still a reasonable one in these evolving situations particularly when the sovereign is regularly appearing in the role of commercial entity.[10]

Some states thus took a restrictive approach by limiting the immunity to the sovereign's acta in jure imperii, and excluding from it his acta injure gestionis. Common was the late one to react on this issue.[11] Lord Atkin stated in the Cristina, "The courts of a country will not implead a foreign sovereign. That is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve process against his person or seek to recover from him specific property or damages and that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his, or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of the second principle, as to whether it extends to the property used only for the commercial purposes of the sovereign or to personal private property. In this country, it is, in my opinion, well settled that it applies to both."[12]

Thus, the Sovereign immunity doctrine as a principle under Private International Law has been explained and justified as resting on the grounds of Independence, Dignity, Extra-territoriality, Comity and that of Diplomatic Functions of the sovereign state.

3. Evolution

3.1 The evolution of the sovereign immunity doctrine in Indian domestic law:

3.1.1 Under Tort Law:

The concept of Sovereign immunity doctrine under common law was observed in colonial British India which then was transported to the Independent India along with other concepts under common law. The doctrine had immense value in colonial rule since the inception of East India Company in India till mid of 19th century but with the independence the influence

[10] Fawcett, Legal Aspects of State Trading 34-51, 25 B.Y.I.L. (1948)
[11] The State Immunity Act, 1978 (UK); The State Immunity Act, 1982 (Canada)
[12] Compania Naviera Vascongado v. Steamship Cristina (1938) AC 485

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of the doctrine started dwindling. Before the independence of India, its origin could be found in Steam O navigation company case[13], Lord Chief Justice Peacock while interpreting S. 65 of GOI Act, 1935 actually attempted to mild down the doctrine by differentiating between the sovereign and non-sovereign functions and the extent up to which the company can made vicariously liable for its employee's torts. Following the reasoning the construct of the military road was ruled to be a sovereign function in the case *Cockraft*[14], contrary to that madras high court took a opposite view an denied any distinction between sovereign and non-sovereign function by ruling that "where an act is done under the sanction of municipal law and in the exercise of powers conferred by that law, the fact that it is done in the exercise of sovereign function and is not an act which could possibly be done by a private individual does not oust its justifiability"[15] . Court in in *Kishanchand* case[16] and *Ross* case[17] followed the same logic.
After independence the courts and legislature started to discuss the impact and relevance of this doctrine in the backlight of constitution. The very first report of Law Commission of Independent India highlighted the issue and backdrops of this doctrine against the concept of justice and equity and recommended to struck it down in its entirety. In the case of *Vidyawati*[18], the court denied the plea for the act committed while discharging a sovereign function by state. It held the clear vicarious liability of the state for the tort committed by its official by holding that the function was not a state sovereign function. The court highlighted that the new independent Indian state is based upon the promise of welfare and socialistic goals where such feudal notion of defence is not appreciable. However, few years later court again took U-turn in the case of *Kasturi Lal*[19] by following the *steam navigation* ratio and thus by again redefining the sovereign and non-sovereign functions held that the abusive use of police power was a sovereign function and thus denied the liability of the state. Moreover, court took the extreme approach by stating that there will be no liability of the state for any torts committed by it or its servants in the exercise of its statutory powers[20].

Finally, in the case of *Nagendra Rao*[21] , the court brought some clarification in the law and

[13] Peninsular and Oriental steam Navigation Company v. Secretary of state, 1861 5 B. H. C. R. App. P. 1.
[14] Secretary of State for India v. Cockcraft (1916) ILR 39 Mad 351
[15] Krishna Ketana, Development of the Doctrine of Sovereign Immunity in England and India (2012). Available at SSRN: https://ssrn.com/abstract=2402176 or http://dx.doi.org/10.2139/ssrn.2402176
[16] Kishanchand v. Secretary of State (1881) ILR 2 All 829
[17] A.M. Ross v. The Secretary of State for India (1914) ILR 37 Mad 55
[18] The State of Rajasthan v. Mst. Vidhyawati and Another AIR 933, 1962 SCR
[19] Kasturilal Ralia Ram Jain v. The State Of Uttar Pradesh AIR 1039, 1965 SCR (1) 375
[20] Rakesh Kumar, Doctrine of Constitutional Tort: Evolution and Evaluation (2004)
[21] N.Nagendra Rao & Co v. State Of A.P. 1994 SCC (6) 205

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upheld the *Vidyavati* (supra) view by distinguishing it from *Kasturilal* (supra). The court clarified that the defence will only be available in the cases of primary and inalienable functions of the constitutional government such as justice administration, law and order maintenance or repression of crime etc.

Thus, it can be well said that Indian courts have taken a restricted view of sovereign immunity doctrine. At present, trading activities and commercial activities like operating railways are out of the scope of this doctrine.[22] Similarly, relief works or government vehicle maintenance as well as running hospitals were not considered as a sovereign function of the state. As held in *Hospital Mazdoor Sabha*[23], *Nagpur Corporation*[24], it has been made clear that the protection of this doctrine will be limited to the acts such as making laws, justice administration, law and order maintenance, repressing crimes or war etc. The court further clarified that the even though state is immune is some circumstances owing to this doctrine the employees of the state who have committed torts are not protected[25] and the public officer is not allowed to take this defence stating that wrong was committed in discharge of official function or while working under the orders of his superior.[26]

3.1.2 Under Contract Law

Government Contracts

In the contemporary era state cannot limit itself to just a traditional governmental function. The modern concept of welfare state requires the state to participate actively and intensively in non-governmental activities such as banking, transport, trade, infrastructure etc.[27] Thus, the state while conducting these activities much acts like a private person. Large number of persons and businesses participates with the government in the form of licences, government contracts, leases, mineral rights etc. The quantum of government contracts has increased surprisingly in modern times which mandates clear and unambiguous laws related fixing a liability in case of breach. While the individual or business organisation who engages with government is dealt with general rules of laws of contract, in case of breach or a wrong committed on the side of government, will the same rules apply or not is the question of importance.

[22] The Chairman, Railway Board & Ors v. Mrs. Chandrima Das & Ors AIR 2000 SUPREME COURT 988
[23] State 0F Bombay & Others v. The Hospital Mazdoor Sabha & Others 1960 SCR (2) 866
[24] The Corporation of The City of Nagpur v. Its Employees 1960 SCR (2) 942
[25] State Of Uttar Pradesh v. Tulsi Ram and Ors. AIR 1971 ALL 162
[26] Palthadi Venkappa Rai v. Devamma AIR 1956 MADRAS 616
[27] Borthakur Richa and Agarwal Rishika, A comprehensive guide to civil sovereign immunity in India: from Austinian absolutism towards diminished applicability, Pen Acclaims Journal, 12. pp. 1-16. ISSN 2581-5504

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It must be noted that if the blanket protection is given to government to claim immunities from the liability arising out of a breach or wrong committed by government side, it will create a hostile environment for those who engages in these activities. Most of such ventures cannot be performed by government alone owing to its financial, expertise and personnel limitations. If these businesses and individuals do not trust the government about honouring its contract, they will refrain from undertaking such ventures which ultimately results into compromise of economic and development of the country.

Contractual Liability of the Government of India

A. 298 of the constitution of India which is almost replication of earlier S.30 of 1915 Act and S.175 of 1935 Act allows the Indian government to participate in the contract with any private individual. It lays down the power of government to engage in any trade or business or to acquire, hold or dispose of property and make contracts for any purpose[28] Further A.299 lays down certain requirements which has to be observed while making such contracts by government. These are some mandatory requirements and the breach of them will result into making a contract null and void.[29] The case of Seth *Bikhraj Jaipuria*[30] highlights that the purpose of A.299 is to act as a safeguard to the government from unauthorised contracts and also to protect the larger public policy.

Governments liability in present times regarding the contract is as same as the private individual. Even in the British India, the East India Company was held liable for breaching the contract which was entered by it in civil capacity ignoring its vested sovereign powers. Though the person acting on behalf of the government cannot be sued in his personal capacity as per A.299(2) the government itself can be sued in the name of union or state as the case may be for any liability arising out of such contract if the conditions of A.299(1) are duly fulfilled. This is not a manifestation of doctrine sovereign immunity as it only protects those who executes the contract on behalf of the state i.e. President, Governor of the state official. This is a personal protection accorded to these officials so they can perform their official function free from fear of any litigation or personal liability arising out of an any contract made by them on behalf of the government after fulfilling the mandate of A.299(1)[31]. It must be noted that despite the liability arising out of governmental or non-governmental contracts is same, government do

[28] Constitution of India, 1950, A. 298
[29] State Of Bihar v. Abdul Majid, AIR 1954 SC 245
[30] Seth Bikhraj Jaipuria v. Union of India 1962 SCR (2) 880
[31] The State of Bihar v. Rani Sonabati Kumari AIR 1961 SUPREME COURT 221

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have some special privileges under other statutes like the period of limitation. S.112 of LA, 1963 provides a longer period of limitation for a suit by or on behalf of the government which is 30 years as compared to 12 years for private individuals.[32]

Thus, broadly it can be concluded that the defence of sovereign immunity is not available to the government in the area of contracting. The government should be held accountable for contracts to which it is a party. Providing any special privileges to the government against the basic laws of contract will result in miscarriage of justice and breach to the basic democratic notions of justice, equity and good conscience. A. 300 of the Indian Constitution embodies that the State may be sued by the individual in relation to its affairs, under the name of Union of India, or it can itself sue others under the name of the State, in the like case as the Dominion of India. Further it enables the Parliament.to make any law in that regards.[33]

3.2 An International Law Perspective:

Jurisdictional sovereign immunity is internationally recognised rule of common law which precludes the courts of one state from exercising its jurisdiction over another sovereign state for establishing any legal claim.[34] As already discussed, as per the doctrine of sovereign immunity in international law, a state cannot be tried for any wrong committed by it in the foreign courts. This is based upon the concept that if a foreign court were allowed to try a state for any legal claim, it would mean that one state is superior to the other. This violates the concept sovereign equality. However, with the changing circumstances in both national as well as international laws the doctrine also undergoing a drastic change in its applicability. It is widely believed that as the engagement of the states in the commercial transaction is growing day by day, shielding themselves behind the absolute view of sovereign immunity doctrine would be controversial to the views of justice and equity. This led the international community towards the acceptance of restrictive view of doctrine. The restrictive immunity approach states that when any State undertakes commercial venture with a foreign individual, firm or business entity, it is barred from taking the defence of sovereign immunity as this does not results into any challenge, threat or loss of the dignity of the State concerned and also nor it interferes with its sovereign functions.

[32] Nav Rattanmal and Others v. The State of Rajasthan 1962 SCR (2) 324
[33] Constitution of India, 1950, A. 300.
[34] Hazel Fox. QC . The Law of State Immunity Oxford, Oxford University Press, 2nd edition 2008

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India unlike UK or US, does not have a comprehensive law dealing with the issue of jurisdictional sovereign immunity of a foreign sovereign State. However, Civil Procedural Code of 1908 does have something called "Suits by Aliens by or against Foreign Rulers, Ambassadors and Envoys".

It authorises the Indian courts in the matters of immunity of foreign States related to jurisdiction. Its effect is that the foreign country or its functionary is barred from taking the defence of sovereign immunity under international law when the Indian Government has given the consent to initiate action in that regards. In the case of *Mirza Ali Akbar*[35]. Justice RAY, negatived plea of UAE and held that a Foreign State or its entity venturing into a commercial transaction is not protected by the defence of jurisdictional immunity in India. The Apex Court, in appeal,[36] further held that S. 86 Code conclusively and exclusively determines the competency of the courts to try such suits against foreign entities. The court expressed that S. 86 "modifies" the doctrine of immunity recognized by international law to certain extent. Again S. 86(6) mandates that the person making such request shall be given a reasonable opportunity to present its case before denying the consent.

Thus S.86 of the Code ensures that no foreign sovereign state or its entity should suffer by undue harassment by a suit based fictitious, frivolous or false claims. Cases like *Harbhajan*[37] and others[38] by Indian Courts strongly emphasise that decisions of the Central Government regarding consent are subjected to the

1. Not declining the consent due to cogent political and other reasons.
2. Not to adjudicate on the merits.
3. The accordance of consent is not immune from judicial review.

S. 86(3) the Code also bars the execution of any decree against foreign state without written consent of the central government. But section 86(6) is something which creates a dichotomy here. It mandates that the opportunity of being heard is only available to a person requesting the requisite consent to sue a foreign State and not to a person who is seeking consent to execute a decree. This should not be the law as it defeats the notion of equity, justice and reasonableness.

[35]United Arab Republic and Anr. v. Mirza Ali Akbar Kashani AIR 1962 CALCUTTA 387.
[36]Mirza Ali Akbar Kashani v. United Arab Republic and Anr 1966 SCR (1) 319
[37] Harbhajan Singh v. Union of India 1987 SCR (1) 114
[38] Narottam Kishore Dev Varma and Ors v. Union of India and Another 1964 SCR (7) 55

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The British Sovereign Immunity Act empowers its court to give effect to the jurisdictional immunity of a foreign State. It need not be emphasised that determination of jisdictional immunity claims by courts, as proclaimed in the Federal Sovereign Immunity Act serves the interests of justice by protecting legitimate claims of both the parties.

Thus, it is proposed that India by enabling a proper legislation, should also adopt this kind of approach. The interests of justice and and balancing the interests of both parties, which have led the United State to entrust the power to adjudicate upon the jurisdictional issue to its courts are also relevant in India. The Indian governments viewpoint in that regard is also evident from the Memorandum on State Immunity in respect of commercial transactions, submitted by the Indian government to the Asian-African Legal Consultative Committee (AALCC) in 1960.[39] The Indian government in the Memorandum supported the notion of restrictive immunity Therefore, India's position is clear that the sovereign immunity should be limited to "governmental" and not to the "non-governmental" or "commercial" activities of a foreign State.

3.3 Sovereign Immunity in the context of International Arbitration and its enforceability:

Arbitration is one of the preferred transnational dispute resolution mechanisms because of its workability and effectiveness. The sanctity of 'pacta sunta servanda' is kept by effectiveness of arbitration as it is based on freely entered agreement to arbitrate and is honoured and sanctioned where need be. The arbitration agreement is presumed to be conducted with integrity, expertise, efficiency and that the agreed award can be enforced through domestic courts. The most important feature of the international arbitration system is the fact that it is presumed to be final, binding and directly enforceable. The trust of the award creditor that the award is directly enforceable in member nations of New York convention is what makes the international arbitration so robust.[40] However, the biggest obstacle in enforcement of arbitral award is when the award debtor state takes the defence of sovereign immunity which makes it nearly impossible to enforce unless state voluntarily chooses to do so. The problem is exacerbated as the execution of award against state is only possible against the assets used by state by commercial purpose and not against assets kept for public purpose. The party interested in enforcement of award is left to cumbersome task of locating and identifying a non-

[39] Asian-African Legal Consultative Committee, 3rd Session held in Colombo, 1960
[40] Convention on the Settlement of Investment Disputes between States and Nationals of Other States, (Mar. 18, 1965), United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Jun. 10, 1958)

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governmental commercial asset. Further task becomes more complicated as public international law treats some assets of government as non-attachable at all.[41]

Countries like US, UK, Sweden and France which considered as trading friendly states have discussed the extent of sovereign immunity defence in the cases of arbitration and took a liberal approach in favour enforcement and execution of international arbitration award.[42] Though India is the "new" kid on the block it seems to be becoming a leading global pro-business jurisdiction and even pushing the status quo on sovereign immunity doctrine in an increasingly liberal and pragmatic direction. India's pro-arbitration policy is reflective in its Arbitration and Conciliation Act of 1996 and series of court decisions followed 2012 onward.[43] While deciding on the enforcement of international arbitration awards and judgments the Indian courts have emphasized upon the importance of execution in providing for an effective rule of law. In fact, India has followed the restrictive immunity doctrine from a longer period than many may believe. In the year of 1982, the High Court of Delhi while dealing with the matter of immunity from jurisdiction and the Arbitration Act of 1940[44] by differentiating between sovereign acts and private acts and explained that the latter is identified by looking at the "nature" or "purpose" of the transaction. Thus, it can be well argued that the Indian courts have embraced the restrictive theory of sovereign immunity from a long time. India is also a signatory to the UN Convention on Jurisdictional Immunities of States and their Properties ("UNCSI"), which signals its commitment to a more liberal position and attitude towards free trade and commerce. In the case of *Ethiopian Airlines v. Saboo*[45], the apex court highlighted that the newly enacted special statutes may have a repealing or limiting effect on some provisions of Civil Procedural Code. The court also made the remark that undertaking the membership of new and specialised international convention like UNSCI may amount the implied waiver of state immunity and that the concept of restrictive immunity now prevails in Indian state. Furthermore, the Court also reasoned its decision on the argument that the member states to the Warsaw Convention and signatories to the Carriage by Air Act had impliedly waived any such immunity as soon as they chose to be a party to such convention.

[41] UN Convention on Jurisdictional Immunities of States and Their Property, A. 19 and A.21
[42] Ylli Dautaj, *Sovereign Immunity from Execution of Foreign Arbitral Awards in India: The "New" Kid on the (Super) Pro-Arbitration Block*, 15 Arb. L. Rev. 19 (2024).
[43] The Arbitration and Conciliation Act, No. 16 of 1996, India Code (1996); Bharat Aluminium Company v. Kaiser Aluminium Technical Services Ltd., (2012) 9 SCC 552; Union of India v. U.P. State Bridge Corporation Ltd., (2015) 2 SCC 52.
[44] Uttam Singh Duggal & Co. Pvt. Ltd. v. United States of America, Agency of International Development, (1982) ILR 2 Del 273
[45]Ethiopian Airlines v. Saboo, (2011) 8 SCC 539.

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In the case of *KLA/Matrix*[46] case court made it clear that there is no requirement under law for obtaining prior consent of the Central Government under Section 86(3) of the Code for the execution of an arbitral award against an award-debtor state. The Court reasoned that "in the modern era, where there is close interconnection between different countries as far as trade, commerce, and business are concerned, the principle of sovereign immunity can no longer be absolute in the way that it much earlier was" and "if state-owned entities cannot be brought to justice, the rule of law would be degraded and international trade, commerce and business will come to a grinding halt." It also held that a state cannot claim sovereign immunity against enforcement of an arbitral award arising out of a commercial transaction and that the arbitration agreement will itself have a effect of waiver of such immunity. Thus, the implied immunity concept as provided in Ethiopian Airlines case(supra) and the double waiver doctrine as held in *KLA/Matrix* case (supra), after the analysis of both, one can claim that the investment treaty arbitration award and international arbitration award can be enforced and executed in India without prior requirement of the Central Government's consent. Indian courts therefore by removing the hurdles associated with expensive and time-consuming litigation have in result elaborated for a "stable, predictable, and effective legal framework for conducting commercial activities and to promote the smooth flow of international transactions."

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Conclusion:

Though all dimensions of the doctrine of sovereign immunity and its constant evolution in the contemporary world are not possible in one paper, I have tried to analyse, in this paper, the origin and the evolution of doctrine of sovereign immunity in both domestic as well as international legal jurisprudence. It is evident from the above discussion that the shift to democratic form of government from the authoritarian and monarchical have restricted the existence and application of this doctrine in the context of both domestic as well as international law. It seems to be evident that with the change in the conceptions of sovereignty, the doctrine of Sovereign Immunity has accordingly evolved to fix the accountability of the state for a wrong committed by it. This in turn will fix not only tortious liability of the states for the wrongs committed but also strengthens its accountability in case of a breach when the state or its arm is taking any contractual obligation. This will no doubt facilitates the environment of trade, commerce and business activity between states with its own individual citizens or businesses as well as with the foreign entities.

[46] KLA/Matrix v. Afghanistan/Ethiopia 2021 SCC OnLine Del 3424