
XX K.K LUTHRA MEMORIAL MOOT COURT COMPETITION, 2024

before

THE SUPERIOR COURT OF KRET

H. E. Mr. Kamrun Hadwan and Anr..... *APPLICANT*

v.

State of Kret and Anr..... *RESPONDENT*

MEMORIAL *on behalf of* **RESPONDENT**

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LIST OF ABBREVIATIONS

<i>Abbreviations</i>	<i>Expansions</i>
AIR	All India Reporter
ANR.	Another
ART.	Article
CRI LJ	Criminal Law Journal
CRIM.L.R.	Criminal Law Review
D.I.	Detective Inspector
HLR	Hofstra Law Review
HON'BLE	Honorable
ICC	International Criminal Court
ICJ	International Court of Justice
JSTOR	Journal storage
KPC	Kret Penal Code
KY. L.J.	Kentucky Law Journal
MLJ	Malayan Law Journal
ORS.	Others
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
UOI	Union of India
V.	Versus
VCCR	Vienna Convention on Consular Relations 1963
VCDR	Vienna Convention on Diplomatic Relations 1961

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1. The Treaty on European Union

2. Vienna Convention on Diplomatic Relations, 1961

3. Vienna Convention on Consular Relations, 1963

4. Fourth Amendment of the U.S. Constitution, 1791

5. UK Police and Criminal Evidence Act, 1984

6. Federal Rules of Evidence, 2019

7. Australian Evidence Act, 2011

8. The Code of Criminal Procedure, 1973

9. Kret Penal Code

10. Law of Evidence of Poland

11. Diplomatic and Consular Premises Act, 1987

12. The Diplomatic Relations (Vienna Convention) Act, 1972

II. BOOKS:

1. 10524, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES, 11,23 (U.S. Department of State, 1998).

2. 7 Op. S67, Cushing 1885, quoted in *Wharton, Francis; Digest of International Law, I*, 648. Italics are author's.

3. DIMITRIOS GIANNOULOPOULOS, IMPROPERLY OBTAINED EVIDENCE IN ANGLO-AMERICAN AND CONTINENTAL LAW 15-16 (Hart Publishing 2019).

4. EILEEN DENZA, DIPLOMATIC LAW COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 335, 336 (Oxford University Press 2016).

5. M Damaška, *Evidence Law Adrift* (New Haven and London, Yale University Press, 1997) 47.

III. LEGAL DATABASES:

- Manu Patra

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2. Aarushi Mehta, *A Study on the Admissibility of Evidence Obtained by Unlawful Means in Indian Courts in view of Right to Privacy as a Fundamental Right*, 2,1(2021).

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5. Carl Islam, *The inviolability of diplomatic and consular premises* 1,4 (2012).

6. Haezreena Begum Bt Abdul Hamid, *The Principle of Inviolability of Diplomatic Agents in Diplomatic Law*, 1 MLJ 219, 222 (2023).

7. Herbert T. Leyland, *Limitations on the Doctrine of Diplomatic Immunity*, 10 KY. L.J. 25,27 (1921).

8. Paras Marya, *A Relook at the Admissibility of Illegally or Improperly Obtained Evidence*, 8 NLIU LAW REVIEW 297,300-301(2019).

9. Peter Ashford, *The Admissibility of Illegally Obtained Evidence*, 85 Issue 4 ARBITRATION 377, 384,387 (2019).

10. Philemon Y. Yang, *The inviolability of Diplomatic and Consular Premises in International Law*, Theses, 128,134,136,174 (1910 – 2010).

11. William G. Morris, *Constitutional Solutions to the Problem of Diplomatic Crime and Immunity*,36 HLR 601,614 (2007).

V. TABLE OF CASES:

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2.	Al-Skeini and Others v. United Kingdom (2011) 53 EHRR 18
3.	Avena and Other Mexican Nationals (Mexico v. United States of America) [2004] ICJ Rep 12
4.	Bai Radha v. State of Gujarat 1970 AIR 1396 1969 SCR (2) 799 1969 SCC (1) 43.
5.	Basfar v.Wong [2022] UKSC 20
6.	Bharati Tamang v. Union of India (2013) 15 SCC 578
7.	Com. v. Henderso 140 Mass. 303
8.	Gindrat v. People 138 Ill. 103.
9.	Iran Hostage Crisis (U.S. v. Iran) Order, 12 V 81.
10.	Italy v. India ITLOS Case No 24, ICGJ 499 (ITLOS 2015).
11.	Legati v. Tollervey 14 East 302
12.	Magraj Patodia v. R.K Birla and Ors 1971 AIR 1295 1971 SCR (2) 118
13.	Nix v. Williams 467 U.S. 431 (1984).
14.	Pinochet v. Bartle and ors [1999] UKHL 17.
15.	Pooran Mal v. Director of Inspection of Income Tax (1974) 1SCC 345
16.	R v. Sang [1980] AC 402.
17.	R.M. Malkani v. State of Maharashtra 1973 AIR 157 1973 SCR (2) 417 1973 SCC (1) 471
18.	Radha Kishan v. State of U. P 1963 AIR 822 1963 SCR Supl. (1) 408
19.	Reyes v. Al Malki [2017] UKSC 61
20.	Starchman v. State 36 S. W. Rep. 940 (Ark.).
21.	State (NCT of Delhi) v. Navjot Sandhu @ Afzal Guru [2005] Cri LJ 3950

STATEMENT OF FACTS

I. THE CHRONICLE OF KRET

1. Kret, a European nation with 50 million residents, is known for its natural beauty, folk music, and economy. Located in the Austro-Hungarian Empire, it was reformed after WWII with a Westminster-style parliamentary government. With a diverse population, Kret follows a common law system.
2. January 3rd marks Establishment Day, celebrated with a grand parade. Kretan is the main language, with English as an official and widely taught second language.
3. Detective Inspector P.V. Bain has recently moved to the largest police station in Emerald City's Diplomatic Enclave from the Railway Police Station.
4. His transfer follows complaints from vendors and railway employees about harassment and bribe demands under threat of false charges.
5. Newspaper articles highlighted cases where those who didn't comply faced false accusations, but no action was taken against Detective Inspector Bain.

II. THE CHRONICLE OF FERRWA

6. Ferrwa, a 12 million-people African nation, is a blend of Berber, Arab, and African cultures. Despite facing challenges from Libyan militias, its cultural fusion is evident in its cuisine, music, and architecture, and its economy relies on agriculture and mining.
7. Governed as a constitutional monarchy with King Hassan as the ruler, Ferrwa's prime minister oversees the government. King Hassan is an esteemed guest at Kret's Day of Establishment parade.
8. In preparation for King Hassan's visit to Kret, the Ferrwan embassy collaborates with local police on security measures.
9. The embassy oversees the King's schedule, including his stay, meetings with Kretan officials, and historical site visits during his three-day trip. Mrs. Penny Wats, a Kretan national working as the Secretary to the Ferrwan Ambassador, manages King Hassan's itinerary.
10. Both countries, Ferrwa and Kret, are UN founding members and adhere to diplomatic treaties.

III. THE CONUNDRUM

11. On 24.12.2023, Mr. Sean Wats reports his wife missing to the local police, suspecting her kidnapping after she didn't return from work at the Ferrwan Embassy. Her phone is unreachable, and her car is at the embassy.
12. A Crime Report is filed under Section 265 Kretan Penal Code, and Detective Inspector P.V. Bain takes charge.
 - 12.1. The investigation by the Detective Inspector (D.I.) revealed that Mrs. Penny Wats, the secretary to the Ferrwan Ambassador, had access to classified information about King Hassan's travel itinerary. The email id belongs to an extremist group from Libya. The D.I. gained access to Mrs. Wats's email after operating her I-Pad, which was seized and sent for forensic analysis at a Kretan Government facility.
 - 12.2. On 23.12.2023, investigative journalist Prich Voshra received information about the proposed Libyan attack and contacted H.E. Mr. Kamrun Hadwan for a comment.
 - 12.3. The ambassador was shocked by the information and summoned Mrs. Wats to the Embassy. She was overpowered and strangled with a rope by the Ambassador's personal bodyguard, Mr. J. J. Crook. Her body was wrapped in plastic and removed from the Embassy at night.
 - 12.4. The D.I. then investigated the Embassy premises on 24.12.2023, but was denied entry.
 - 12.5. The D.I. arranged to gain entry into the Embassy and collect CCTV footage, including footage of the crime.
 - 12.6. The Ambassador's bodyguard used a wet wipe to clean the furniture in the room, and the D.I. found the bodyguard's face white with fear and put it in his pocket.
 - 12.7. The D.I. and Kretan national Mr. J. J. Crook were interrogated at the Diplomatic Enclave Police Station. After using AI-driven brain mapping, Crook admitted his guilt and disclosed the location of the burning of his body.
 - 12.8. He was arrested and forensically analyzed. The investigation team on 25.12.2023 found burnt remains of a human body, charred areas, and half a skull and teeth. Crook was granted 15 days of custody and the D.I. seeks leave to file a supplementary Police Investigation Report.
 - 12.9. Both Mr. Kamrun Hadwan and Mr. Crook are guilty of causing the death of Mrs. Penny Wats.

IV. THE PROCEEDINGS

13. Detective Inspector P.V. Bain requests police custody of Mr. J. J. Crook for 15 days, which is granted despite legal objections.
14. Bain investigates the case, concluding the investigation against Mr. Crook and filing a police investigation report.
15. The magistrate determines that offences under S. 202, 103, and 88 KPC are established, and the case proceeds, with Mr. Crook remaining in police custody.

V. MATTER PRESENTED FOR ADJUDICATION IN THE SUPERIOR COURT

16. Mr. J.J. Crook has filed Writ Petition Criminal No. 4/2024 in the Superior Court of Kret. In the petition, he requests his immediate release and contests the ongoing proceedings against him.
17. This includes challenging the crime report, police investigation report, and the court order dated 25.12.2023 issued by the Ld. Metropolitan Magistrate at Emerald City Court Complex. The case is scheduled for a hearing before the Superior Court in January 2024.

STATEMENT OF ISSUES

ISSUE I: Is Mr. J. J. Crook entitled to diplomatic immunity?

ISSUE II: Could the D.I. have conducted an investigation into the offences committed inside the premises of the Ferrwan Embassy without the prior consent of the Ferrwan authorities?

ISSUE III: Was the evidence collected by the D.I. from the Embassy including CCTV footage to be excluded from consideration by the Magistrate, being illegally obtained?

ISSUE IV: Were the further recoveries made including of remains of Mrs. Wats liable to be rejected and excluded from reliance by police on account of objections as to the illegal search at the Embassy and the arrest of Mr. J. J. Crook?

SUMMARY OF ARGUMENTS

ISSUE I: It is humbly submitted to this Hon'ble Court that Mr. J.J. Crook's diplomatic immunity is in question due to his alleged criminal actions conflicting with the Vienna Convention's principles. The gravity of the homicide and international norms suggest immunity may not apply. Diplomats must respect local laws even with immunity, and as a private servant, Crook lacks diplomatic immunity, emphasizing the need for his accountability in the murder of Mrs. Penny Wats.

ISSUE II: It is humbly submitted before the Hon'ble Court that the central issue revolves around the Detective Inspector's authority to investigate within the Ferrwan Embassy without prior consent. The argument asserts that principles of evidence preservation, public safety, international norms, and implied consent during emergencies justify the investigation. It emphasizes the importance of not allowing diplomatic immunity to protect those involved in serious crimes like murder.

ISSUE III: It is humbly submitted before the Hon'ble Court the argument contends that legally acquired evidence from the Embassy, including crucial CCTV footage, should remain admissible. It emphasizes the absence of illegality, the distinction in diplomatic immunity between official and private acts, and Mr. J.J. Crook's voluntary waiver of inviolability.

ISSUE IV: It is humbly submitted before the Hon'ble Court that the argument strongly asserts the admissibility of critical evidence, specifically Mrs. Wats remains, while meticulously safeguarding the rights of Mr. J. J. Crook. It centres around three fundamental pillars: the absence of an unlawful search, the lawful apprehension of Mr. Crook on the basis of serious suspicions, and the defensibility of the recoveries.

WRITTEN PLEADINGS

ISSUE I: IS MR. J. J. CROOK ENTITLED TO DIPLOMATIC IMMUNITY?

It is humbly submitted to the Hon'ble Superior Court of Kret that Mr. J.J. Crook is not entitled to diplomatic immunity. Examining Mr. J. J. Crook's entitlement to diplomatic immunity, this argument encompasses five critical areas. Firstly, the purported criminal conduct of Mr. Crook conflicts with the Vienna Convention's principles¹, which restrict immunity to acts within official duties. Secondly, considering the gravity of the alleged homicide, diplomatic immunity may not apply. Thirdly, international norms and legal standards assert that serious criminal offences should not be shielded by immunity. Fourthly, diplomats and staff must respect local laws, even when enjoying immunity. Lastly, Mr. Crook, operating as a private servant², lacks diplomatic immunity³, particularly in cases of severe criminal offences. Therefore, he should be subject to Kret's jurisdiction.

I.1. Misapplication of Diplomatic Privilege

The purported criminal conduct of Mr. J. J. Crook flagrantly contravenes the core principles enshrined in the VCDR. Article 31(1)(c)⁴ of the VCDR clearly outlines that diplomatic agents are immune from the criminal jurisdiction of the receiving state only *in respect of acts performed in the exercise of their functions*. Security personnel, while essential for the protection of diplomatic missions, are not immune from prosecution for criminal activities beyond the scope of their official duties.

¹ Article 31(1)(c), Article 41(1).

² **Article 1(h)**: a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State.

³ In UK Supreme Court Case, *Reyes v. Al Malki* [2017] UKSC 61, According to the Dutch-speaking criminal Court of Brussels "The employment of a private servant shall not be regarded as an official diplomatic act. In that respect, the former diplomat may not enjoy immunity. The criminal action against the former diplomat is, thus, admissible". Also, Mirza Pasic, "The members of the administrative and technical staff, the service staff, and the private servants have limitations regarding the privileges and immunities compared with the members of the diplomatic staff of the mission". Also see, United States Department Of State Office Of Foreign Missions, "The private servants of diplomatic personnel enjoy no jurisdictional immunity or inviolability in the United States".

⁴ **Article 31(1)**: A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

Caleb Cushing while Attorney General of the United States, said: If the crime committed affects individuals only the government of the country is to demand his recall. . . . *If the crime affects the public safety of the country the government may, for urgent cause, either seize and hold his person until the danger is over, or expel him from the country by force.*⁵ This last statement develops very clearly, for America at least, one limitation upon the general rule of immunity from legal process.⁶

Under the relevant provisions⁷ of The Diplomatic Relations (Vienna Convention) Act, it is explicitly stated that members of the service staff of a diplomatic mission who are neither nationals of nor permanent residents in the receiving state are entitled to immunity for actions undertaken in the scope of their official responsibilities. This means that individuals like Mr. JJ Crook, who doesn't fall under this category, are not exempted from legal prosecution in the host country for acts carried out in the line of duty.

Diplomatic immunity is a legal principle designed to protect diplomats from the rigour of the application of the host country's legal system, ensuring that they can carry out their diplomatic duties without fear of undue interference. This immunity is extended to diplomats themselves, not to individuals who may be nationals or residents of the host country, such as Mr. J. J. Crook in this case.

I.2. Gravity of the Purported Offence

The VCDR explicitly states that diplomatic agents *shall enjoy immunity from the criminal jurisdiction of the receiving State*⁸. However, this immunity is not absolute and is qualified by Article 41(1)⁹ of the VCCR, which excludes immunity for offences of a particularly grave nature. Homicide, being one of the most serious criminal offences, unquestionably falls within the category of offences for which diplomatic immunity should be waived.

⁵ 7 Op. S67, Cushing 1885, quoted in *Wharton, Francis; Digest of International Law*, I, 648. Italics are author's.

⁶ Herbert T. Leyland, *Limitations on the Doctrine of Diplomatic Immunity*, 10 KY. L.J. 25,27 (1921).

⁷ **Article 37(3)**: Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

⁸ Article 31(1).

⁹ **Article 41(1)**: Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

Given the gravity of the offense, it is imperative that Mr. J. J. Crook be held accountable for his purported involvement in the murder of Mrs. Penny Wats, as indicated under **Section 200 KPC**.

I.3. Conformity with International Norms

The principles enshrined in the VCDR reflect widely accepted international norms that diplomatic immunity does not extend to serious criminal offences. In the interest of upholding international legal standards, it is incumbent upon the host state, Kret, to ensure that justice is served in this case.

However, the immunity granted does not preclude the diplomat from being prosecuted for serious crimes in the ICC or the International Tribunals. Such immunity is also not intended to help a diplomat or its family members or staff to evade prosecution for wrongs committed but to protect the diplomat's ability to carry out their work effectively.¹⁰

I.4. Respect for Indigenous Jurisdiction

The VCDR reiterates that diplomatic agents are immune *from the criminal jurisdiction of the receiving State*¹¹. However, it is pertinent to note that this immunity does not absolve diplomats and their staff from adhering to local laws and regulations. Mr. J. J. Crook, as a citizen of Kret, is subject to Kretan law, and immunity should not be granted for actions that violate such laws.

In *Avena and Other Mexican Nationals (Mexico v. United States of America)*¹², the International Court of Justice affirmed the principle that diplomatic agents must respect the legal obligations of the host state.

¹⁰ Haezreena Begum Bt Abdul Hamid, *The Principle of Inviolability of Diplomatic Agents in Diplomatic Law*, 1 MLJ 219, 222 (2023).

¹¹ Article 31(1).

¹² [2004] ICJ Rep 12.

I.5. Capacity as a Private servant

According to Eileen Denza, *Private servants¹³ employed by members of the mission and who are nationals or permanent residents of the receiving State receive no privileges or immunities.*¹⁴

*The decision of the Vienna Conference not to grant immunities to private servants was obviously based on the view that there is a lack of functional necessity as far as these persons are concerned.*¹⁵

Mr. J. J. Crook's purported involvement in criminal activities necessitates that he be subjected to Kretan jurisdiction, consistent with the principle of respecting indigenous legal authority.

Mr. J. J. Crook, in his capacity as a private servant and not a diplomatic agent or official, does not enjoy diplomatic immunity, a principle reaffirmed by relevant case law¹⁶. The VCDR clearly stipulates that diplomatic immunity is extended to accredited diplomatic agents and their immediate families. However, it does not encompass private staff members such as bodyguards. In this context, Mr. Crook's role as a private servant¹⁷ to the Ferrwan Ambassador does not confer upon him the privilege of immunity, especially in cases involving grave criminal offences such as murder. Thus, prevailing international law and jurisprudence support the conclusion that he should be subject to the jurisdiction of the host state, Kret, for his purported criminal actions.

The severity of the purported crime, the tragic murder of Mrs. Penny Wats, accentuates the inappropriateness of extending immunity in this context. Hence we plead seamlessly with established international norms and solid legal precedents, underlining that justice imperatively dictates Mr. Crook's accountability under Kret's jurisdiction for his purported involvement in this profoundly lamentable event.

¹³A person privately employed by a member of a diplomatic mission is not a member of the mission and does not have any immunity or inviolability.

¹⁴ EILEEN DENZA, *DIPLOMATIC LAW COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 335 (Oxford University Press 2016).

¹⁵ *Id.* 336.

¹⁶ *Abdoulaye Yerodia Ndombasi (Democratic Republic of Congo) v. Belgium* (2002); *Pinochet v Bartle and ors* [1999] UKHL 17.

¹⁷ **Article 38 of The Diplomatic Relations (Vienna Convention) Act:** (2)- Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the missions.

ISSUE II: COULD THE D.I. HAVE CONDUCTED AN INVESTIGATION INTO THE OFFENCES COMMITTED INSIDE THE PREMISES OF THE FERRWAN EMBASSY WITHOUT THE PRIOR CONSENT OF THE FERRWAN AUTHORITIES?

It is humbly submitted before the Hon'ble Superior Court of Kret that the D.I. can investigate the offences committed inside the premises of the Ferrwan Embassy without the prior consent of the Ferrwan. This case centers on the justification of Detective Inspector's actions in entering the Ferrwan Embassy premises. Underpinning this argument are principles such as the preservation of crucial evidence, the imperative of safeguarding public safety, adherence to international legal norms, and the concept of implied consent during emergencies. These factors collectively support the notion that the Detective Inspector's actions were consistent with the principles of justice and accountability for serious crimes like murder.

II.1. Preservation of Evidence

The VCDR expressly states that *the official correspondence of the mission shall be inviolable*¹⁸. However, also clarifies that diplomatic agents are immune from the criminal jurisdiction of the receiving state *only in respect of acts performed in the exercise of their functions*¹⁹. The murder of Mrs. Penny Wats is clearly beyond the scope of any diplomatic function. Therefore, the D.I. was justified in entering the premises to preserve crucial evidence.

II.2. Protection of Public Safety

The VCCR stipulates that consular officer shall be free to communicate with nationals of the sending state and to have access to them²⁰. In the present case, the purported involvement of embassy staff in a murder, a crime of the utmost gravity, presents a clear threat to public safety. Under such circumstances, the paramount duty of law enforcement is to take immediate action to mitigate this risk, even without prior consent.

¹⁸ **Article 27(2):** The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

¹⁹ Article 31(1)(c).

²⁰ **Article 36(1)(a):** *Communication and contact with nationals of the sending State* - consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State.

Practice shows that a forcible entry will not be tolerated by most civilized countries, unless it is certain that without such an entry, the fundamental security of the receiving state will probably be at stake.²¹

II.3. International Legal Norms

The VCDR and VCCR themselves acknowledge that diplomatic and consular immunities should not be used to shield criminal activities. If it is not possible to come in contact with the authorities of the sending state, or if such consent is refused, the local authorities, in extreme cases, might be obliged to enter the premises.²²

Article 31(1) of the VCDR states that diplomatic agents *shall enjoy immunity from the criminal jurisdiction of the receiving state*. However, Article 41(1) of VCCR qualifies this immunity, excluding it for offenses of a “particularly grave nature”. Murder undoubtedly falls within this category. Therefore, the international legal framework supports the argument that immunity cannot be invoked to hinder the investigation of such serious crimes.

II.4. Consent Implied

The VCDR does not provide, that if fire breaks out or if there is an epidemic in diplomatic premises, agents of the receiving state may enter such premises, without the consent of the sending state.²³

These premises enjoy inviolability to the same extent as diplomatic premises, however consent is implied in the case of emergency, and the authorities of the receiving state may enter the premises without obtaining consent in the case of fire or other disaster requiring prompt protective action.²⁴

The justification for the unauthorized entry would be that human life was in sure and impending danger. The circumstances were such that the officials of the receiving state could not wait for that consent to come from the government of the sending state.²⁵

²¹Philemon Y. Yang, *The inviolability of Diplomatic and Consular Premises in International Law*, Theses, 174 (1989).

²²*Id.* at 134

²³ *Id.* at 128.

²⁴ Carl Islam, *The inviolability of diplomatic and consular premises* 1,4 (2012). **Article 31(2): Inviolability of the consular premises-** The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

²⁵ Philemon Y. Yang, *supra* note 21, at 136.

The failure of Ferrwan authorities to cooperate fully with the investigation can be construed as an implied consent for the D.I. to enter the premises.

II.5. Respect for Sovereignty and Local Laws

While diplomatic and consular missions enjoy privileges and immunities, these should not be used to violate the host country's laws. Article 41(1) of the VCCR and Article 31(1) of the VCDR both reiterate that diplomatic agents and consular officers are immune *from the criminal jurisdiction of the receiving state*. However, this immunity does not exempt them from adhering to local laws and regulations. If crimes are committed within embassy premises, the host country retains sovereignty and authority to investigate and prosecute, in accordance with its legal system.

This issue is entirely contingent on earlier issue. If diplomatic immunity is denied, there is no legal basis for investigating. Once diplomatic immunity is disproven, there is no assertion that embassy personnel or police have the authority to carry out investigations. This case involves a disappearance, alleged murder, and the discovery of a deceased body, which, under various laws²⁶, grants the police extensive powers and responsibilities, enabling them to recognize offenses, enter premises without warrants, and conduct searches.

In a significant judgment by a majority of three, the UK Supreme Court in *Basfar v Wong*²⁷ has confirmed that diplomats are unable to rely on their diplomatic immunity in response to alleged breaches of modern slavery laws.

In *Italian Marines Case*²⁸, the tribunal ruled that the Italian marines enjoyed diplomatic immunity as Italian state officials under the UNCLOS and held that India must cease to exercise its jurisdiction. The compensation has been mutually agreed between India and Italy in terms of the award by an international tribunal.

Hence, respectfully implore the recognition the paramount importance of upholding justice within diplomatic missions. The actions of Detective Inspector were grounded in a firm adherence to established legal principles. Diplomatic immunity should never serve as a refuge for individuals involved in grave offenses such as murder. Support for justice and a verdict in favor of justice for Mrs. Penny Wats are earnestly sought.

²⁶ Indian Criminal Procedure, US, UK, Irish, Australia.

²⁷ [2022] UKSC 20.

²⁸ Italy v. India ITLOS Case No 24, ICGJ 499 (ITLOS 2015).

ISSUE III: WAS THE EVIDENCE COLLECTED BY THE D.I. FROM THE EMBASSY INCLUDING CCTV FOOTAGE TO BE EXCLUDED FROM CONSIDERATION BY THE MAGISTRATE, BEING ILLEGALLY OBTAINED?

It is humbly submitted to the Hon’ble Superior Court of Kret that the evidence gleaned from the Embassy, including the CCTV footage, should not be expunged from the legal proceedings at hand. This case rests upon the principles of diplomatic inviolability, national security, and the duty to protect evidence. This case demonstrate that the Detective Inspector’s actions were not only legally justified but also necessary to prevent harm²⁹, uphold justice, and safeguard our nation’s security.

For a start, examine the claim, in Ashworth’s original thesis, that ‘the most appropriate criterion for the admissibility of improperly obtained evidence is a qualified protective principle’, which accepts the idea that there should be no exclusion where the defendant has ‘suffered no disadvantage as a result of the breach’.³⁰

III.1. No illegality in Search and Evidence Procurement:

Evidence collected by D.I is relevant irrespective of question that illegally obtained. All those legal provisions which are generally followed by community of Nations or civilized Nations that illegally obtained evidence are not admissible do not apply to this case because the essentials that are provided in those laws are not satisfied here.

III.2. Absence of Diplomatic Immunity for J.J. Crook:

I. Distinction Between Official and Private Acts:

In Article 31 of VCDR, distinguishes between official and private acts of diplomatic agents. Official acts are protected by diplomatic immunity, but private acts, including crimes such as murder and conspiracy, are considered beyond the scope of immunity. This distinction clearly indicates that the criminal actions of Mr. J.J. Crook are not shielded by diplomatic immunity and, therefore, do not render the evidence obtained inadmissible.

II. Waiver of Inviolability by Mr. J. J. Crook:

The principle of “diplomatic asylum” acknowledges that diplomatic premises should not be used to evade legal responsibility. Mr. J.J. Crook voluntarily provided information about the location of evidence and the crime, effectively waiving the inviolability of the Embassy for this specific purpose. His voluntary cooperation should be seen as a waiver of the Embassy’s

²⁹ Fact number 9 from the Moot proposition can be found on page number 12.

³⁰ A J Ashworth, *Excluding Evidence as Protecting Rights*, 3 CRIM. L.R. 723,729 (1977).

inviolability, justifying the entry made by Detective Inspector P.V. Bain for the purpose of securing evidence and ensuring justice.

III.3. Evidence Admissibility Even if Obtained Illegally:

I. Admissibility of Evidence Illegally Obtained

Since the law of evidence is a product of the development of trial by jury, the test of admissibility always has been: is it safe to entrust the fact to a jury; not, is it fair to the other party. It has been held, therefore, that evidence was admissible though obtained by the plaintiff unlawfully.³¹ And so evidence found on an unwarrantable search by a private detective has been admitted.³² Even where the illegal seizure was by a public officer, most jurisdictions have held, that evidence procured thereby is competent^{33,34}

India falls within the first category of common law nations ; that have adopted the strictest approach in taking of evidence, and with an absence of any statutory or constitutional provision that would exclude illegally obtained evidence, the impropriety of the evidence does not render it inadmissible. The same is evident from a catena of judicial pronouncements by the Supreme Court. *Pooran Mal v. Director of Inspection of Income Tax*³⁵ elucidates this position perfectly. The Court held that the Indian Evidence Act, 1872 permits ‘relevancy’ as the only test of admissibility as per Section 5 of the Act, and secondly, no other provision of any law excludes evidence on the ground that it was obtained illegally.³⁶

This very notion was upheld by the Supreme Court in the case of *Radha Kishan v. State of U.P.*³⁷, wherein it was observed that in case a search for evidence is being conducted in contravention of Section 165 and Section 103 of the Criminal Procedure Code, then at most the person being searched can resist the same, and the court may look into the evidence with a greater degree of care.³⁸ While dealing with the question of admissibility of an illegally intercepted telephone conversation, the Supreme Court in *State (NCT of Delhi) v. Navjot Sandhu @ Afzal Guru*³⁹ stated that the question was no longer *res integra*, observing that a

³¹ *Legati v. Tollervey*, 14 East 302.

³² *Gindrat v. People*, 138 Ill. 103.

³³ *Com. v. Henderso*;:, 140 Mass. 303; *Starchman v. State*, 36 S. W. Rep. 940 (Ark.).

³⁴ Admissibility of Evidence Illegally Obtained, 13 JSTOR 302 (1899).

³⁵ (1974) 1SCC 345; *Bharati Tamang v. Union of India*, (2013) 15 SCC 578.

³⁶ Paras Marya, *A Relook at the Admissibility of Illegally or Improperly Obtained Evidence*, 8 NLIU LAW REVIEW 297,300 (2019).

³⁷ 1963 AIR 822 1963 SCR Supl. (1) 408; *Magraj Patodia v. R.K Birla and Ors* 1971 AIR 1295 1971 SCR (2) 118 ; *R.M. Malkani v. State of Maharashtra* 1973 AIR 157 1973 SCR (2) 417 1973 SCC (1) 471; *Bai Radha v. State of Gujarat* 1970 AIR 1396 1969 SCR (2) 799 1969 SCC (1) 43.

³⁸ Aarushi Mehta, *A Study on the Admissibility of Evidence Obtained by Unlawful Means in Indian Courts in view of Right to Privacy as a Fundamental Right*, 2,1(2021).

³⁹ [2005] Cri LJ 3950; *R.M. Malkani v. State of Maharashtra* AIR [1973] SC 157.

tape-record of a relevant conversation is a relevant fact and therefore is admissible under **Section 7 of the Indian Evidence Act**^{40, 41}.

In the leading case of *R v. Sang*,⁴² Lord Diplock noted: *The trial judge has no discretion to refuse to admit relevant admissible evidence on the ground that it was obtained by improper or unfair means. The court is not concerned with how it was obtained.*⁴³

II. Exigent Circumstances Exception under VCDR

Under the VCDR Article 22(2)⁴⁴, diplomatic premises are deemed inviolable, except in cases of *fire or other disaster requiring prompt protective action*. This provision recognizes the imperative need for the receiving state to take immediate measures to safeguard lives and property when faced with such exigent circumstances. In the case at hand, the D.I.'s entry into the Embassy was a direct response to a legitimate concern regarding a potential fire hazard, aligning precisely with the exception outlined in Article 22(2). The purpose of this entry was to proactively prevent a possible disaster.

In *Iran Hostage Crisis (U.S. v. Iran)*⁴⁵, The court did not address specifically that the admissibility or otherwise of the documents that presumably would have been alleged to evidence the alleged US wrongdoing in the affairs of Iran, as Iran did not seek to deploy them, as it did not participate. But from the language of the decision it appears that the ICJ would not have admitted evidence obtained in violation of many international conventions.⁴⁶

III. Balancing Interests: Public Safety vs. Diplomatic Inviolability

Diplomatic inviolability is a revered principle, yet it is not absolute. It must yield when lives are in peril and justice hangs in the balance. The Detective Inspector's actions were not only legally justified but morally imperative. By admitting this evidence, ensure that the scales of justice remain balanced, that public safety is upheld, and that the integrity of our legal system endures. Implore to make the just and lawful choice to admit this vital evidence and allow the pursuit of truth and justice to prevail.

⁴⁰ **Section 7: Facts which are the occasion, cause or effect of facts in issue.** — Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

⁴¹ *State (NCT of Delhi) v. Navjot Sandhu @ Afzal Guru* [2005] Cri LJ 3950 (*supra* note 39, at 16.)

⁴² [1980] AC 402.

⁴³ *Id.* at 437.

⁴⁴ **Article 22(2):** The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

⁴⁵ *Order*, 12 V 81.

⁴⁶ Peter Ashford, *The Admissibility of Illegally Obtained Evidence*, 85 Issue 4 ARBITRATION 377, 384 (2019).

The D.I.'s actions were a response to the immediate need to protect public safety by averting a potential disaster. Simultaneously, he aimed to preserve crucial evidence for a fair and just legal process.

IV. Renewed Emphasis on Thesis in Evidence Admissibility

In 'Evidence Law Adrift' he sums up the problem perfectly, noting that *where the same individuals decide the admissibility of evidence and the weight it deserves, the taint from the forbidden but persuasive information cannot be avoided: it always affects the decision maker's thinking.*⁴⁷

Recognising that different legal systems have different stress resistance levels to human rights pressures for reform, it simply aspires to generate a renewed interest in the rights thesis and calls upon legal systems to give rights considerations due weight when determining the admissibility of improperly obtained evidence, regardless of whether they rely on exclusionary rules or exclusionary discretion.⁴⁸

Due to the factor of permissibility of illegally obtained evidence, the police are no longer motivated to strictly comply with lawful procedure, and the courts have turned a blind eye to this transgression.⁴⁹

It is clear that in England both the criminal and civil courts will generally admit illegally obtained evidence preferring to have all the evidence in order to make the correct decision rather than to exclude something that might be determinative.⁵⁰

Respectfully plead to preserve the admissibility of Embassy evidence, notably the critical CCTV footage. The plea is grounded in diplomatic immunity nuances, Mr. J.J. Crook's voluntary cooperation, established legal precedents, and the imperative to balance inviolability with public safety. Admissibility principles, both domestically and internationally, suggest that legality concerns should not inherently render evidence inadmissible. D.I P.V. Bain's actions were both legally justifiable and morally necessary for the cause of public safety and justice. Thus, implore the court to preserve the integrity of legal system by allowing this vital evidence to be considered.

⁴⁷ M Damaška, *Evidence Law Adrift* (New Haven and London, Yale University Press, 1997) 47.

⁴⁸DIMITRIOS GIANNOULOPOULOS, IMPROPERLY OBTAINED EVIDENCE IN ANGLO-AMERICAN AND CONTINENTAL LAW 15-16 (Hart Publishing 2019).

⁴⁹ Aarushi Mehta, *A Study on the Admissibility of Evidence Obtained by Unlawful Means in Indian Courts in view of Right to Privacy as a Fundamental Right*, 2,1(2021).(*supra* note 38.)

⁵⁰Peter Ashford, *The Admissibility of Illegally Obtained Evidence*, 85 Issue 4 ARBITRATION 377, 384 (2019).(*supra* note 46, at 387.)

ISSUE IV: WERE THE FURTHER RECOVERIES MADE INCLUDING OF REMAINS OF MRS. WATS LIABLE TO BE REJECTED AND EXCLUDED FROM RELIANCE BY POLICE ON ACCOUNT OF OBJECTIONS AS TO THE ILLEGAL SEARCH AT THE EMBASSY AND THE ARREST OF MR. J. J. CROOK?

It is respectfully submitted before the Hon'ble Superior Court of Kret, firmly commended for the admissibility of crucial evidence, including the remains of Mrs. Wats, in full recognition of the rights of Mr. J. J. Crook. At its core, this issue revolves around the fundamental premise that evidence, even amidst diplomatic complexities, retains its intrinsic admissibility and should not be unjustly withheld.

In the pursuit of justice and the protection of Mr. J. J. Crook's rights, this issue is presented, which is meticulously argued under three critical facets.

IV.1. No Illegal Search:

I. Exigent Circumstances:

Detective Inspector P.V. Bain's entry into the Ferrwan Embassy can be justified under the doctrine of exigent circumstances. The urgent need to prevent a potential terrorist attack on Kretan soil and the destruction of evidence due to a fire inside the Embassy justified his entry. In accordance with Article 22(2) of the VCDR, the receiving state, Kret, has a duty to protect the diplomatic mission from any intrusion, disturbance of the peace, or impairment of its dignity.

Detective Inspector P.V. Bain's entry into the Ferrwan Embassy was guided by the urgent need to safeguard the lives of Kretan citizens and prevent potential acts of terrorism.

Furthermore, Mr. J.J. Crook voluntarily confessed information about the place during the investigation, which corroborates the urgency and necessity of Detective Inspector P.V. Bain's actions.

II. Protection of National Security:

The VCDR acknowledges that the receiving state has a legitimate interest in protecting its national security. Detective Inspector P.V. Bain's actions were consistent with this principle, as they were aimed at safeguarding the safety of Kretan citizens and preventing a threat to national security.

Article 3(e)⁵¹ of the VCDR highlights that diplomatic missions have the function of promoting friendly relations between the sending and receiving states. However, this function cannot extend to actions that threaten the receiving state's security.

The European Court of Human Rights in *Al-Skeini and Others v. United Kingdom*⁵² recognized that a state has a positive obligation to protect the lives of individuals within its jurisdiction, even when potential threats emanate from diplomatic premises. The actions of Detective Inspector P.V. Bain were not only consistent with Kretan law but also with international jurisprudence emphasizing the protection of national security. Mr. J.J. Crook's voluntary confession adds weight to the necessity of these actions.

IV.2. Lawful Arrest of JJ Crook:

I. Suspicion of Involvement in a Serious Crime⁵³:

Consular officers may be arrested or detained pending trial only if the offense is a felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g., a warrant issued by an appropriate court).⁵⁴ Criminal immunity expires upon the termination of the diplomatic or consular tour of the individual enjoying immunity. Therefore, obtaining an indictment, information, or arrest warrant could lay the basis for a prosecution at a later date⁵⁵. Article 41⁵⁶ of the Convention on Consular Relations states that a consular official may be arrested or detained only in the case of a grave crime.⁵⁷

Detective Inspector P.V. Bain's apprehension of Mr. J. J. Crook was predicated on valid grounds to suspect his involvement in a grave crime, including potential terrorism and the homicide of Mrs. Wats. Given the gravity of the allegations and the exigency to prevent further harm, Mr. Crook's arrest was fully compliant with Kretan law and international norms.

⁵¹ **Article 3(e)**: promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural, and scientific relations.

⁵² *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Council of Europe: European Court of Human Rights, 7 July 2011, available at: <https://www.refworld.org/cases,ECHR,4e2545502.html> (last visited 12 October, 2023).

Article 32(1): The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

⁵³ Serious Incident: Any incident where an officer would normally perform a custodial arrest if the individual did not have diplomatic immunity.

⁵⁴ 10524, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES, 11 (U.S. Department of State, 1998).

⁵⁵ *Id.* at 23.

⁵⁶ **Article 41(1): Personal inviolability of consular officers**-Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

⁵⁷ William G. Morris, *Constitutional Solutions to the Problem of Diplomatic Crime and Immunity*, 36 HLR 601, 614 (2007).

II. No Diplomatic Immunity:

As argued previously, diplomatic immunity generally does not cover individuals engaged in criminal activities, particularly acts of terrorism. Article 32(1) of the VCDR provides the receiving state with the authority to waive immunity when it is necessary to prosecute individuals for severe offenses. This principle is in line with the International Court of Therefore, Mr. J. J. Crook's arrest remains lawful and justified in accordance with these established principles.

In the case of India, a signatory to the VCDR, the country has adopted a municipal law known as The Diplomatic Relations (Vienna Convention) Act, 1972. Under this act, the Secretary of the Ministry of Affairs issues a certificate under Section 9⁵⁸ to determine diplomatic immunity. Many member states have similar mechanisms for granting immunity through certificates. This highlights that diplomatic immunity is a prerogative of the State, requiring post facto recognition, as opposed to being bestowed automatically, which is central to the current case. In our particular case, there is a notable absence of information on this matter.

IV.3. Recoveries Were Admissible:

I. Inevitable Discovery Doctrine:

The principle of inevitable discovery, as established in *Nix v. Williams*⁵⁹ by the U.S. Supreme Court, holds that evidence initially obtained through illegal means is admissible if it would have inevitably been discovered through lawful means. In this case, had D.I. P.V. Bain did not enter the Embassy to prevent the potential fire, the evidence, including the remains of Mrs. Wats, would have inevitably been discovered when authorities responded to the fire. Thus, the recoveries were not only lawful but also admissible. This doctrine underscores the notion that evidence obtained through actions necessitated by the urgency of the situation should not be excluded when it would have been discovered lawfully anyway.

II. Preservation of Evidence:

The primary objective of D.I. P.V. Bain's entry was to preserve crucial evidence. The remains of Mrs. Wats were essential in establishing her unfortunate fate and the involvement of Mr. J. J. Crook in her death. The court should acknowledge the overriding public interest in

⁵⁸**Section 9: Evidence.**—If in any proceedings any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Secretary to the Government of India in the Ministry of External Affairs stating any fact relating to that question shall be conclusive evidence of that fact.

⁵⁹ 467 U.S. 431 (1984).

ensuring that those responsible for serious crimes, such as terrorism and murder, are held accountable. Therefore, D.I. P.V. Bain's actions, aimed at preserving vital evidence, were not only justifiable but also aligned with the imperative of ensuring justice in cases of grave criminality.

Hence the counsels plead that as there was absence of an illegal search and the lawful nature of Mr. J. J. Crook's arrest, reinforcing that the recoveries were undeniably admissible. This stance underscores resolute commitment to the principles of justice, deeply rooted in international standards, and unwavering dedication to upholding diplomatic norms and the sanctity of the rule of law.

PRAYER

WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED,

1. To deny Mr. J. J. Crook's diplomatic immunity.
2. The D.I. can enter the diplomatic premises without the prior consent of the authorities, as his conduct was justified.
3. To maintain the admissibility of Embassy evidence, including CCTV footage.
4. To declare that further recoveries, such as Mrs. Wats remains are admissible to preserve justice.

AND/OR

AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT IT MAY DEEM FIT
IN THE INTEREST OF JUSTICE, FAIRNESS, EQUITY AND GOOD CONSCIENCE

**FOR THIS ACT OF KINDNESS, THE RESPONDENT AS IN DUTY BOUND SHALL
FOREVER PRAY.**

All of which is humbly prayed,

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Counsels for the Respondent