

## The Necessities, Impairs and Constrains of Nullification of Criminal Immunity of the Head of States

<sup>1</sup>Mohammad Javad Shariiat Bagheri, <sup>2</sup>Hosein Dorji

<sup>1</sup> Visiting Assistant Professor, Payame Noor University, PO BOX 19395-3697, Tehran, IRAN

<sup>2</sup>PhD Student of International Law, Payame Noor University, PO BOX 19395-3697, Tehran, IRAN

[dorjihosein@gmail.com](mailto:dorjihosein@gmail.com)

**Abstract:** Trail and punishment of the head of states that commit international crimes were faced with many impairs and problems. Among these, the most important legal impair is criminal immunity. The history has shown that these accused have generally had sufficient immunity and not ever submit to justice. Nullification of the criminal immunity of the head of states is necessary because of matters including public international order, international peace and security, domestic international order, prevention of non-punishment of the criminals and deterrence so that prevent of non-punishment of the criminals. Effective implementation of prosecution and trail of the head of the states and nullification of their immunity deals with some impairs, constrains, costs and challenges. Among these impairs are the non-existence of necessary and suitable statutes, non-willing of states and marshalling evidence. These impairs should be identified and rectifies by states. This paper is designed in two parts. The first one deals with necessities of nullification of the criminal immunity and the second part analysis the impairs and constrains of punishment of the head of states.

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### Introduction:

The most heinous crimes that cause anxiety among the international community are not stay without penalty. However, sometimes the perpetrators of these crimes may be the heads of states, the prosecution, trial and punishment is faced with many obstacles. One such obstacle is the existence of criminal immunity. Immunity issue has always been one of the concerns of international community. Looking at the incidents that happened in the world, showstmost of those were international crimes, among which have more power and weren't accountable to any authority due to their immunity. Nowadays that international peace and security, public order and justice the world will be felt more by the international community, need to meet anyone who is a threat to the rights of individuals regardless of his status, it is irrefutable. Replying this necessity, International community to establish public order, the execution of justice at the international level is necessary and appropriate legal mechanisms needed. But effective implementation of this objective involves the obstacles, constraints and challenges that is facing the global community. From such barriers the lack of appropriate rights and regulations, the lack of expertise knowledge, political interference of the heads of governments, and the issue of the time all are the things that necessities total cooperation.

### 1-Necessities for the cancellation of the criminal immunity of heads of state

### 11- International public order

The international public order is the growing laws the preference of the common life of related governments depends to it. Security and orderly coexistence of states is dependent on the governor to cogent and the aim of this Public order is not reducing national criminal characters rather, its purpose is to coordinate these characteristics. And anything that violates this international order can be called international crime (Hosseininejad, 2003). Although some lawyers have emphasized on a public order based on human rights (Falsafi, 1961) and others name the international order as the international law, however, there are some values that are fixed in time and place and violating them will danger international society. The laws of human rights in the context of reserving human life are from this type of laws. Public order is the foundation of international law. In the past also, the lawyers perceived the public order as covering international law. The acceptance of this public order is based on consensus but, in their interpretations we are faced with different behaviors and conceptions. However, it seems that the public order is "the set of codified or not codified rights that is perceived as fundamental in a legal system and violation from them is a crime (Beigzadeh, 1999).

It can be concluded that sustaining international public order is one of the most important bases of cancellation of criminal immunity. It is due to this aim that the governments became committed for arresting

the violators of such orders by different conventions and consortiums.

The international crimes will lead to human worries and attacking to common humanitarian values, so based on their nature we can perceive them as the enemy of the whole of humanism.

### **1-1-The internal public order**

One of the most significant reasons for the cancellation of the criminal immunity of the head of the governments is the threat of international community to the country that the individual choose it as a shelter. In fact, the presence of a convict in a country will weaken its infrastructures and legal bases as well as its relationship with international community. Of course the presence of a convict person in a country that immune him/her will lead to weakness of international trust and cooperation.

### **1-1- to avoid convicts to be unpunished**

In some cases the international violators find some ways for escaping from international punishments and this issue will be more severe when the violator be a head of a government because it will find the escaping more easily with his/her criminal immunity. So, one of the basic and fundamental ways is to cancel their criminal immunity.

### **1-2- Interception**

Interception is the necessity for cancellation of criminal immunity of heads of states. For example the article 1 of the genocide law commits the member countries not only about punishing the genocides but avoiding it. So, the execution of criminal immunity of the heads of the states in this regard can be a motivator for genocide for potential convicts (Cowel, 1945).

General Council of UNITED NATIONS (UN) also has contended that the activities that pursuit, punish, stop, and recognize the violators are very fundamental to prohibit such crimes U.N.Doc.Cat/c/9/Add. I, Zomarch 1990, para. 40

### **Barriers for cancelling criminal immunity of heads of states**

In general, there are some barriers for nullification of the criminal immunity of the head of states such as; the lack of law, the lack of political volition and will, the lack of expertise knowledge in the criminal justice system, the impunity of the convicts of the international crimes, the lack or the inefficiency of the convict retraction, time, international peace, the authorities of security council of UN, and impunity as a condition for stopping the genocides and crimes within countries (internal wars). At the following we'll describe and explain all of such issues.

### **Lack of appropriate law**

Basically, rare countries give the authority to their courts for investigating huge crimes such as genocide, war crimes and anti humanitarian crimes. In such countries also a coordinated law making also is not observable. Also, internal courts have showed that they are not interested for auditing the crimes of heads of states when there is no obvious rules and laws.

### **The lack of expertise knowledge in criminal justice system**

Judges of internal courts naturally don't have the expertise knowledge about international law and also they are less interested to refer to the international law in their judgments. Also sometimes they aren't fully aware of fast changes that occur in international law (Byers, 2000).

On the other hand, updating legal interpretations in many countries is a problematic issue. So, the punishment of head of states both in the aspect of interpretations of international law and in the aspect of lack of expertise knowledge necessitates updating the knowledge and skills. Also there is a need for special courts and organizations.

### **Lack of political will and political interference in cancellation of immunity**

Sometimes, regardless of legal possibilities for executing the rules of criminal immunity, due to the lack of political will or even political interference of political persons this aim becomes not possible both in the lawmaking stage or execution of law.

One of the most serious issues that prohibit the execution of the law of cancellation of criminal immunity of head of states is that the current structure of international law permits the heads of states to interfere in the criminal judgments.

### **The impunity of culprits of international crimes**

Impunity is a legal issue and will be given based on the internal regulations while the impunity is forbidden for the persons that violate international crimes (Orontlicher, 1991). Impunity will be announced usually after revolutions, riots, and parades (Nooriha, 1378).

### **The problem of rationalizing assertions and making them reasonable**

This issue is a very difficult and vital issue and not attainable due to reasons such as; the lack of serious will and cooperation, the lack or insufficiency of the bilateral or multilateral contracts between countries, and the problems in the early stages of research.

### **The lack or insufficiency of the contracts for restoration of the convicts**

The international criminal law put importance on the convict restoration policies around the world regardless of the quality of cooperation between countries. But as we know, the lack of an standardized legal system around the world and the lack of such contracts amongst countries has led to a great challenge in this area. Sometimes rules such as the exception of political crimes, the interactive crime, interdict of re-punishment, and pass of the time all are the issues that prohibits the execution of the law for international crimes.

#### **Passage of the time**

Based on the rule of time passage, sometimes the execution of a especial law is limited to a specific time period and after that time period the crime wont checked and inspected. Fortunately in the last years countries are seeking the ways for removing time passage rule for international crimes. It seems that this is became a tradition among the countries to not include the international crimes in the time passage rule.

#### **International peace and authorities of security council of united nations**

Based on UN regulations, sustaining the international peace and order is the duty of Security Council (SC). The authorities of SC are very wide in this regard and are unconditioned. Such permissions enable the SC to ignore or to suggest and apply for the punishment of an international crime. But SC encountering doesn't follow a unified set of standards and sometimes its activities became partisan and not neutral.

#### **Political and economical considerations**

Sometimes the governments have ignored the punishment of international crimes for attaining economical and fiscal contracts. The role of some countries for benefiting in such cases is very vast around the world.

#### **Conclusion:**

From the fact that the international crimes will start from the head of states due to their power, they are

not responsible to any authority for their crimes. So, for prohibiting the head of states to be unpunished, the nullification of their criminal immunity has been emphasized. The legal infrastructure that necessitates this principle is international public order. Not executing the rule of the nullification of criminal immunity of heads of states is the product of some challenges and barriers. From the most important barriers for executing this rule are; the lack of law, the lack of political volition and will, the lack of expertise knowledge in the criminal justice system, the impunity of the convicts of the international crimes, the lack or the inefficiency of the convict retraction, time, international peace, the authorities of security council of UN, and impunity as a condition for stopping the genocides and crimes within countries (internal wars).

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