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A CRITICAL ANALYSIS OF THE LAW RELATING TO
SOVEREIGN IMMUNITY

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INTRODUCTION

The world of today is an interdependent one in many aspects. Without very transnational business activities primarily in the form of international trade and investments, development of a state would be difficult to achieve. The majority of the developed states are engaged in transnational business. State entities and instrumentalities are also involved in these activities. This being the case, it is necessary for a private person to ascertain the extent of immunity granted to states and their entities. Hence, the law relating to state immunity is a relevant and important factor in the development of a state.

State immunity may be regarded as an exemption or suspension from legal process granted by a state to another state. In other words, it is the immunity accorded to a foreign state by a forum state through its courts of law, in respect of the institution of proceedings, attachment of property or enforcement of judgments against such foreign state. However, this does not embrace an immunity from the substantive law of the forum state. Once the foreign state waives its immunity, the forum state would assume jurisdiction over the matter in issue.

The definition of the word 'state' is important in relation to the application of the doctrine of state immunity. For purposes of immunity, the term 'state,' includes all sovereign states, irrespective of the form of government, whether a monarchy, republic, federal state or otherwise.¹