CHAPTER 1
RESEARCH STUDY: PROBLEM, SCOPE AND METHODOLOGY

1.1 Research Problem

The horrifying experiences of the Armed Conflict in the Gulf, Vietnam, Somalia, Yugoslavia and Rwanda remind us of the war and the suffering, death and destruction it causes. War is against humanity and involves most brutal and arbitrary violence. The contemporary International Law - in particular the charter of the United Nations - prohibits not only the use of force but even the threat to use force with exception to the collective actions taken by the United Nations or the defensive measures permitted by Article 51 of the Charter. In order to make this prohibitions realistic international law offers to states a great scale of means and measures for the peaceful settlements of disputes with a view to an effective abolition of the recourse to war.

Unfortunately, the prohibition of war proclaimed after World War - II is not respected. The sad reality of today's International Relations is that armed conflicts continue spread and are not ready to disappear. The recourse to the armed force is accompanied by most heinous crimes such as Genocide, Rape, Enforced Prostitution Torture, Hostage taking summery executions, internment, deportation and intimidation. Armed conflicts completely bend twist, torture and put to the ground the mechanisms for the protection, and promotion of Human Rights.

The threes core international crimes i. e. Genocide, Crimes against Humanity and War Crimes are expressly prohibited by International Law through adoption of serious of Conventions, and also by setting up of International Tribunals and International Criminal Court.

All these Conventions makes it mandatory for the parties to make these crimes punishable under the municipal laws. The concept of International
Jurisdiction for these crimes has also been established. In short these crimes have achieved *Jus Cogens* status under the Public International Law, and any individual who has perpetrated such crimes is punishable irrespective of his position in Government. Even the Heads of the States can be punished for such crimes according to International Criminal Law.

The conflict starts when it comes to punishing heads of state for the International Crimes. Two conflicting norms exists in International Law. The principle of sovereign immunity on one side and International Crimes on the other side. When a head of state perpetrates or orders, plan, abates perpetration of International Crimes, can he claim sovereign immunity for such acts under International Law?

There are conflicting decisions of various international Courts and Tribunals and also by various National Courts specially after the controversial decision of International Court of Justice in *Belgium v Congo* the debate has heated again. This conflict has to be resolved in order to deter head of states from perpetrating such heinous crimes.

### 1.2 Aims of Research

1.2.1 To study the meaning and definition of International Crimes.

1.2.2 To study the Legal Provisions under various International Instruments regarding punishment of individuals perpetrating International Crimes.

1.2.3 To study the concept of sovereign immunity i.e. immunity ratione materiae and immunity Ratione Personae under the International Law.

1.2.4 To study the conflict of various International Courts and Tribunals regarding sovereign immunity and International Crimes.

1.2.5 To study the various decisions of National Courts of different Countries regarding sovereign immunity vis-à-vis International Crimes.

1.2.6 To study the conflict of between international tribunals and ICC vis-à-vis National Courts exercising International Jurisdiction.
1.2.7 To examine whether existing Laws can eliminate the protection of sovereign immunity to the perpetrators of International Crimes.

1.3. Objective of Research

The objective of the research is to examine whether the principle of sovereign immunity overrules the norms of International Criminal Law and to examine the possible steps to be taken for elimination of such conflict.

1.4 Hypothetical Issues

1.4.1 What are International Crimes?

1.4.2 What is the Definition, elements and meaning of International Crimes i.e. genocide, crimes against humanity and War Crimes according to various International Instruments?

1.4.3 What are the general principles of criminal responsibility under International Criminal Law?

1.4.4 What is the concept of sovereign immunity under the International codified Law and International Customary Law?

1.4.5 What is the concept of Universal Jurisdiction under International Criminal Law?

What are the Princeton Principles of Universal Jurisdiction?

1.4.6 What is the conflict between the principles of Universal Jurisdiction and Sovereign Immunity?

4.6.1 What are the issues of Jurisdiction in cases of exercise of Universal Jurisdiction?

1.4.7 What is the position of International Tribunals and National Courts regarding the defence of sovereign immunity made by various heads of States?

1.4.8 What is the position of Sovereign immunity in today's age of Human Rights?

4.8.1 Case of General Augusto Pinochet
1.4.9 Whether there is a possible solution to this problem in existing International Law?

1.4.10 What changes are needed in contemporary International Law to eliminate this conflict of Law?

1.5. **Scope of Study**

The present study will examine in a broad perspective. The International Law and Municipal Laws of various countries with reference to punishment of International Crimes and sovereign immunity.

The study will be limited only to crimes, which are declared as International Crimes i.e. Genocide Crimes against Humanity and War Crimes.

The sovereign immunity will consider both personal immunity and material immunity provided to sovereigns of states.

1.6. **Research Methodology**

The research is based upon comparative and analytical study of various international and National Jurisprudence regarding International Criminal Laws and sovereign Immunity laws.

The study is based on Primary Laws, Reference Books, Court Decisions, Journals, Reports, Opinions of Legal Scholars and Statistics available on the subject of research.

1.7 **Significance of Study**

1.7.1 **International Level**
The study will ensure and deepen the analytical aspects of the subject and help international Tribunals and lawyers practicing International Criminal Law to solve the conflict of International Law. It will also help the International Community to develop International Criminal Law in order to eliminate gross human rights violations perpetrated by sovereigns of states.

1.7.2 The Study will help the legislature to enact laws on international jurisdiction and International criminal Laws, which is the need of the day in the era of Global Terrorism.

1.7.3 Contribution to knowledge
This study will help immensely to legal scholars, academicians and students to further their knowledge of the relatively new and rapidly growing subject of International Criminal Law. This will also serve as a reference book to the students of International Law especially in India, where there is negligible contribution to this subject by Indian Legal Scholars.

1.8 Scheme of Research
Research Problem, need of its study, and introduction of the problem.
1.8.1 Introduction to International Crimes
1.8.2 The Definition, elements and meaning of International Crimes i.e. genocide, crimes against humanity and War Crimes according to various International Instruments
1.8.3 The general principles of criminal responsibility under International Criminal Law
1.8.4 The concept of sovereign immunity under the International codified Law and International Customary Law
1.8.5 The concept of Universal Jurisdiction under International Criminal Law
1.8.5.1 The Princeton Principles of Universal Jurisdiction

1.8.6 The conflict between the principles of Universal Jurisdiction and Sovereign Immunity?

1.8.6.1 The issues of Jurisdiction in cases of exercise of Universal Jurisdiction.

1.8.7 The position of International Tribunals and National Courts regarding the defence of sovereign immunity made by various heads of States

1.8.8 The position of Sovereign immunity in today's age of Human Rights

1.8.8.1 Case of General Augusto Pinochet

1.8.9 Possible solution to this problem in existing International Law

1.8.10 Conclusion: Changes is needed in contemporary International Law to eliminate this conflict of Law