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# INTERNATIONAL LAW

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## I INTRODUCTION

INDIA'S ONE of the greatest achievements in the field of International Law in 2017 was perhaps with India's representation Judge Dalveer Bhandari getting re-elected to the International Court of Justice with an overwhelming majority. This reflects India's growing influence as a formidable as well as a reliant figure in the field of International Law. This is perhaps India's opportunity to prove wrong the presumption that India is a nation that is not very appreciative of the International Legal Order. At the same time, it is reflective of the fact that the common notion that International Law is Eurocentric can finally be put aside. There cannot be a better testimonial to the fact that Justice Bhandari won against United Kingdom's representation to the ICJ.

India's achievements in 2017 are not restricted to this alone. Feminism and international law, an issue that has been plaguing the whole world has been beaten by India. This year bore witness to the first Indian woman Dr. Neeru Chadha being appointed as a judge to the International Tribunal for Law of the Seas. One can easily conclude that not only has India warmed up to the International Legal order but has also resolved to meet head-on with issues like feminism and the Third-world associated with this discipline. In the domestic front as well, India has been dealing with several issues concerning Public International Law. Here is a look at the list of cases that India has successfully concluded by interpreting the applicability of this law in its sovereign context.

## II SUPREME COURT CASES

***Chrisomar Corporation* v. *MJR Steel Pvt. Limited***

In *Chrisomar Corporation* v. *MJR Steel Pvt. Limited,*[1] the issue arose regarding a vessel flying under the Flag of Cyprus. The vessel in question had received services

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1 2017 SCC Online SC 1104.

from the port of Durban and had an outstanding amount that has been raised by the plaintiff in view of the said services that were provided. Upon docking in Haldia port, the plaintiff filed an admiralty suit that amounted to a maritime lien on the vessel. An out of Court settlement was reached but no payment was made thereof. So, the vessel was re-arrested and sold thereafter. Due to lack of maritime lien being defined in Indian statute, the Court had to refer to International Law Conventions on maritime law and concluded that since such law is developed in the common law of nations, it will be considered as common law of India as well.[2] In this case the issue was raised that India is not party to several international law conventions that define such lien and a vessel's liability. The judge lamented the lag of Indian Legal system in adopting such International Conventions. However, since India participated in the Arrest of Ship Convention, and the same was used in MV Elizabeth,[3] it was interpreted that it became a part of our national law. Thus, the international Conventions were successfully applied in justifying the arrest of the vessel as well as in defining lien.

***Halliburton offshore services INC.* v. *Principal officer of Mercantile Marine Department***

In the *Halliburton offshore services INC.* v. *Principal officer of Mercantile Marine Department*,[4] the issue was the requirement of a grant of registration and the provisional registration of a ship. In this case, the learned Judge while explaining why such a registration is important highlighted the maritime flag of the ship, its nationality and rights etc. derived from it. The Court specifically cited the Geneva Convention on High Seas (1958) which enumerates the same. Similar laws are also found in the Indian legal system which the Court specifically relied on thereafter. So, it can be concluded that it is not only the domestic laws but the international law also shares the same view on this aspect.

***In Re: Inhuman Conditions in 1382 Prisons***

In *In Re: Inhuman Conditions in 1382 Prisons,*[5] the Supreme Court addressed the issue of unnatural custodial deaths in prisons. The Court found that what is practised in our prisons is the theory of retribution and, while our criminal justice system believes in reformation and rehabilitation which is why handcuffing and solitary confinement were prohibited. It is this rejection of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths. The Court looked into international law and stated in its ruling, that the General Assembly of the United Nations adopted the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted on 17th December, 2015. These Rules

2 This view was taken in *MV Elizabeth case* (AIR 1993 SC 1014, 85).

3 *M.V. Elizabeth* v. *Harwan Investment And Trading Pvt. Ltd***,** AIR 1993 SC 1014, 85.

4 AIR 2017 SC 2897.

5 2017 (11) SCALE 493.

provide useful internationally accepted guidelines for implementation by prison administrations across the country. It also addressed the issue of compensation for next of kin of the convict who died an unnatural death in prison and made a reference to the article 9(5) of the International Covenant on Civil and Political Rights, 1966 which reads: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

***Justice K. S. Puttaswamy* v. *Union of India***

On August 24, a nine-judge bench of the Supreme Court, in the case of *Justice K.S. Puttaswamy* v. *Union of India,*[6] unanimously affirmed that the right to privacy is a fundamental right under the constitution. The decision came at the end of a two-year-long battle, which had begun when the Union of India in a 2015 hearing (on the validity of the Aadhaar Act) argued that the right to privacy was not guaranteed under the constitution.

Through six different opinions, across 547 pages, the bench not only upheld the right to privacy, but also delivered a judgment which will significantly impact our republic for decades to come. Data protection, the legality of beef/alcohol bans, LGBT+ rights etc. are issues that will be directly protected by the privacy umbrella. Suffice it to say that this is not only the most significant decision of the year, but perhaps also one of the most important civil rights judgments ever delivered by the apex court. On a side note, the judgment had Justice D. Y. Chandrachud overturning his father Justice Y. V. Chandrachud's surrender of civil liberties during the Emergency in the *ADM Jabalpur* case. The Supreme Court resorted to various international law rules and norms which aided in their delivery of justice.

***Shayara Bano* v. *Union of India***

The Supreme Court in the case of *Shayara Bano* v. *Union of India,*[7] banned the controversial Islamic practice that allows men to leave their wives immediately by stating "talaq" (divorce) three times, calling the practice "unconstitutional". A five-judge Constitutional bench set aside the age-old practice by a majority of 3:2, holding that it was unworthy of protection. Triple talaq the personal law by which Muslim men can instantaneously divorce their wives by uttering "talaq" thrice "is not integral to religious practice and violates constitutional morality," the Supreme Court judges said. International law in its numerous conventions and norms bestows the utmost respect upon women and propagates their upliftment and promotes equality amongst men and woman, while shunning discrimination. The Court gave the judgment keeping in mind the spirit of such practices in international law. Interestingly, all five judges on the bench belonged to five different faiths Hinduism, Islam, Christianity, Sikhism and Zoroastrianism. The judgment came after the apex court addressed five different writ petitions filed by Muslim women who had suffered intense torture and harassment

6 AIR 2017 SC 4161.
7 AIR 2017 SC 4609.

in cases of triple talaq. The lead petition in this case was filed by Shayara Bano in 2015 who advocated the practice of instant talaq as violating articles 14, 15, 21 and 25 of the Indian Constitution.

***Independent Thought* v. *Union of India***

**In the case of *Independent Thought* v. *Union of India,*[8] the Court held that** a man's act of indulging in sex with a minor wife would amount to rape. The petitioners had challenged the constitutionality of exception 2 to section 375 of the IPC. The exception provides that sexual intercourse with a minor wife – one who is of or above the age of 15 – would not qualify as rape. As a result of the exception, there existed a category of married women between the ages of 15-18 who could not enjoy protection under the law if they were forced into sexual intercourse by their husbands. This position was supported by the Union of India. Through its judgment passed on the October 11, the Court held that the distinction made between a married girl child and an unmarried girl child was arbitrary and whimsical. In effect, the Court has criminalised all sexual intercourse between a man and a minor girl, irrespective of their marital status. Before the Supreme Court verdict, the law did not find a man guilty of rape for having sexual intercourse with wife older than 15 years of age. While child marriage is a crime, this exception created conflict between laws. The Protection of Children from Sexual Offences (POCSO) Act of 2012 defines 'children' as those aged below 18. It has specific provisions declaring that 'penetrative sexual assault' and 'aggressive penetrative sexual assault' against children below 18 is rape. The apex court also looked into several international conventions and covenants of child rights and their protection while pronouncing this landmark judgment. This ruling will also apply to Muslims irrespective of the fact that Muslim Personal Law allows marriage at the age of 15.

## III HIGH COURT CASES

***Mansel Limited* v. *Bunkers on Board***

In the case of *Mansel Limited* v. *Bunkers on Board,*[9] the question arose whether the Court while exercising its admiralty jurisdiction can order arrest of the ship and the sale of its bunkers on the board of the ship? While answering this question, the Court mentioned several international legal instruments by which the Court established that it was empowered to establish its jurisdiction. Such instruments had mentioned the jurisdiction of the High Court and in this case, it is the Court concerned. The Court further concluded that the absence of an express statue in India on admiralty jurisdiction cannot be a basis for the narrow interpretation of such jurisdiction. The Court admitted that broader powers are attributed under several international

8 AIR 2017 SC 4904.
9 (2017) 4 AIR Bom R 66.

conventions and there is no reason why they cannot be applied in Indian context. Due to their generality in the maritime states, they were considered applicable in India as part of its Common Law.

***Dudnyk Valentyn* v. *Inspector of Police***

The case of *Dudnyk Valentyn* v. *Inspector of Police,*[10] is an appeal against the case which was previously decided. A ship was arrested by the Indian authorities for carrying arms and ammunitions and being stationed in what was the territorial waters of India. The Court misinterpreted the situation stating that the ship in question was outside the territorial waters. So, the subsequent order for the arrest of the vessel and prosecution of its personnel were declared illegal. The High Court of Madras then relied on the United Nations Convention on Law of the Seas (UNCLOS) as well as the Indian Constitution. It reflects a perfect application of dualistic features of Indian Legal system. The Constitution was complimented by the international convention which laid down the limits of the territorial sea. At the same time, the Court dictated on the measurement of such territorial limits which is the low waters. Here the Court also reflected upon the practices of other nations which is also a concept supported under International law. Several other concepts such as innocent passage were also mentioned in this case. Concepts such as these are defined in international law and finds mention in domestic laws. The Court went on to rely not only on the domestic laws but also drew on the international documents. This goes on to show the reliance of the Indian judiciary on the international legal order.

***Charnjit Singh Aulakh* v. *Director General***

In the case of *Charnjit Singh Aulakh* v. *Director General,*[11] the High Court of Delhi addressed the issue of jurisdiction, that the High Court lacked jurisdiction to try this case. The writ petition was filed because of imposition on the petitioner, the punishment of compulsory retirement with minimum permissible pension. The punishment which came from the Director General Central Industrial Security Force from the headquarters of the Central Industrial Security Force at Lodhi Road in New Delhi was within the jurisdiction of this Court.

The Court in its judgement decided that in the present case as the Appellate Authority is situated in New Delhi, the application of the Principle of *forum non-conveniens* to refuse to exercise the jurisdiction is not correct. Under article 226 of the Constitution of India, the High Court of Delhi was the power to entertain the writ petition. The principle of *forum non-conveniens* originated as a principle of international law, concerned with Comity of Nations. A domestic court in which jurisdiction is vested by law otherwise ought not to refuse exercise of jurisdiction for the reason that under the same law some other courts also have jurisdiction. However,

10 2017 SCC Online Mad 10886.
11 (2017) 239 DLT 515 (DB).

the remedy under article 226 being discretionary, the court may refuse to exercise jurisdiction when jurisdiction has been invoked mala fide. There is no such suggestion in the present case and nothing has been urged that it is inconvenient to the contesting respondent to contest the writ before the High Court of Delhi.

***Dinesh* v. *Union of India***

*Dinesh* v. *Union of India*[12] is an important case which upheld the powers of the Indian Courts and also cemented the position of PETA in India. PETA was alleged to have indulged in sexist advertisement tantamounting to the advertisements being pornographic in nature and also filing "unnecessary public interest litigation". The petitioner claimed that PETA by such actions have not only affected the women and children of this country but has also violated principles of international law by the filing vexatious public interest litigations against the sovereign powers of India and therefore, PETA should be banned to carry out any operations in India. The Madras high court held that in the advertisement the women were sparsely clad in order to propagate non-use of fur and other materials which affect the rights of animals and there is nothing objectionable in them. With regards to the filing of the frivolous public interest litigations the Court simply stated that it is the prerogative of the Court whether to entertain or not to entertain a petition.

***Director of Income Tax* v. *KLM Royal Dutch Airlines***

In the case of *Director of Income Tax* v. *KLM Royal Dutch Airlines,*[13] the High Court of Delhi had to decide whether Lufthansa and KLM, German and Dutch airlines respectively, with branch offices in India, have to pay taxes from the profits they have incurred by providing technical services to other airlines by analysing the Double Taxation Avoidance Agreement between India and Germany and India and Netherlands. These international airlines (the assessees) are members of the International Airlines Technical Pool (IATP) and as members they extend minimal technical facilities (line maintenance facilities) to other International Air Transport Association (IATA) member airlines at New Delhi airport. Monies are not paid on account of these services but notional credits and debits are routed through the IATP's accounting mechanism i.e. IATA clearing house. The facilities extended by the assessees are in nature of line maintenance facilities and these are predominantly with a view to assist other IATP member airlines as a means for collaboration among the air transport enterprises. The assessees filed their returns of income and claimed that the amounts received from various IATP member airlines for the services provided by them in India were not taxable in India. A case was initiated against the assessees for non-payment of taxes by the Indian authorities. The Court held that the services provided by the assessees does not fall under the gamut of "operation of aircraft" for which they can be taxed,

12 2017 SCC Online Mad 7471.
13 (2017) 392 ITR 218.

as mentioned in the Double Taxation Avoidance Agreement between Germany and India and also between Netherlands and India. Therefore, the High Court ruled in favour of the international airlines.

## IV NATIONAL GREEN TRIBUNAL OF INDIA

***Kasala Malla Reddy* v. *State of Andhra Pradesh***

In the *Kasala Malla Reddy* v. *State of Andhra Pradesh,*[14] the petitioners were seeking a direction to be provided to the state of Andhra Pradesh for provision of clean drinking water to the people living in villages and affected by chemical pollution. While providing regulations for the same, the Court acknowledged several cases where the counsel had relied on several international agreements and conventions such as the Stockholm conference, Rio De Janerio conference and the UN Climate Change conference. The principles enshrined in these agreements for the provision of safe drinking water, giving importance to the health of the people etc. also find reflection under the Indian Constitution as well as the Environment Protection Act. The Court further stressed the importance of these principles which led to the establishment of the National Green Tribunal. The environmental issue finds mention in several cases where the Courts rely not only on the domestic but the international legal instruments as well to reflect a mutual respect and coordination of the two legal orders in India.

## V CONCLUSION

An overview of all the cases that have been decided in 2017, one can conclude that the wave of International Law has caught up with the domestic sphere. An interpretation that was generally restricted to theories under the domain of professors and students has now moved into the practical sphere. Judges are taking the opportunity to interpret and integrate the international principles that can be helpful in interpretation of the domestic issues. This also brought forth the gaps that remain to be fulfilled by India, in either ratifying several international legal documents or formulating domestic laws on similar lines as mentioned in the international legal order. This issue can be further ascertained from the series of maritime cases that have found mention in this compilation. Notably, there still remain many areas which need harmonization between domestic and international legal system. The legal body in India has been instrumental in dealing with such lacunae while we can be rest assured that the legislature is working its way to integrate this issue well in near future.

14 MANU/GT/0101/2017.