

## ANALYZING INDIAN CLAIMS BEFORE INTERNATIONAL TRIBUNALS

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Dr. Kuchata Ram\*

### ABSTRACT

*This project is on the legitimacy of international law and its jurisdiction over the countries. In the project we will discuss the Indian claims before the international tribunals and the judgments given by the authority. Furthermore we will deal with the requirement of international law and the criteria of the approach we follow and in what circumstances to deal matters before such authorities. Requirement of Tribunals and how many tribunals have its jurisdiction and admissibility over India. What approach countries should follow and especially by India when such matters are to be adjudicated by the tribunals like International Court of justice and the International Court of Arbitration. The goals and the purpose of formation of such authority will be mentioned likewise. In the end we will discuss those cases in which matters were in dispute and further resolve by such authority.*

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**Keywords:** *International Tribunals, International Law, Jurisdiction, Human Rights, Violation.*

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### Introduction

*"These international law sanctions are designed not only to make perpetrators accountable but also to promote peace by restoring the rule of law, justice and individual rights after mass atrocity"*<sup>1</sup>

- Humphrey M,

### What are International Tribunals

The apex court of India is the guardian of human rights belonging to all its citizens. Likewise the international tribunals also guards the human rights, gives punishment to the criminals of such violation, snatch their liberty, deter those who commit such wrongs and restore justice. But these international tribunals are not as effective as the apex courts which have its power to bound people. There are many plus and mines in imposing their judgment. Some of them opened particular states, some for individuals; some of them are based on the consideration of a treaty, and some of them recognized by the Security Council. Some tribunals only resolve dispute, some of them have power to give damages and some of them have advisory jurisdiction. These tribunals are governed by the International law (private laws of the separate states) and emerged because of international criminal laws and the Human Rights law. By the time the standards of human rights have more widened and the tribunals working more efficiently.<sup>2</sup>

### Human Rights

To deal with the criminals who commit such atrocities were punished furtherance with the quick action is to be taken against such human right violations and by this we restore the basic structure of a society. In order to reach such goals the governmental mechanism, rehabilitation of the prisoners of such crimes and prosecution of such prisoners are such steps to reach for rebuilding the nation. These tribunals are the only hope of the world and are the only link by which to remove the stances of mass atrocities and genocides. These international tribunals are represented by the world and thus have the accountability to act on these atrocities and maintain the peace in the region.

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\* Assistant Professor, Faculty of Law, Jai Narain Vyas University, Jodhpur, India.

<sup>1</sup> Humphrey, M, 'International Intervention, Justice and National Reconciliation: The Role of the ICTY and the ICTR in Bosnia and Rwanda', Journal of Human Rights, Vol.2, No.4, 2003, pg 496, available at- <http://www.e-ir.info/2012/01/24/justice-and-peace-the-role-of-international-tribunals-in-transitional-justice/> Last seen 1:11 am date 29/9/16

<sup>2</sup> <http://www.hrea.org/learn/elearning/international-tribunals/>

Jurisdiction of International tribunals:-Individual states can express their assent for International tribunal's right to try the case on an impromptu premise for existing disputes, by a method wherein it tries to reach a common understanding between the parties for an understanding known as a settlement, or by willfully tolerating a suggestion to this impact made by the Security Council and such acknowledgment prompts intentional acceptance of International tribunal's jurisdiction. Then again, Compulsory Jurisdiction is the place wherein the state has communicated its assent for International tribunal to settle all or certain classifications of lawful question, either by consenting to a settlement which, by its terms, accommodates plan of action to the International tribunal, or by method for a one-sided affirmation accepting the mandatory jurisdiction of the International tribunal.<sup>1</sup>This jurisdiction thing is a governmental phenomenon and the work of executive of the nation. India firmly believe in this tribunal's jurisdiction though it have the power to revoke it and can alter the terms and conditions regarding the revocation or imposition of the jurisdiction. India was in British rule in 1929, when it first accept the jurisdiction of such international tribunals like the permanent court and revise the same decision in 1940 under some law.<sup>2</sup> But India observed the jurisdiction of such tribunal in first time when the Portugal file case against India in 1955 over the right to passage over Goa.<sup>3</sup> To safe its stand India immediately withdrew the consent over the jurisdiction of such tribunal (ICJ). In the end India finally agrees with the jurisdiction of ICJ and file its consent in 1974.<sup>4</sup>

### Indian Claims in International Tribunals

The principal case including India in ICJ was the situation of Portugal v. India where Portugal had recorded a body of evidence against India in 1954 over foreswearing of entry to what were then the Portuguese regions of Dadra and Nagar Haveli, two enclaves encompassed by the Territory of India. India challenged the case both on the matter of ward and merits. On the matter of purview, ICJ decided that it has ward over the issue as both the gatherings had contended on the plane of the universal law and had now and again explicitly said as much. Likewise the case of the India that the wellspring of debate started before Feb 5, 1930, i.e., before the date of marking of presentation, was not entertained as the question emerged when the obstruction upon the section of Portuguese was conferred by India and that happened in the year of 1954. On the premise of legitimacy, India contended that Portuguese faculty and merchandise had no privilege gave upon them to have free entry among such enclaves. Court held that amid times of British and prompt post-British period, there was no limitation on such section outside routine ability to control and such practice had offered ascend to one side and a correlative commitment. Be that as it may, in the matters of entry of arms and ammo and military, the position was distinctive as they were constantly subject to confinements and such limitation was constantly upheld in such enclaves. "The Court was, in this manner, of the perspective that no privilege of entry for Portugal including a correlative commitment on India had been built up in admiration of military, outfitted police and arms and ammo." India's refusal to section was secured by its energy of direction and control of the privilege of entry of Portugal.

The second body of evidence was initiated by India against Pakistan and remains the main case documented by India under the purview of ICJ. India suspended the Pakistan flights in light of a break of bargain by Pakistan which happened when Pakistan supposedly agreed to the seizing of an Indian plane. Pakistan brought an objection against India before the Council of the International Civil Aviation Organization (ICAO) which expected purview in view of the jurisdictional conditions of the arrangement. India spoke to the ICJ, contending that ICAO had no locale in light of the fact that the settlements were no more in power. "Pakistan contended that India couldn't all the while claim the arrangement was not in power because of Pakistan's rupture, furthermore that the bargain's jurisdictional arrangements still connected." The ICJ rejected Pakistan's contention against its taking locale by expressing that one-sided suspension alone doesn't render jurisdictional provisos out of commission, and considered the case.

The third case in ICJ including India was recorded by Pakistan against India in the year of 1999 guaranteeing remuneration for the unjustified demonstration of India shooting down an unarmed flying machine which had dubiously transgressed into the Indian airspace. India asserted that ICJ has no ward over the case, referring to an exception it recorded alongside the revelation tolerating the obligatory locale

<sup>1</sup> *Supra* note 2.

<sup>2</sup> Statute of The International Court of Justice, Art.36, ¶ 5.

<sup>3</sup> R.P. ANAND, STUDIES IN INTERNATIONAL ADJUDICATION, 36-52 (1969).

<sup>4</sup> *Id*

of ICJ in 1974 which barred debate amongst Indian and other Commonwealth states and question secured by multi-horizontal bargains. India likewise asserted in the development to the case that Pakistan disregarded 1991 two-sided understanding between the two nations by flying a battle flying machine so near the airspace of India. The Court gave the ruling for India (14-2) maintaining its case that the Court has no ward in this matter.

Aside from these three cases, there are two different bodies of evidence recorded against India which are considerably less promoted. One of them is identified with Prisoner of Wars of 1971 Indo-Pak war which was initiated by Pakistan against India in admiration of a debate concerning charges of genocide against Pakistani work force in Indian authority. The matter was later ceased on Pakistan's solicitation who chose to no run further with the procedures in light of the consenting to of reciprocal arrangement amongst India and Pakistan on 28th Aug, 1973 alluding to household transactions in regards to this issue. Another case is in the blink of an eye in the phase of entries where Marshall Islands recorded an application against nine states in ICJ in 2014, including India, "asserting that these States, known or ventured to have atomic weapons, have neglected to satisfy their commitments under universal law regarding atomic demobilization and the end of the atomic weapons contest at an early date." On the premise of the affirmation presented by India in 1974, this matters falls under the avoidance of question concerning move made in "self-preservation". India has in like manner asked the court to independently choose the jurisdictional inquiry before continuing on to the benefits which the court has consented to.

### **Conclusion**

The international tribunals have their significant role in dealing with delivering justice and maintaining peace. But this role have its own complexities as many times it's depend on the government mechanism, social acceptance and legality. These tribunals are much capable in increasing state's competency in dealing with the prosecution of the criminals. What is more important that the tribunal should deliver justice and maintain peace with much amount of accountability, the correct law should be used in order to work on it and nobody should be left untouched if he had done any crime or atrocity. By this we can understand India's stand regarding the disputed arose by another state in front of International tribunals. India.

Most of the cases against India is filed by its regional rival country Pakistan in revengeful and unjust intention and to deal with it India has provided a draft in which there are so many optional clauses to the developed county like United States regarding the exemption of its liability from the unjustified and revengeful disputes arose against it in international environment. This thing under the surveillance of so many international law scholars as by providing such drafts with such controversial clauses which exempt India's liability collapse the main commitment and purpose of these international tribunals. The right balance has to be struck between sovereignty of states and peaceful adjudication of international disputes that infringe upon the good faith between such states.

