

ENRICA LEXIE CASE

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INTRODUCTION

If you are a new person then you must have heard about the Supreme Court decision to modify the compensation provided by the Republic of Italy regarding the 2012 shooting case¹. In which was the Supreme Court said that the boat owner who was to be given 2 cr, will now get 1.55 cr. and the nine other members on the boat at the time of the incident will be given 5 lakhs each. But was this case and why Republic of Italy paid compensation to these fishermen of Kerala? To understand all this we have to understand the maritime zones of India.

MARITIME ZONES OF INDIA²

Before moving on to the facts of this case the terminology regarding the various maritime zones is explained before cause the whole case is regarding the difference between different maritime zone and the territorial jurisdiction over them. In India maritime zones are defined under the “Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act 1976” which says,

TERRITORIAL WATERS³

Territorial waters refer to the area which is 12 nautical miles from the basepoint of the country, and the coastal state will have complete jurisdiction over the territorial waters including resources that are to be found from the sea or from the sea bed.

CONTINENTAL ZONE⁴

The Continental zone refers to the area which is adjacent to the territorial waters and it is the zone that is 24 nautical miles from the baseline of the country. This means that it includes 12

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¹<https://www.ndtv.com/india-news/9-fishermen-to-be-paid-5-lakhs-each-in-italian-marines-case-supreme-court>

²Maritime zone act 1976

³Maritime zone act 1976

⁴Maritime zone act 1976

nautical miles of territorial waters and another 12 nautical miles of area. And coastal states only have jurisdiction over the laws that are regarding foreign ships in that area.

EXCLUSIVE ECONOMIC ZONE⁵

This refers to an area 200 nautical miles from the baseline of the country and the coastal country does not have any right to restrict the movement of foreign ships in that area. The coastal state has the complete and special right to use and exploit all the resources of the sea irrespective of living and non-living of that area.

HIGH SEAS⁶

This refers to the area beyond the EEZ and no state has jurisdiction over this area of sea. This is the area that any state can have the right to explore and make scientific exploration.

FACTS

In the past decade, the incidence of piracy has grown even in the vicinity of the Minicoy islands of the Lakshadweep archipelago. And to overcome piracy and ensure the safety of the merchants of Italy, the Government of Italy through a government decree made legislation regarding the deployment of Italy Military Navy Contingents on Italian vessels sailing with the Italy flag. And one such vessel named EnricaLevie was traveling from Sri Lanka to Egypt with two men and a Vessel Protection Detachment (VPD) which was an Italian contingent that was there to protect the vessel from the pirates. On the 15th of February, a fishing ship named St. Anthony carrying 11 people, engaged in fishing which was 20.5 nautical miles from the coast of Kerala. The VPD saw the fishing vessel and believed it to be pirates. VPD used their warning alarms and also used lights to imply to them to turn around but due to the daylight the light and the signal didn't reach or be understood by the fishermen and they didn't turn around. As a result of which the VPD opened fire on the fishing vessel though they called it a warning fire. But this led to the killing of two fishermen on the spot and endangering the lives of the other nine fishermen on the boat. The fishermen came back and reported the incident to the local guards and through them to Indian coastal guards and they found out about the ship being engaged in the shooting was Enrica Lexie. After knowing that Indian coastal guards asked Enrica Lexie to come back for the investigation and questioning

⁵Maritime zone act 1976

⁶Maritime zone act 1976

as part of the standard process. The captain of the ship agreed and Enrica Lexie came to Kerala and where it went through investigation and questioning. After collecting and examining the evidence the coastal guards believed that two sergeants, Sergeant Massimiliano Latorre and another member of the VPD, Sergeant Salvatore Girone were involved in the killings of Valentine Jelastine and Ajeesh Pink the two fishermen, and Kerala police after establishing the fact of shooting asked both the sergeants to leave the ship and both were charged for murder under Indian penal code. The sergeants approached the Kerala high court to quash the charges against them and let them be free by custody.

KERALA HIGH COURT

Both the marines filed a case in the Kerala high court to quash the FIR against them and free them from any kind of charges. This case was very important in the “Enrica Lexie” incident as it discussed the merits and grounds of the case.

Petitioners:

- Sergeants Massimiliano Latorre;
- Sergeants Salvatore Girone, and
- Republic of Italy

Respondents:

- Government of India;
- State of Kerala.

Issues Raised:

- Do the Indian courts have jurisdiction to try a crime that was committed in the continental zone which is beyond the territorial waters of India under IPC?
- Do the Italian marines be provided with sovereign immunity as they were the military officials of Italian forces?

KERALA HIGH COURT JUDGMENT

The court held in the first issue that both the marines can be held liable for their act as the act took place in the EEZ of India and India has the sovereign authority to take action against the

crime committed on its territory. And thus Indian courts have the authority to trail both the Italian marines.

In the second issue, the court held that both the marines should not be provided with sovereign immunity as they both were not on official duty as the ship which they were on and that is in consideration was not governmental but owned by a private individual and also the act of the marines were brutal and did not follow any protocols and regulations while doing their duty so they should not be provided with the sovereign immunity.

SUPREME COURT

The judgment of the Kerala High Court was challenged by Italy in a form of a special leave petition and a writ petition asking to quash the Kerala high court's judgment over the contentions that Kerala's court does not have jurisdictions over this matter and hence is not authorizes to try this matter. And the Supreme Court in order to come to an end of this matter SC combined both the petition to work on the case in a effective manner.

Petitioner's Arguments:

- The incident happened 20.5 nautical miles from Kerala which makes it out of the territorial water zone so the state police does not have the jurisdiction to arrest the petitioners and kept them in custody.
- Both the marines were discharging their duty as Italian armed forces as they were acting on the basis of a notification by the Italy government that made VPDs part of every sailing ship under Italy's flag.
- The sovereignty of the Kerala high court only extends to the territorial water zone and hence the actions of detention and trial of both the marine was unlawful and only the union government had the jurisdiction to take cognizance of this matter.
- When India accepts the concept of extraterritorial jurisdiction in the IPC then it should also admit the right of Italy to try its citizen under the criminal procedure of their land where the punishment of murder is similarly harsh as in the IPC.
- The petitioner also claimed that under article 97 of UNCLOS which states that any matter concerning a foreign ship or the master of the ship that coastal state would not have any jurisdiction over it, India in this case would not have jurisdiction over any proceedings.

- They also argued that they also defy the charges of murder and attempt to murder which they are being accused of as they acted according to the protocols and did nothing wrong as they interpreted the fishing vessel as a pirate's boat and acted accordingly.
- They prayed the court to rescind all the charges against them and issue a writ to strike down all the proceedings initiated regarding this case.

Respondent's Arguments:

- The respondent in reply stated that the incident took place 20.5 nautical miles from the baseline of India which makes it inside the continental zone and as per the government notification of 1981 India has sovereign authority over continental zones as well, which establishes the jurisdiction over the case.
- Both the marines should not be provided with sovereign immunity as both the marines were not working for the government rather they were protecting the ship which belonged to a private individual so that rescind the sovereign immunity of both.
- The respondent argued that Kerala High Courts has jurisdiction over the continental water zone as per the authorization provided to them by notification of August 1981.
- India accepts the concept of extraterritorial jurisdiction and even supports that concept but as the incident took place in the territorial water zone of India so India will not just sit as a silent spectator.
- Respondent argued that the Article 97 of the UNCLOS is not applicable as Article 97 is only applicable to high seas and not to the territorial water zone and also it is only applicable to accidents due to navigation.
- Respondent argued that the warning regarding the flashlights are useless as the incident took place in broad daylight so the flashlight warning was of no use also turning to open fire should be the last option and the fishing vessel was at about a hundred meters of distance so the act of the respondent was unreasonable as there was quite a reasonable distance between both.
- Thus the respondent argues to dismiss the petition and jurisdiction over the case should be provided to India.

SUPREME COURT JUDGMENT

- The SC observed that Kerala only have jurisdiction only over territorial waters and not beyond that so they do not have jurisdiction over the matter, hence they are asked to transfer both the marines to Delhi and be handed custody to the Union of India.
- The SC held that article 97 of UNCLOS will not be applicable as it is related to the issue of high seas and also the accident of homicide cannot be termed as an accident of navigation.
- The court held that though Italy also can have extraterritorial jurisdiction over the case as the incident took place in India, so India has more title to it.
- In the end, Supreme Court instructed the respondent to form a Special court to conduct proceedings of this incident again and end all the legislation running at times regarding this case.

PERMANENT COURT OF ARBITRATION

Unhappy with this judgment, Italy moved to other international forums to find the justice they were looking for. And at last, they went to the permanent court of Arbitration, Netherlands.

Italy pleaded

1. All the proceedings regarding the matter.
2. India should pay compensation to both the sergeants for the inconvenience they suffered.
3. A tribunal should establish its jurisdiction over the matter completely and dismiss all the proceedings and jurisdiction of India.

India pleaded

1. That tribunal has no jurisdiction over the matter and it dismiss all the contentions pleaded by the Republic of Italy.
2. And also pleaded that Italy should pay compensation for violating several articles of UNCLOS.

Judgment of PCA

1. The tribunal held that Italy and India both were the signatories to UNCLOS and hence tribunal has jurisdiction over the matter.
2. Italy has violated UNCLOS articles by disturbing the right to freedom of navigation in the sea of India.
3. Italy was to be liable for the loss of lives of the fishermen and was asked to pay compensation for the same and also for damages to the boat.

Application to Supreme Court

After the judgment of the PCA, an application was filed in the Supreme Court to end all the proceedings that were regarding the Enrica Lexie, for honoring the settlement between both the nations. And custody and case against both the marines were given to Italy.

ANALYSIS AND CONCLUSION

“It’s ok to Loss a Battle to win the War”

After 8 years of long and waiting battle came to an end in November 2022 when Italy finally paid 10 cr. of compensation out of which 4 cr. each was provided to the heirs of the deceased and 2 cr. for the damage to the boat, which supreme court ordered to change to 1.55 cr. to the boat owner for damages and 5 lakhs rupee each to the other member of the boat for endangering their lives as well. But what was believed to happen has happened as no final verdict against both the marines has come even after 10 years, which is a loss for India. But if both the marines were to be tried in India the 11 fishermen and their families would not have gotten this kind of compensation. So we can believe that it is not a complete loss and also not a complete win. But yeah this case has been a landmark case as it discussed those aspects and those circumstances of maritime law that were new for our country and will serve as a guideline for any future such happening.