HOW TRANSNATIONAL LAW AFFECTS INDIAN LEGAL SYSTEM IN THE FIELD OF ADMIRALTY LAW

Manoj Reddy Keshireddy

Yeoh Tiong Lay LLM Scholar 2016-17, Kings College London

"Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities".[1]

Transnational law consists of set of rules, from whatever source, which governs international transactions and is common to a number of legal systems.[2] Such commonality is derived from international instruments of various kinds which include judge made law, conventions, model laws, and declarations. Transnational law can also be used a label for internationally uniform law based on proper international sources of law i.e. either on customary law or conventions. It also constitutes of legal rules and principles which are internationally used or recognised in uniform or similar way although they may stem partly from different national laws. [3]

The transnational law assumed international dimensions, since; it is formally codified by United Nations Organisations in the form of conventions, treaties, declarations, guidelines, etc. The growth of transnational law can also be attributed to the growth of international trade and uniformity in the acceptance of commercial law principles by nations all over the world.

The attempt here is to probe into the effect of transnational law on Supreme Court of India and by virtue of it, its incorporation into the Indian law, and to analyze the impact in this regard pertaining to the area of international maritime law.The most important provisions with respect to the Constitution of India in this regard are, Articles 253[4], 73[5], 51(c)[6], and Entry 14 of the Union List[7]. In light of these provisions, how much can be the power of

---

[1] S.P. Gupta v. Union of India, [1982] 2 SCR 365.

[2] HC Gutteridge, Comparative Law (2nd edn, Cambridge University Press1949), ch IX and XI-XII

[3] Roy Goode, Commercial Law in the Next Millennium (Sweet & Maxwell, London 1998) 8

[4] Article 253: Notwithstanding anything in the forgoing provisions ofthis chapter, parliament has power to make any law for implementing any treaty, agreement, or convention with any other country, or countries, or any decision made at any international conference, association, or other body.

[5] Article 73: Subject to the provisions of this Constitution, the executive power of the Union dhall extend-

(a) To matters with respect to which parliament has power to make laws.
(b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

[6] Article 51(c): The state shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another.

[7] Entering into treaties and agreements with foreign countries and implementing of treaties etc.

© THE WORLD JOURNAL ON JURISTIC POLITY 2017. ALL RIGHTS RESERVED. | WWW.JURIP.ORG

the judiciary to give effect to a provision in an international covenant, in the absence of legislation is the question that determines the effect of transnational law on the national system.

The first contribution in the field of admiralty law by the Supreme Court in this regard sprouted from ***M. V. Elizabeth v. Harwan Investment and Trading Pvt. Ltd.***[8]. In this case, the question was whether the admiralty court in India had jurisdiction to arrest a ship on an action in tort in regard to cargo in an outgoing ship. The question of interpretation was the impact of a provision from an International covenant on the national law. It was reasoned that, where substantive law demands justice for the party aggrieved and the statute has not provided the remedy, it is the duty of the Court to devise procedure by drawing analogy from other systems of law and practice. In paragraph 66[9], it is stated that the power of the Courts is plenary and unlimited, unless it is expressly or by necessary implication curtailed. Absent such curtailment of jurisdiction, all remedies which are available to the Courts to administer justice are available to a claimant against a foreign ship and its owner, found within the jurisdiction of the concerned High Court. The Court then went on to observe:

It is true that Indian statutes lag behind the development of international law in comparison to contemporaneous statutes in England and other maritime countries...... India has also not adopted the international convention relating to the arrest of Sea going Ships, Brussels, 1952. Nor has India adopted the Brussels Conventions of 1952 on civil and penal jurisdiction in matters of collision, nor the Brussels Conventions of 1926 and 1967 relating to maritime liens and mortgages. Although these conventions have not been adopted by legislation, the principles incorporated in the conventions are themselves derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law of India and applicable for the enforcement of maritime claims against foreign ships.[10]

The most remarkable comment that can be made on this case is that, in the absence of specific statutory provisions international principles can be adopted and adapted by Courts to supplement and complement national statutes on the subject. It actually added something to the national law in the light of an international covenant and made it enforceable without legislation.

M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd.[11] ***And Liverpool and London Steamship Protection and Indemnity Association Ltd. v. M.V. Sea Success I***[12] are worth being discussed together due to two common factors in both the cases. One is that, both these decisions are between the same

[8] AIR 1993 SC 1014.
[9] M.V.Elizabeth (n8).
[10] Ibid.
[11] AIR 2002 Bom 151.
[12] (2004) 9 SCC 512.

© THE WORLD JOURNAL ON JURISTIC POLITY 2017. ALL RIGHTS RESERVED.

parties before the Bombay High Court and then before the Supreme Court of India. The other is that in both these cases, the court adopted same method to establish that provisions in the Geneva Arrest Convention, 1999 are enforceable in India.

In ***M. V. Sea Success I.***[13] the division bench of High Court held that the Geneva Arrest of Ship Convention, 1999, although not ratified by a requisite number of nations, would be applicable to the Admiralty Courts in India. The Bench placed its emphasis on observations by the Supreme Court in *M. V. Elizabeth*[14] regarding the applicability of 1952 Brussels. In this regard it observed *"India had not adopted the Brussels Arrest Convention, 1952 but the Apex Court observed that though India seems to be lagging behind many other countries in ratifying the beneficial provisions of various Conventions to facilitate international trade and have not adopted these conventions, yet the principles incorporated in the conference which are themselves derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law in India and applicable for the enforcement of maritime claims against foreign ships is equally applicable to the Geneva Arrest Convention, 1999 which embodies also necessities of the international trade and, therefore, is applicable for enforcement of maritime claims against foreign ships and can be regarded as part of our common law."*

It is noteworthy that, not only did the High Court adopt the position laid down by the Supreme Court in M.V.Elizabeth[15], but it has widened the scope of applicability of international maritime conventions and principles based on the requirements of international trade.

The aforesaid judgment when challenged before the Supreme Court by an appeal in ***Liverpool and London Steamship Association Ltd.*** [16]**,** the court held that *the 1999 Arrest Convention could be applied in the process of interpretive changes and though India being not a signatory country thereto, it is applicable to the Indian Courts exercising Admiralty jurisdiction. It is held that the application of the 1999 Convention in the process of interpretive changes, however, would be subject to: (1) domestic law which may be enacted by Parliament; and (2) it should be applied only for enforcement of a contract involving public law character, and this being not a contract of public law character.*

It is submitted that the reasoning of the Court was based on the premise that changing global scenario and evolving law should be kept in mind while judging the disputes. It is in light of this position that the court has asked itself a question and answered it affirmatively in the light of transnational developments in that field of marine law. The said question and answer being, "if the 1952 Arrest Convention had been applied, although India was not a signatory thereto, there is obviously no reason as to why the 1999 Arrest Convention should not be applied."

---

[13] M.V.Sea (n11).
[14] M.V.Elizabeth (n 8).
[15] Ibid.
[16] Liverpool (n12).

© THE WORLD JOURNAL ON JURISTIC POLITY 2017. ALL RIGHTS RESERVED.

Law laid down by Apex Court was binding to lower Courts under Article 141 of Constitution of India, 1950. Hence, by virtue of the decision by the Supreme Court India in the aforesaid cases the legal position laid down directly affects the domestic position. It may be noted that such position was reached by the Court with the aid of transnational law i.e. conventions in the present case.