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CONSTITUTIONAL VALIDITY OF TERRITORY RELATED TREATIES IN INDIA: A CASE STUDY OF KATCHATHEEVU

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ABSTRACT

Territory is the fundamental element of the state, as it establishes the physical and legal boundaries within which state activities must follow. Article 1 of the Constitution of India defines the territory of India, which includes the states, union territories and any areas acquired by the government. The Power of Making International Treaties and Agreements is vested with the Executive of the State, but with the approval of the Cabinet, within the scope of the Indian Constitution, under Articles 73 & 246. Even though, Chapter 1 of the Indian Constitution speaks about the Territory of India, it doesn't have legal provisions for ceding a territory of India to any other country. In the cases of Berubari union, Ram Kishore v. UOI and Maganbhai Ishwarbhai Patel v. UOI the hon'ble Supreme Court said that The Executive can implement International treaties, but the Treaties are agreements related to territorial matters need a Constitutional Amendment and cannot be done by the existing provisions in our Constitution and the Executive treaty making power is subjected to Parliamentary limitations and the Executive cannot alter the territory of India without Constitutional Procedure.

Coming to this current case study was Katchatheevu, the issue is emerged from the Indo-Sri Lankan Agreements of 1974 & 1976, signed by the Executive of India. These agreements placed the Island Katchatheevu, located in the Palk Strait, between India and Sri Lanka without the approval of the Parliament and without a Constitutional Amendment. The Island was historically used by the fishermen of both the countries for fishing activities. But because of this Agreement the historical fishing rights of the Indian Tamil Fishermen was had been taken away by the Sri Lankan Navy in the sea, which was guaranteed under the United Nations Convention on the Law of the Sea. Because of the armed actions of Sri Lankan Navy, the Right to life, Liberty, livelihood has been violated, because of the arrest, seizure of boats, and even shot dead by the navy.

By comparing the previous Judgements of the Indian Judiciary and the International Court of Justice and the International Instruments like UNCLOS and VCLT this dissertation tried to highlight that the Territory related treaties directly affect the sovereignty and federal structure of our country. Proved that the Katchatheevu agreement was constitutionally invalid and ended with the suggestions to solve the issue in legal manner.

Key Words: Territory, Katchatheevu, International Agreement, Constitutional Procedure, Power of the Executive.

INTRODUCTION

The four basic components or characteristics that defines a country are Population, Government, Sovereignty and Territory, said

under Article 1 of Montevideo Convention on the Rights and Duties of States (1933).³⁴³ Among all

³⁴³ "Montevideo Convention on the Rights and Duties of States" (International Law Students Association, 1934)

these, Territory plays a vital role in constituting the physical space for a sovereign state. Territorial integrity is just a geographical idea, it is actually basic for the Constitution of the Land, plays important role in the politics, decide how the governance works and even decide the rights people have as citizens. Maritime boundaries are naturally very complicated than the land boundaries due to overlapping claims, historical usage, and livelihood dependencies of coastal populations.

In the Southern part of Indian subcontinent, the Katchatheevu Island is the dispute going on for decades with Sri Lanka. It feels like one of those territorial issues that just drags on and gets people really worked up. Basically, Katchatheevu is a tiny and uninhabited land, located between Tamil Nadu and Sri Lanka in Palk Strait. Even though the island is tiny with just 285 acres of landscape,³⁴⁴ alternately owned by both the countries in history. In British period, the island was under the control of Ramnad Zamindari, a Tamil ruler and even a bit after the independence.³⁴⁵ The Indian fishermen, especially Tamils have been fishing around the waters of the island for centuries without any restriction, which made them economically depend over the customary usage of those waters. But now it was in a trouble, not only with the economical dependency, also with the life of the fishermen.

After both India and Sri Lanka got its independence from the British rule, the question over the ownership and sovereignty of the island remained unsolved until the Indo-Sri Lanka Maritime Boundary Agreements of 1974³⁴⁶ & 1976³⁴⁷. In 1974 Agreement, India acknowledge the sovereignty of Katchatheevu belongs to Sri Lanka, but the Indian Government keeps saying that no territory has been ceded to Sri Lanka.

³⁴⁴ Editorial, “T.N. Assembly unanimously adopts resolution on retrieval of Katchatheevu from Sri Lanka” The Hindu, April. 03, 2025.

³⁴⁵ Editorial, “Katchatheevu: The big issue over a small island” Mint, June. 15, 2016.

³⁴⁶ Agreement between Sri Lanka and India on the Boundary in Historic Waters between the two Countries and Related Matters, 26 and 28 June, 1974.

³⁴⁷ Agreement on the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal and related matters (with map). Signed at New Delhi on 23 March 1976.

This agreement by Indian government raises serious constitutional questions, as without getting the approval of the Parliament or without amending the Constitution under Article 368, whether the Executive of the State can decide a issue based on the territorial sovereignty.

As Robert Green Ingersoll says, “In nature there are neither rewards nor punishments; there are consequences” the fishermen faced the consequences of the Agreement as punishment by facing arrests, harassment, seizure of boats and even getting shot dead by the Sri Lankan Navy around Katchatheevu. The Right to live, livelihood and occupation of the fishermen are being violated according to Articles 14, 19(1)(g) and 21 of the Indian Constitution³⁴⁸ directly. It has been over 50 years since the signing of the agreement, still the issue is unsolved concerning land and laws and reflecting on the lives of the Fishermen of the Country.

Territory is the basic element of the statehood and any dispute related to the border of the territory is not solved for more than 50 years is really a challenge to the national sovereignty and questioning the rule of law of the land and accountability of the democratic form of government. The Katchatheevu issue now transcends the boundaries of diplomacy and entered into the realm of the Constitutional Law. It raises the question over the limits of the executive’s power to make treaties, the Parliamentary involvement in territory related affairs and safeguarding the rights of the citizens against International treaties.

From the Constitutional point of view, the Katchatheevu dispute indicates a big Constitutional conflict between the International Treaty & Agreements, with the responsibility of the Executive and the Supremacy of the Constitution. Article 73(1)(a) of the Indian Constitution, extends the executive power of the Union, to the matters to which Parliament has power to make laws. But the Constitution did not give direct power to the

³⁴⁸ Constitution of India, 1950.

executive to modify the territorial boundaries of our country by treaties. Judicial precedents in *Re: Berubari Union*³⁴⁹ and *Maganbhai Ishwarbhai Patel v. Union of India*³⁵⁰ had given guidelines for this constitutional issue.

Taking the Katchatheevu issue as a case study, this dissertation undertakes an analytical study on the Constitutional validity of the territory related treaties in India. By examining the relevant Constitutional provisions, Judicial decisions, International Treaties, Conventions and the decisions of the International Court of Justice this research is to identify the constitutional inconsistencies and finding the legal and possible solution for this issue. Ultimately, the goal of this study is to constitutional discourse and discuss the ways to bring justice and to save the dignity of Indian Tamil Fishermen, who was affected by the Indo-Sri Lankan Maritime boundary issue and to protect the sovereignty of our Country.

STATEMENT OF THE PROBLEM

Our Indian Constitution includes governing principles of sovereignty, territorial integrity, democracy and the rule of law. In all these, the concept of “territory” plays a leading role in the Constitution, as it determines the boundaries within which a Government can function with sovereignty and the rights of the citizens could be decided on its basis. That’s why, the framers of our Constitution included the provisions relating to the “Territory of India” in Part I (Articles 1 to 4), to tell inside which boundaries, the rights and principles of the Constitution applies. However, the history of Post-independence, because of the absence of parliamentary scrutiny and amendments, the territorial boundaries were altered and finalized by the result of executive actions and agreements. These executive actions raised questions regarding to the supremacy of the Constitution.

This study is primarily undertaken to examine the Constitutional validity of territory, regional boundary related agreements in India, particularly about the Indo-Sri Lanka Agreement of 1974, concerning the possession of Katchatheevu Island. Katchatheevu issue is very complicated and very underrated problem in Indian and International Law studies. Traditionally it has been described as an international agreement concerning a joint maritime boundary between India and Sri Lanka, it has had an great impact on India’s territorial integrity and affects the life and livelihood of Indian citizens, especially Indian fishermen both directly and indirectly.

One of the major aim and objectives of this study is to critically evaluate whether the executive of India has power to alter or cede the territory of India through International treaty and agreements without the approval of the Parliament or without making any constitutional amendment under Article 368. Although, Article 73 of the Constitution extended the power of Union Executive to the matters with respect to which Parliament has power to make laws, but the Constitution does not explicitly mentioned about altering the territory of the country through agreements.

This research study also seeks to analyse the concept of territorial treaties in general and examine the territorial jurisdiction in the Indian Constitution, using the Judicial interpretation by the Hon’ble Supreme Court in the case of *In Re: Berubari Union, Maganbhai Ishwarbhai Patel vs. Union of India* and other cases, and how it has attempted to define a line that differentiate between border adjustments and the ceding of territory. The objective of this study is to determine whether the Katchatheevu agreement falls within the permissible limits for resolving a border dispute or whether it constitutes a cession of territory requiring a Constitutional amendment and ratification.

Another key objective of this study is to examine the implications of territory-based agreements on a democratic country and the principles of

³⁴⁹ *In Re: The Berubari Union And ... vs Unknown (Berubari Case)*, AIR 1960 SC 845, 1960 3 SCR 250.

³⁵⁰ *Maganbhai Ishwarbhai Patel vs Union Of India And Anr*, 1969 AIR 783, 1969 SCR (3) 254.

federalism. Territory and territorial integrity are not only important in external relations of the State, but it also have an huge impact among the rights and interest of the States within the Union of India, specifically to the coastal States like Tamil Nadu. In fact, the absence of adequate consultation with the States and Parliament regarding the Katchatheevu agreement has direct consequences federalism and representative democracy and the role and effectiveness of the system of checks and balances built within the Indian Constitution.

Apart from the Constitutional aspect, the aim of this study is also based on Human Rights aspect of Katchatheevu issue. The Indian Tamil fishermen are continuously facing hardship such as arrest, detention, confiscation of fishing equipment and in some cases, death at the hands of Sri Lankan Navy. All of the above mentioned hardships are directly violating their Fundamental rights of Life, Livelihood and the right to practice their profession, under Article 14, 19(1) and 21 of the Indian Constitution. This research paper is going to focus whether the obligations of a State under International Law supersede the Constitutional requirement to guarantee Fundamental Rights of its citizens.

Another key purpose of this dissertation is comparative and normative in nature. By examining how other democratic countries around the world have responded to the exercise of powers to create agreements for regional changes and this paper seeks to identify best practices that can be used to amend the Indian Constitution without disturbing the parliamentary sovereignty and federal nature of our nation. Further, the essential purpose of this research is to provide solutions to the long-standing policy confusion, which cause immense distress around Katchatheevu issue. Despite political debates, Public Interest Litigations and diplomatic tensions, this problem is in a state of stagnation for over 5 decades. This research paper aims to go beyond political rhetoric and provide a constructive solutions through constitutional

interpretations, which contributes to policy making, legal practice and academic discourse.

Another important motive of this research is to clarify the implications of the relationship between sovereignty and treaty obligations under the Indian Constitution. While the binding nature of International Agreement is recognized under International Law, Constitutional supremacy will prevail under the Indian Constitution And reaffirm that the sovereignty under the constitution is not merely independence, but also Constitutional governance. Ultimately, this study is not only just to contribute to the evolving field of Indian Constitutional law, but also to enrich it, particularly in the matter relating to territory, sovereignty and international agreements. By bringing Katchatheevu issue into the study, I like to show how constitutional norms work in practice and attempt to create a comprehensive and firm basis for reassessing the powers exercised by the executive of the State to enter into an International agreement and for protecting the Constitutional hierarchy.

In conclusion, this research work is made with the aim of analysing the constitutional validity of territory based treaties in the India and understanding its implications concerning Fundamental rights and Sovereignty and providing effective legal and possible recommendations, without disturbing the Constitutional supremacy, Federal structure of our country and the rule of Law.

RESEARCH QUESTION

By challenging the ambiguities of the Indian Executives action on signing an International Agreement without following the Constitutional provisions and the lack of clear provisions regarding the ceding or exchange of territories via International treaties in our Indian Constitution, the issue of Katchatheevu had raised important concerns which affects the democratic accountability, Sovereignty, power of the Parliament and Executive. To critically discuss these concerns and evaluate the validity of the treatments regarding the change

of territories in India via international treaties, the following research questions are formulated.

- A. Whether the Executive of our Country can enter into an International Agreement without the parliamentary approval?
- B. Whether the Government can cede a territory of India to another country only using Article 3, whereas Supreme Court in Berubari case, held that Constitutional Amendment is needed to cede a territory?
- C. Whether the Indo-Sri Lankan Agreements of 1974 and 1976 are constitutionally Valid?
- D. Whether India can recover the fishing rights near the Sri Lankan Boundary, which was banned during 1983 Civil War and the Rights of Katchatheevu Island by seeking the International Court of Justice?

RESEARCH OBJECTIVES

The primary objective of this Research study is to examine the Constitutional validity of territory related treaties, entered by the Government of India, with the special focus of the Indo Sri Lankan Agreement of 1974 & 1976, which has created a huge impact on India's sovereignty and continuously violating the rights of the citizens, especially Indian fishermen because of the cession of Katchatheevu Island to Sri Lanka. The followings are the main objectives of this research,

- A. To examine the extent and limits of the executive power of the Indian Union, in the matter of signing International Treaty or an Agreement, particularly in the absence of Parliamentary approval and specifically aims to explore the scope of the executive power of the Indian Union under Article 73, 246 and 253 of the Constitution of India and the constitutional implications of treaty making in matters that affecting

National Sovereignty, territorial integrity and the fundamental rights of citizens.

- B. To analyse the Constitutional procedure for ceding or transferring Indian territory, specifically focusing on the relationship between Article 3 and 368 of the Indian Constitution. It also critically reviews the judicial interpretation of the In Re: Berubari Union and the similar judgements to determine whether constitutional amendment is important for maintaining the Constitutional supremacy in the matter of transfer of territory through ordinary laws or executive actions.
- C. To examine the Constitutional validity of the Indo-Sri Lankan Agreement (Agreement between Sri Lanka and India on the Boundary in Historic Waters between the two Countries and Related Matters), 1974 and (Agreement on the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal and related matters), 1976, based on the legality, procedural fault and their practical implications on India's territorial sovereignty and to examine whether the above mentioned agreements actually constitute a territorial cession, whether it is consistent with the provisions relating to federalism and fundamental rights in the Indian Constitution, and what its practical implications are for Indian fishermen in the Palk Strait.
- D. To analyse the legal possibilities of protecting, restoring or reclaiming the traditional fishing rights of Indian Tamil fishermen and India's related rights around Katchatheevu Island, with the help of available International legal mechanisms; this includes an analysis of customary international law, historical fishing rights, Bilateral and multilateral Maritime Agreements and the possibilities of approaching International dispute redressal mechanisms, including

International Court of Justice, to seek justice for the ongoing humanitarian and constitutional concerns.

HYPOTHESIS

- 1) The Executive's Treaty-making power in Indian Union under Article 253 is not absolute and is subject to constitutional limitations, particularly in matters affecting the territory of India.
- 2) Territory-related International Treaties and Agreements require Parliamentary participation and, in case of it affects the boundaries of the State, a constitutional amendment is necessary under Article 368 to ensure constitutional validity.
- 3) The Indo-Sri Lanka Agreements of 1974 & 1976, relating to Katchatheevu lack adequate constitutional safeguards and democratic accountability.

The study's goal is to conclude that the executive's action of entering into a bilateral agreement with Sri Lanka, which ceded the sovereignty of Katchatheevu island without the Parliamentary approval and adequate Constitutional amendment is not made under the Constitutional procedure.

REVIEW OF LITERATURE

Studies on the Constitutional validity of the Indo-Sri Lankan Agreement of 1974 & 1976 includes several fields, including Constitutional Law, International Treaties, International Maritime Law, Humanitarian Laws and International dispute resolutions. These agreements established the International maritime boundary between India and Sri Lanka and consequently ceded the Island of Katchatheevu to Sri Lanka. It was signed in 1970s, defined the maritime boundaries in the Palk Strait, the Gulf of Manner and the Bay of Bengal and brought Katchatheevu within the Sri Lankan side of the international maritime boundary line and granted certain access rights to Indian fishermen and pilgrims; while the 1976 agreement further defined the limits of these rights and, consequently, also restricted fishing rights around the island.

Many legal experts in India have highlighted the Supreme Court decision in the Berubari Union case to explain that Constitutional amendment under Article 368 is mandatory to cede any territory to a foreign government. Although, this principle has not been judicially determined with respect to Katchatheevu it is fundamentally very important as a benchmark against which these agreements will be evaluated. Within the framework of International law, The Vienna Convention on the Law of Treaties gives legal framework on how treaties are made, interpreted and considered valid. It has clarified this matter by stating that invoking a country's internal jurisdictional limitations as a reason for not fulfilling a treaty obligation is not permissible, unless the violation of a fundamental domestic legal rule is clearly evident.³⁵¹ Whereas, this particular issue has highlighted the conflict between domestic Constitutional law with International Treaties.

Furthermore, this literature also examines Maritime rights and historical fishing rights in the context of International Law. Analysing more International instruments like United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations agreements relating to the implementation of the Convention on the Law of the Sea for the conservation of straddling fish stocks and highly migratory fish stocks provide an important backdrop to the rights of coastal states concerning marine resources, fisheries, and traditional practices; all of which are highly relevant to the Palk Strait dispute. Comparative jurisprudence concerning the validity of agreements illustrates the methods used in resolving cases involving procedural weaknesses in an international dispute, to find out the possible solution for this issue.

Looking with the lens of Human Rights Law, the literature draw attention to the affects of Katchatheevu Agreement on the Right to life, livelihood, freedom of Movement, Freedom from torture, etc of Indian Traditional fishermen, due to the restrictions imposed on access to fishing

³⁵¹ Article 46, Vienna Convention on the Law of Treaties (1969).

grounds; those restrictions and limitations have led to arrests, losses and insecurity. Considerable uncertainty still exists regarding how to resolve such conflicts. The intersections of Treaty regimes, Constitutional provisions and maritime rights and claims is a central point of discussion and core of this Literature.

RESEARCH METHODOLOGY

This study will adopt a doctrinal, analytical and comparative research methodology. Constitutional provisions, International Agreements and judicial decisions will be used for interpretation and for analysing. Primary source will include the Constitution of India, Indo-Sri Lankan Agreements of 1974 & 1976, Judicial decisions of The Hon'ble Supreme Court of India and other International agreements relating to treaty law and the delimitation of maritime boundaries. The secondary sources includes textbooks, commentaries, articles, law journals, parliamentary debates, News articles and other official Government documents. To examine the conflict and relationship between domestic Constitutional law and International Agreements and Treaties, this study will also undertake an analytical examination of international legal principles, particularly the Vienna Convention on the Law of Treaties and the judgments of the International Court of Justice. In the event that necessary information is unavailable, a separate inquiry will be conducted to examine how other constitutional states have handled treaties with regional implications.

TESTING OF HYPOTHESIS:

The primary objective of this socio-legal inquiry is to undertake a critical constitutional analysis of the validity of the executive action that led to the cession of Katchatheevu Island to Sri Lanka. To further this objective, the research proposes the following key hypotheses for critical examination:

- (1) The limitations on executive power in the formulation of treaties;

- (2) The mandatory nature of parliamentary involvement in territorial alterations; and
- (3) The constitutional deficiencies regarding democratic accountability within the treaties of 1974 and 1976.

The research presented in this chapter aims to critically examine these hypotheses by conducting an in-depth analysis of relevant constitutional provisions, property rights pertaining to the Ramanathapuram Zamindari, and the pivotal judicial pronouncements delivered by the Supreme Court of India in the case of *In Re: The Berubari Union and Mahanbai Ishwarbhai Patel v. Union of India*.

I. TESTING HYPOTHESIS I

"The Executive's Treaty-making power in the Indian Union under Article 253 is not absolute and is subject to constitutional limitations, particularly in matters affecting the territory of India."

- **EVALUATION:** When the expansive powers vested in the Executive of the Indian Union, to negotiate and conclude treaties pursuant to Articles 73 and 253 of the Indian Constitution, as well as Entry 14 of the Union List are subjected to a jurisprudential analysis (specifically against the backdrop of the fundamental definition of the 'State'), such an analysis reveals the inherent limitations governing these powers. Article 1 of the Indian Constitution provides the definition of the "Territory of India." In its Advisory Opinion concerning the 'Berubari Union,' the Supreme Court clarified that the powers vested in the Executive to conclude treaties do not encompass the authority to cede or alienate the nation's territory; while the Executive possesses the authority to bind the nation in the international arena—operating within the framework of the 'Doctrine of Dualism', legislative action aimed at altering the physical boundaries of the Indian Republic constitutes an absolute limitation upon the powers of the Executive.

- **CONCLUSION:** This fundamental principle is affirmed. Juristic principles support the conclusion that Article 253 of the Indian Constitution is subordinate to the structural integrity of the Constitution itself. The Executive cannot utilize its special powers in foreign affairs as a surreptitious means to circumvent and violate the constitutional safeguards designed to protect India's sovereign territory.

II. TESTING HYPOTHESIS 2:

"Territory-related International Treaties and Agreements require Parliamentary participation and, in case of it affects the boundaries of the State, a constitutional amendment is necessary under Article 368 to ensure constitutional validity".

- **EVALUATION:** To analyze this concept, it is essential to distinguish between defining a disputed boundary and ceding sovereign territory. In this context, the Administration relied on the Maghanbhai exception, arguing that Katchatheevu was a disputed territory subject merely to administrative demarcation. However, the historical analysis undertaken in this study refutes this premise. The administrative leases granted by the Raja of Ramanathapuram—specifically the lease granted to the British Crown in 1922, followed by the vesting of Zamindari rights in the Madras Government under the Madras Estates (Abolition and Conversion into Ryotwari) Act of 1948 indicate that Katchatheevu had already acquired the definitive status of Indian territory prior to 1950. Since Katchatheevu constitutes a part of Indian territory (as listed in the First Schedule), its transfer to Sri Lanka amounts to a cession. According to the Berubari doctrine, Parliament cannot cede territory solely by enacting legislation under Article 3 of the Constitution; needless to say, it cannot do so unilaterally through an executive agreement. To permanently cede a

nation's territory, a constitutional amendment under Article 368 of the Constitution is mandatory.

- **CONCLUSION:** The hypothesis has been proved true. The evidences proves that transferring the established territory fundamentally alters the First Schedule of the Constitution. The Constitution requires the Parliamentary participation before the establishment of any Agreement or treaty, to be held valid and an Article 368 constitutional amendment is a non-derogable requirement for domestic constitutional validity.

III. TESTING HYPOTHESIS 2:

"The Indo-Sri Lanka Agreements of 1974 & 1976, relating to Katchatheevu, lack adequate constitutional safeguards and democratic accountability."

- **EVALUATION:** This hypothesis requires evaluation through two specific components: an analysis of the federal structure and an examination of the socio-economic rights of the affected citizens. The Executive Branch characterized the 1974 Agreement merely as a standard "boundary settlement." This classification enabled them to circumvent the consultative procedures established under Article 3. The Central Executive thereby bypassed parliamentary scrutiny. Furthermore, this maneuver allowed them to silence the Tamil Nadu State Legislature and deny the State its right to register objections against changes affecting its historical boundaries. The exchange of letters in 1976 brought an end to the traditional fishing rights of Indian citizens within the waters of the Palk Bay. This action by the government effectively nullified a key State subject-fisheries as enumerated under Entry 21 of the State List. The right to livelihood protection, enshrined under Article 21, was severely compromised, as this measure deprived numerous coastal families of their fundamental

means of sustenance. Without engaging in any public debate or legislative process, the government implemented significant socio-economic transformations alongside territorial adjustments. This created a situation characterized by a complete absence of essential democratic norms.

- **CONCLUSION:** The hypothesis finds proof for its validity. The agreements of 1974 and 1976 were concluded without proper constitutional safeguards or essential democratic oversight; for the State Legislature was bypassed, parliamentary debates were averted, and historical livelihoods were brought to an end through unilateral measures.

This study achieves its ultimate objective through a process of testing and validating three key hypotheses. All available evidence demonstrates that Katchatheevu belongs to the Republic of India. Consequently, the executive decision to sign a bilateral agreement with Sri Lanka in 1974 for the cession of this territory constituted a violation of constitutional principles. By treating this transfer as a mere boundary demarcation, the Union Executive exceeded its legal authority and insulated itself from legislative scrutiny. The absence of parliamentary approval—as well as the lack of a constitutional amendment required under Article 368, indicates that the cession of Katchatheevu failed to adhere to proper constitutional procedures. This not only calls into question its domestic legitimacy but also renders its legal status unconstitutional.

FINDINGS OF THE STUDY

The objective of this study is to critically analyze the validity of agreements concerning territorial boundaries in India, with particular emphasis on the Indo-Sri Lankan Maritime Boundary Agreements (1974 and 1976). A doctrinal methodology was employed to comprehensively analyze the legal limits of the Union Executive's treaty-making powers, based on domestic constitutional law, comparative federalism, and customary international

maritime law. This study culminated in the following specific conclusions, which directly address the central objectives of the research.

I. THE EXECUTIVE'S TREATY-MAKING POWER:

- This study concludes that the Union Executive cannot enter into international treaties or conduct negotiations regarding such treaties without broad authority; nevertheless, insofar as the treaty-making power is concerned, the Union Executive remains subject to the authority of the Constitution.
- This study arrives at the conclusion that an executive prerogative cannot be exercised in a manner that unilaterally alters the existing boundaries of national sovereignty, undermines the territorial integrity of the nation, or infringes upon the constitutional rights of its citizens. The Executive's treaty-making power must not be exercised with respect to any international treaty that affects the fundamental definition of the nation or the basic socio-economic rights of the people residing therein; furthermore, such power must remain subject to the constraints of the democratic legislative process. Moreover, the concentration of authority regarding foreign affairs in the hands of the Executive does not grant it a mandate to act in violation of the basic structural limitations of the Constitution.

II. THE MANDATORY REQUIREMENT OF ARTICLE 368 FOR TERRITORIAL CESSION:

- Article 368 of the Constitution underscores the constitutional imperative that any act involving the transfer of jurisdiction over Indian territory to a foreign power must be in consonance with the Constitution and must be executed in the manner prescribed by Article 368. A robust and pivotal legal conclusion emerging from this analysis is that the distinction between the transfer of territory and the

demarcation of boundaries as enshrined in the Constitution is immutable and inviolable. An analysis of the interplay between Articles 3 and 368 yields a definitive conclusion: neither ordinary legislation nor unilateral executive action can constitutionally effectuate the cession or alienation of Indian territory to a foreign state.

- Consequently, any alteration to boundaries resulting from a transaction that permanently transfers sovereignty over Indian territory constitutes a substantive amendment to the First Schedule of the Constitution. Accordingly, to uphold the requirements safeguarding the supremacy of the Constitution, any act involving the transfer of a portion of Indian territory must be executed in strict adherence to the procedural rigor established by Article 368, precisely as mandated therein. The Executive cannot circumvent these constitutional imperatives by merely characterizing such a transaction as a routine boundary adjustment.

III. THE CONSTITUTIONAL INVALIDITY OF THE 1974 AND 1976 AGREEMENTS:

- This report also presents evidence indicating that the Indo-Sri Lankan agreements of 1974 and 1976 regarding Katchatheevu contained severe procedural and constitutional flaws. Documentary and historical revelations point to the fact that Katchatheevu was historically an integral part of the Ramnad Zamindari; consequently, prior to the 1974 agreement, it had already been allocated to the Madras State and classified as Indian territory. Therefore, the transfer of Katchatheevu to Sri Lanka constituted not merely a demarcation of historical waters, but a formal cession of territory. Since this cession occurred without parliamentary approval and without the constitutionally mandated

amendment under Article 368 of the Constitution it lacks constitutional validity even within the domestic legal framework.

- Furthermore, this study concludes that these agreements infringed upon the rights of the Government of Tamil Nadu and violated the consultative requirements stipulated under Article 3 of the Constitution, thereby undermining federal principles. The unilateral termination of the traditional fishing rights of Tamil fishermen by the Central Executive through the exchange of letters in 1976 constitutes a persistent violation of the fundamental rights to life and livelihood guaranteed under Article 21 of the Constitution, as it has effectively deprived these fishermen of their means of sustenance.

IV. INTERNATIONAL LEGAL MECHANISMS AND THE RESTORATION OF RIGHTS:

- An analysis of the avenues available to protect and reclaim the traditional fishing rights of Indian fishermen reveals a complex dichotomy between domestic invalidity and international binding validity. The treaties of 1974 and 1976 are regarded under the Vienna Convention on the Law of Treaties (VCLT) as valid instruments of state consent; consequently, they constitute a formidable impediment to any attempt to unilaterally abrogate them.
- Nevertheless, customary international law and recent maritime arbitral awards increasingly recognize and safeguard the continued subsistence of historical or traditional fishing rights, even following the establishment of modern international boundaries. As a result, notwithstanding the significant geopolitical and international legal challenges inherent in asserting absolute territorial sovereignty over Katchatheevu Island, the reclamation of usufructuary

rights ought to remain a legally viable objective.

The most appropriate legal avenues for seeking relief through bilateral maritime agreements have been identified as the negotiation and establishment of new bilateral 'Joint Resource Management Zones,' or engaging in permanent, reciprocal rights agreements between the two parties. Should bilateral diplomacy fail, these parties have recourse to theoretical avenues such as utilizing international dispute settlement mechanisms, including the arbitral tribunal procedures under UNCLOS, or seeking advisory opinions from the International Court of Justice (ICJ) regarding the humanitarian impact on fishermen and customary fishing rights. However, both of these mechanisms require the mutual consent of the two sovereign nations involved. Only thereafter would either nation acquire the jurisdiction to enforce or implement any agreement or ruling to which it is entitled.

CONCLUSION:

India's border disputes and national security concerns primarily revolve around its land-based, militarized frontiers. Pakistan and Bangladesh are frequently cited as the primary focal points for cross-border conflicts and territorial disputes. However, this study demonstrates that India shares an unstable and conflict-ridden border with other nations as well including Sri Lanka.

The Palk Strait officially classified by the Ministry of External Affairs (through agreements signed in 1974 and 1976) as a "settled" maritime boundary remains, in reality, a volatile, deadly, and unresolved conflict zone. Officially, the Indo-Sri Lankan maritime boundary is characterized by the Central Government as "peaceful"; yet, in truth, this classification constitutes a geopolitical fiction maintained by the Indian state. This fiction fails to acknowledge the ground realities prevailing in Tamil Nadu. Consequently, the southern maritime boundary is relegated to a secondary status and deemed "settled" by India's

constitutional and diplomatic institutions; as a result, this institutional framework has created a critical geopolitical blind spot regarding the people of its southern region. Ultimately, this myopic perspective prioritizes the maintenance of general bilateral equilibrium with Colombo over the territorial integrity and economic security of its own southern populace.

One of the most distressing consequences of this global imbalance of power is India's persistent violation of Article 21 of its Constitution. Through its domestic laws and judiciary, India regards the "Right to Life" as a supreme, fundamental right. This exalted right is safeguarded by a judicial doctrine the "rarest of rare" doctrine pertaining to the death penalty. According to this doctrine, the Indian judicial system will not execute a human being even in the extremely rare instance where, after a thorough review of all evidence by a judge or judicial officer, it appears to be the only just and possible outcome and even after the accused individual or their family has been afforded full legal due process and legal representation. Thus, India regards human life as constitutionally as well as legally and culturally invaluable. Consequently, as it remains an extreme exception rather than the rule, the death penalty is not imposed for judicial purposes within the broader society (the last execution took place in early 2020).

However, there is no contradiction here: even as the Indian government has consistently affirmed the 'right to life' of its citizens across the nation, over the past fifty years, hundreds of civilians Indian fishermen have been killed, maimed, or forcibly disappeared by the Sri Lankan Navy. These are not combatants; rather, they are simple fishermen engaged in their age-old vocation within fishing grounds that have historically belonged to them. The killing without any form of inquiry of so many of these citizens, under the pretext of enforcing or maintaining an unjust (and contentious) maritime boundary, reflects a monumental failure on the part of a government whose foremost duty is the protection of its own

citizens. The agreements concluded between India and Sri Lanka in 1974 and 1976 not only rendered the traditional livelihoods of these fishermen illegal but also exposed them to lethal actions by a foreign force; in doing so, these agreements effectively denied them their constitutional rights to life and to a livelihood.

A humanitarian catastrophe has arisen as a consequence of a fundamental flaw within the Constitution. This study has substantiated that the transfer of 'sovereignty' over Katchatheevu was not merely an act of 'delineating' an 'undemarcated' boundary as characterized by the Union administration but rather something of far greater significance. Based on historical records and the fact that the region was legally integrated into the Madras State in 1948, it has been conclusively established that Katchatheevu constitutes an integral part of India.

Thus, the 1974 Agreement constituted an irrevocable transfer of sovereign territory. By exercising powers granted solely under Article 73 thereby circumventing the constitutional requirement for an amendment under Article 368 (as stipulated in the Berubari Union case) the Government of India acted in excess of its jurisdiction. Furthermore, by failing to consult with the State of Tamil Nadu as mandated by Article 3, the Government of India deprived the State Legislature of its right to participate in decisions affecting the State; in doing so, it violated the principles of cooperative federalism. The Katchatheevu case serves as a stark reminder that whenever an administration operates without parliamentary oversight or without being subjected to accountability through democratic participation, the socio-economic rights of the people residing in border regions are invariably compromised.

The Katchatheevu issue cannot be resolved merely by maintaining the status quo. Under international law and the Vienna Convention on the Law of Treaties, the difficulty involved in unilaterally abrogating the 1974 agreement between India and Sri Lanka regarding

Katchatheevu renders this approach problematic. Furthermore, with the evolution of international maritime law, the mere act of delineating sovereign territory does not automatically extinguish traditional or customary fishing rights.

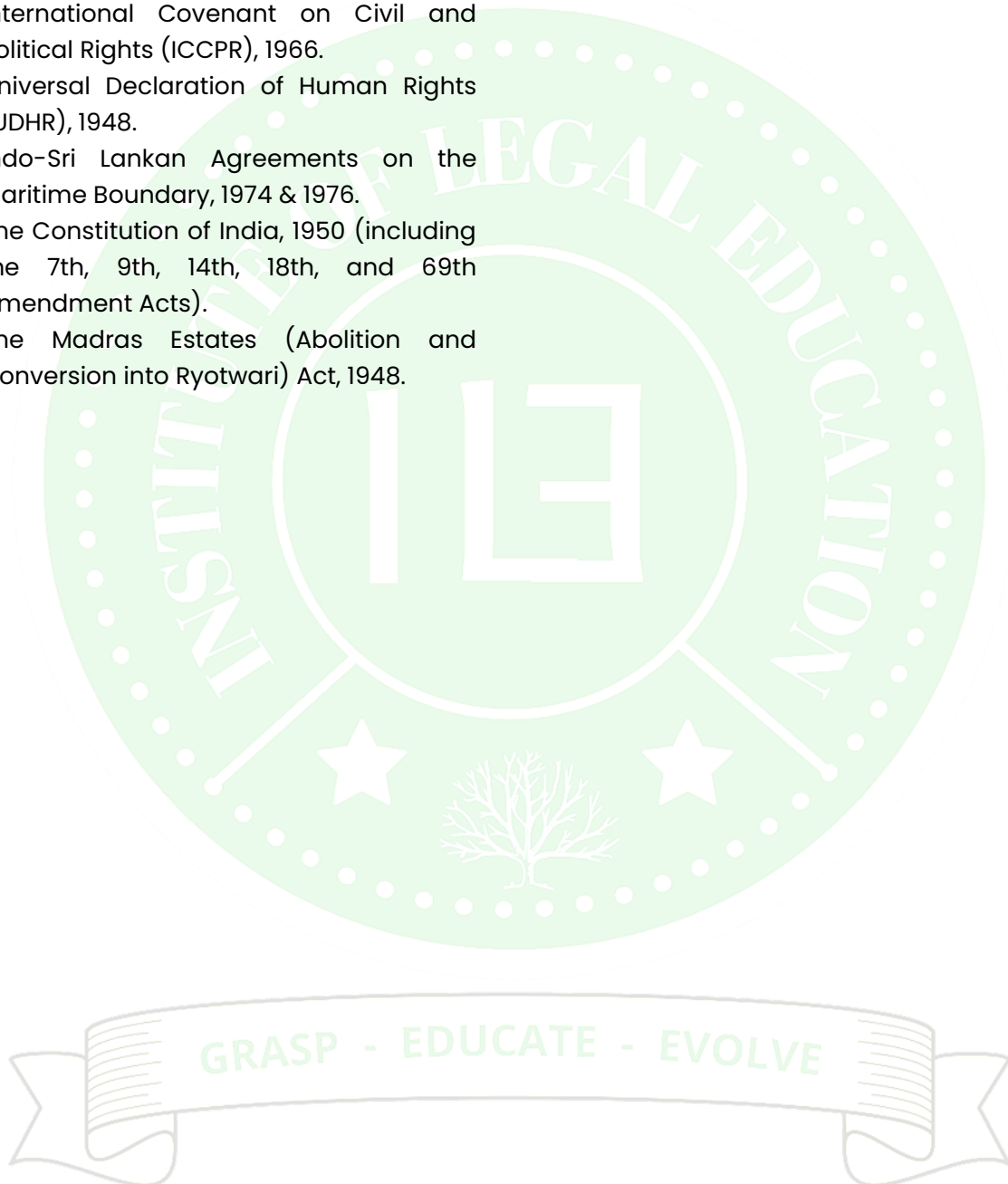
By shifting its stance on the Katchatheevu issue, the Indian government must urgently transition from a position of passive acquiescence to one of active renegotiation. In conjunction with establishing a "Joint Resource Management Zone" (JRMZ) in the Palk Bay, the Central administration must collectively utilize all diplomatic channels to ensure that Indian fishermen in the Palk Strait secure permanent access to their historic fishing grounds, free from the fear of capital punishment or imprisonment. As part of this renegotiation process, the Indian Parliament should enact a comprehensive piece of legislation titled the 'Treaty Ratification Act.' This Act would prohibit any future executive agreement entered into without full legislative debate and the unanimous consent of the affected State(s) from altering State boundaries, ceding territory, or otherwise undermining the fundamental livelihoods of citizens.

The Constitution of India was framed primarily as a mechanism for the State to function within a geopolitical framework; nevertheless, it was also designed to safeguard individual rights, ensure access to justice, grant citizens the freedom to choose and shape their own lives, and uphold human dignity. The Katchatheevu issue serves as a stark reminder of the consequences that ensue when boundaries defined by the international community are prioritized over the fundamental rights of a specific group of people. Until the Indian government fully acknowledges and accepts that the lives of its own fishermen are of equal importance to the constitutional principles it espouses, the Palk Strait region will continue to stand as a testament to the lengths to which the State will go to serve its own interests while simultaneously highlighting the extent of the

Central Government's failure to safeguard the welfare of its own citizens.

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