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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL
SIR CREEK DISPUTE: AN ESTUARY POSING A POTENTIAL THREAT OF WAR

ABSTRACT
India and Pakistan are two major powers of the South Asia. Even though today both of them have different ideologies, beliefs and rampant political rivalry but this cannot be denied that they share a common history and a common culture.

Since the inception of these two nations, from the erstwhile state of India that existed before the August 15, 1947 both nations have been constantly engaged in conflicts and confrontations. Most of these conflicts like the Kashmir Issue, Kishan Ganga Project, Kargil Confrontation etc. have took the world by strides and have created a fear of nuclear war in this region.

Some of these conflicts are due to geographical proximity and strategical importance of these areas whereas others have emerged out of political high-headedness of national leaders who are not ready to step back and as a result the ushering of an era of peace in this region of world has become a distant dream.

One such issue is the Sir Creek Region Dispute. This research paper focuses on the geography of Sir Creek Region and its importance for both the countries. The inceptions of this dispute as well as the confrontations which have taken place due to this dispute have been discussed in the detail too. In addition to this the contentions raised by both the sides so as to prove their claim over this region and the various incidents which heightened the tensions between these two countries have also been discussed.

1) WHAT IS SIR CREEK?
➢ GEOGRAPHICAL LOCATION OF THE AREA
   Sir Creek is a sixty miles long estuary that is situation in the marshy areas of the Rann of Kutch. According to the National Oceanic and Atmospheric Administration of United States of America an estuary is an area where the river meets the sea.\(^1\) Sir Creek is the region of delta of Indus River. Sir creek was traditionally known as Ban Ganga by the locals.\(^2\) It was later on renamed by the British as Sir Creek a representative of British at the time of British rule in India.
Rann of Kutch is the largest salt plain of India and lies between the border of state of Gujarat and Sind province of Pakistan. The word Kutch means an area which is really dry and wet at the same time.\(^{iii}\) The area covers around 10,800 square miles of area.\(^{iv}\)

- **FLORA AND FAUNA OF THE AREA**
  This marshy area houses a plethora of flora and fauna. This area is known as a home to two most dangerous reptiles namely Russell’s viper and scorpions. This area also welcomes large number of Flamingoes and Migratory Birds every year during the winter season. On the Pakistan side of creek lays the Keti Bunder South Wildlife Sanctuary. This sanctuary encompasses a large area of not only the Sir Creek but also some other creeks too. Just like the Indian side, this side also supports a huge variety of bio-diversity.

2) **IMPORTANCE OF THIS REGION**
This region carries a lot of importance for both India and Pakistan and this is the main reason that no one is ready to given up its claim on this region.

- **ECONOMIC IMPORTANCE**
  - The core importance of the Sir Creek is because of the fishing resources which are considered to be one of the largest in Asia.
  - The marshlands are estimated to be rich in hydrocarbons.
  - These areas are also rich in shale gas.
  - It is an area rich with mineral oil and natural gas deposits’

  This area will form part of the Exclusive Economic Zone of both the states and as per the United Nations Convention on The Law Of Sea 1982 the country to which it will belong to will have the right to harness all its resources. Pakistan is insisting on defining the extremity of its land frontier in the Sir Creek area as its EEZ will be enlarged by around 250 square miles in case India accepts the Green Line showing the eastern bank of Sir Creek eastern as its land boundary.

- **STRATEGIC IMPORTANCE**
  There are two channels in this area namely "Harami Nala" and "Bondho Dhoro". They carry a lot of importance to India. They are strategically important for India so as to prevent infiltration and illegal activities. The Vian Wari Creek, as it is known on the Indian side enters the territory of Pakistan in the north. In Pakistan it is called i "Harami
Dhoro”. It then turns east and reenters India where it is called “Harami Nala”. It then splits into two streams out of which one re-enters Pakistan. In addition to this, Bondho Dhoro, which enters India in the Sujawal District of Sindh province of Pakistan, is also a point of infiltration by boat. Chinese activities in the area have also increased in this area over the period of time.\textsuperscript{vi}

3) TIMELINE OF DISPUTE

➢ PRE-INDEPENDENCE ERA

Even though the dispute has come to light only after the independence and partition but it is worth noting that the roots of this dispute go back to the pre-independence era. In the pre-independence era both Sindh and Kutch were two a part of India. After independence, Sindh became a part of Pakistan whereas Sindh chose to join Pakistan. The dispute over Sir Creek first began in 1908. It was because an argument took place between the then rulers of rulers of Kutch and Sind over a pile of firewood which was lying on the banks of a creek which divided these two principalities at that time.\textsuperscript{vii}

The Commissioner of Sind complained to the Government of Bombay about encroachments by the Kutch State upon the territory of Sind. When the Kutch Darbar was inquired and were asked for an explanation, the Dewan of Kutch contended that the region in which the incidents took place formed part of the territory of the Kutch State. The Government of Bombay on the other hand was inclined to the view that in case, evidence on both sides was carefully collected and examined a friendly compromise with the Kutch Darbar was possible.\textsuperscript{viii}

The Kutch Darbar was accordingly informed that, ever since the conquest of Sind, the Khori Creek had been regarded as the boundary between Sind and Kutch and that if the Darbar is of the view that this boundary is inaccurate then Darbar should state it with the help of maps that which boundary it claims and also the reasons for making such a claim. The Dewan of Kutch by the means of a green line on the map contended that it was the true boundary between the State of Kutch State and the Province of Sind.\textsuperscript{ix}

The dispute was resolved by the Government of Bombay in 1914. For resolving the dispute help of cartographic illustrations were taken into consideration. The help was taken of Map Number B44 which is now known as Map Number B74.1\textsuperscript{x} This resolution described Creek as a part of Sindh state.
The compromise was put to the Rao, who expressed his willingness to agree to it, provided that the Government of India sanctioned the proposed boundary. The Commissioner in Sind also agreed to the adoption of the blue dotted which ran due east from the top of the Sir Creek as the frontier line.

The Government of India sanctioned the proposed compromise by a letter dated 11 November 1913 from the Assistant Secretary to the Government of India, Foreign Department, to the Secretary to the Government of Bombay.

By 1925 a new map of this area was chalked down and in this map a green line was drawn to the east of the creek. This green line meant that the creek belonged to Sindh state at that time which is now a province of Pakistan.

➢ **CONSTRUCTION OF PILLARS**

Boundary pillar exist at the Western Terminus, but that no such pillar exists or has been erected at the Eastern Terminus. Along the accepted horizontal and claimed vertical line to the west of the Western Terminus, 134 pillars were erected in 1924. It is also believed that Pillars were once fixed along the two loops in Badin Taluka.\(^{xi}\)

Pakistan has taken up the position in the UN Tribunal that in 1924 seven pillars were erected on the vertical boundary which is south of the Western Terminus. India on the other hand has denied that such pillars were ever erected. \(^{xii}\)

Pakistan also stated that in 1850, two or more pillars were erected in the south-east of the Eastern Terminus on the claimed boundary referred to as Becher's pillars. \(^{xiii}\)

➢ **POST INDEPENDENCE ERA**

After the settlement by the Government of Bombay the issue remained resolved for around four to five decades. But after the independence the issue once again came to the light in 1960s. In 1965 the infamous Indo- Pak War took place. At that time Prime Minister of India was Lal Bahadur Shastri and President of Pakistan was Muhammad Ayub Khan.

After the war the issue of Sir Creek once again came to light. Sir Creek is a fluctuating tidal channel or an estuary. Pakistan asserted its claim over the half of the Rann along the
24th parallel. As per Pakistan all that area was a part of Pakistani territory. India on the other hand countered Pakistan by asserting that the boundary ran roughly along the northern edge of the Rann. There were a series of heated debates and discussions between both the parties and finally the dispute was referred to UN Tribunal.

4) REFERRING OF THE CASE TO TRIBUNAL

➢ CONSTITUTION OF TRIBUNAL

In response to an agreement reached between the Government of India and Government of Pakistan on 30th August 1945 a tribunal was set up under the aegis of United Nations for resolving this dispute. The First Meeting of the Tribunal took place in February 1966 at Geneva. In the course of the subsequent four Meetings of the Tribunal held in February 1966, it was decided that the name of the Tribunal would be known as Indo-Pakistani Western Boundary Case Tribunal. Both the countries nominated members to this tribunal.xiv

➢ MEMBERS OF TRIBUNAL

The Government of India nominated as Member of the Tribunal Ambassador Ale S Bebler who was the Judge of the Constitutional Court of Yugoslavia, and the Government of Pakistan nominated Iranian Ambassador Nasrollah Entezam who was also the former President of the General Assembly of the United Nations. On 15 December 1965 due to failure on part of both the countries to nominate a Chairman, the Secretary-General of the United Nations nominated Judge Gunnar Lagergren as Secretary-General and Treasurer of the Tribunal, and Mr. Jan De Geer as Deputy Secretary-General.xv

➢ COOPERATION BETWEEN THE PARTIES FOR COLLECTING EVIDENCES

In June and July 1966, a delegation from Pakistan visited New Delhi- the capital of India for inspecting and obtaining copies of maps and documents in Government archives. Similarly, a delegation from India visited Islamabad for the same purpose. It is worth mentioning that even after the heightened tensions between both the nations they maintained direct communications continuously and assisted one another in searching and producing such evidence. The number of maps exhibited in the case is about 350. The oral hearings began on 15 September 1966 and continued until 14 July 1967.
➢ DECISION OF THE TRIBUNAL

It would not be wrong to say that this dispute in fact emerged during the negotiations after both the contending parties consented agreed so as to limit their larger dispute only to the boundary in the north. To the south laid an agreed boundary that began at the head of Sir Creek and ran a short distance eastward roughly along the 24th parallel. However, India contended that the said line moved up sharply at a right angle to meet the northern boundary of the Rann. Pakistan was adamant so as to claim half of the Rann along the well known 24th parallel. Thus the crux of the issue was that whether or not the short agreed boundary from the head of Sir Creek rose at a right angle at its western end to so as to reach the northern limit of the Rann. The tribunal accepted India’s contention that it turned north and declared that India has a better claim over almost the entire Rann.xvi

In the verdict delivered by the tribunal in 1968 Pakistan was given 10% of its claim of 9000 square kilometers. The tribunal also supported India’s claim to 90% of the Rann and fixed the land border up to a point called the western terminus. It is worth mentioning that both the parties agreed to exclude the boundary from the head of creek downward to the west. The boundary from the Western Terminus to the head of Sir Creek was also not demarcated.

➢ RESPONSE OF PAKISTAN

The Pakistan is of the view that the adjudicators in 1968 did not discuss the Sir Creek because in the pre-partition documents the creek it was clearly indicated as a part of Sind which is now in Pakistan.xvii

➢ RESPONSE OF INDIA

India on the other hand has refuted the claim of Pakistan in strong words. According to India the question concerning the Sir Creek part of the boundary was left out of consideration. xviii

5) WHAT IS THALAWIG DOCTRINE

➢ DERIVATION OF WORD THALWEG

India is of the opinion that the dispute should be resolved by the well-known doctrine of international law namely Thalweg Doctrine. The word Thalweg is derived from two German words; Tal meaning valley, and Weg, meaning wayxx It is the line of lowest elevation within a valley or within its water course.
➢ MEANING OF THE PRINCIPLE
Under Public International Law, thalwegs have a special significance owing to the fact that disputed river borders are often deemed to run along the river's thalweg. The *thalweg principle* states that in case the boundary between two political states is separated by a watercourse then such a boundary is denoted as the thalweg of the watercourse which is separating the boundaries between the two states.

It is the middle point of the navigable channel which constitutes a boundary line between two states. Various states like Iran, Iraq and Europe have defined their watercourse international boundaries by a median line, left bank, right bank, etc. as per this principle. In other words by applying this principle the river or water body which is between two states is divided from the middle and is given equally to both the states.

➢ REJECTION BY PAKISTAN
But Pakistan rejects this idea. It argues that this doctrine can be applied only to the water bodies which are navigable through the water. Sir Creek is not one such place as it remains dry for most of the times of the year.

➢ INSISTANCE ON PRINCIPLE BY INDIA
India on the other hand contends that this doctrine is applicable as Sir Creek is a water body. During the monsoon season it gets filled by water and even inundates the nearby area. The same is the case during the high tides. At these times this creek is navigable by boats and large numbers of fishermen go to the creek in order to catch fish. Rear Admiral K.R. Srinivasan during one of the rounds of negotiations with Pakistan officials made it clear that the mid-channel principle on Sir Creek was even endorsed by the resolution passed by the Government of Bombay in 1914 in its ‘Para nine and Para ten’.

6) HISTORICAL CLAIM
Pakistan claims that it is having a historical claim over the Sir Creek Region. It has laid down a number of evidences and historical ideas to prove it before the Tribunal. Hereinafter mentioned are a few of such evidences.

- Pakistan has argued that from the sixth century onwards a number of invasions were made by the Rulers of Sind of the Kutch mainland.
- Pakistan has also argued that Sind had established a garrison of 5,000 men at Lakhpat.
Pakistan has also relied on an account given in 1827 to the effect that Sind had actually taken possession of certain parts of Kutch, until the advancement of the British army in 1816.

Pakistan has also argued that the Rulers of Sind in the past had manifested effective control and dominion over the Rann owing to their ability to cross it.

Pakistan has further argued that under the political system of the British in India, Kutch "froze" in 1819, due to entering into a treaty relationship with the British.

Pakistan has also referred to statements of officials in the Sind Administration and of Rao of Kutch to prove that Rann itself is the boundary.

Two maps produced by Pakistan show that the boundary between Sind and Kutch was situated in the middle of the Rann - a marine feature, in which the surrounding States had established themselves as sovereigns.

Pakistan has also cited Report of Major Miles in 1823 and the Resolution of the Government of Bombay, 1860 to deduce that the sovereign rights of the coastal States over the bets in the Rann were divided along a line that ran equidistant from the shores on either side of the Rann.

The approach was similar, says Pakistan, in the Resolution of 20 December 1897 of the Government of Bombay, disposing of proprietary rights in the Nara and Parpatana Bets.

Even in the 1914 resolution the disputed area was given to Sind which is now a part of Pakistan.

It is widely accepted idea that as per the provisions of UNCLOS 1982, the historical claims of various countries over an area have to be respected while dividing any boundary or area as per this convention.

7) INTERNATIONAL NEGOTIATIONS

Many rounds of negotiations have taken place between both the countries to solve this dispute. Still no concrete result could be reached. Following are the various rounds of negotiations that took place between the representatives of both the nations.

The first round of talks was held in Islamabad on 2 June 1989 in which the fundamental aspects of issue were discussed by the Indian and Pakistani delegations, but the efforts went in vain as there was no concrete result.

The second and third rounds of talks were held in in 1990 and 1991 and even they concluded without making any worthwhile progress.
• The **fourth round** of talks was held in Rawalpindi on 28-29 October 1991. In this round even though the political desirability of coming to terms on the delineation of the boundary was apparent, the Surveyor General of Pakistan remained adamant about the delineation of the maritime boundary. The difficulties were compounded as the mid channel of the Creek, shifts quite frequently depending on the pattern of the tides. Concepts of “equidistance” and “equity” in delimiting the maritime boundary from the mouth of the Creek towards the open seas were subjects of lively debates and deliberations but again no agreement could be reached.

• In the **fifth round** of talks held in New Delhi, on 5-6 November 1992, the Indian Navy had found the possible ways of defining a maritime boundary from the sea. But unfortunately this issue did not figure during the talks. After the fifth round, the talks were thwarted for a long period of time.

• After six years, negotiations were again held in June 1997 and in September 1998 in which each of the issues was taken up by a separate working group formed by both the countries. These can be termed as the **sixth round** of talks.

• The talks of the Sir Creek working group were held on 8 November 1998 in New Delhi. These talks promoted mutual co-operation, trust and confidence. The Indian side put forward a proposal for the finalization of the boundaries based on the following four steps. These were allocation, delimitation, demarcation and administration. At the 8 November 1998 talks in New Delhi, India objected to Pakistan’s bid to internationalize the Sir Creek issue, reiterating that all differences between New Delhi and Islamabad, after the Shimla Accord, had to be resolved bilaterally. Pakistan on the other hand was of the view that India should agree to its proposal to take the dispute to an international tribunal.

At the end of these negotiation rounds both parties could not reach a settlement but agreed to meet in the future so as to discuss any potential settlement.

8) **INCIDENTS IN FURTHERANCE OF THIS DISPUTE**

There are a number of incidents have taken place every then and now between India and Pakistan due to this region and this has made the situation more tensed than before.

➢ **ATLANTIQUE INCIDENT**

Atlantique incident took place just one month after the Kargil War and drew the attention of the entire world once again to this region. The incident took place on 10th August 1999.
Atlantique was a Pakistani maritime patrol aircraft which was flying over the Indian Territory. It was shot down by a Mig 21 of the Indian Air Force over the Rann of Kutch region. In this incident 16 Pakistani Navy Personnel consisting of 5 officers and 11 sailors were killed. Howbeit, Pakistan stated that the plane that was shot down was unarmed and it at no point entered the Indian Territory. Moreover the debris of the plane were found in Pakistan.\textsuperscript{xxiv} Pakistan even took the issue to International Court of Justice but failed in getting it adjudicated.

After this incident Pakistan has deployed even more military personnel in the area and has even installed some Surface to Area Missiles in the region.\textsuperscript{xxv}

➢ MILITARY DEPLOYEMENTS

Since June 2019, there has been a rapid built up forces at Sir Creek from both the sides.. In fact soon after the 1999 Atlantique incidence, Pakistan deployed its 31st Creek Battalion in the area. In 2019, Pakistan also deployed 32nd Creek Battalion in order to increase the troop strength.\textsuperscript{xxvi}

9) CONCLUSION

Even after a lot of debates, discussions and series of negotiations this issue has still not been resolved. There are a lot of unanswered questions and unresolved ideas. There is a dire need that a survey of this area is completed at the earliest. In addition to this it is necessary that the desire of resolving the dispute exists between both the nations. The political high headedness has to be kept aside and steps have to be taken to resolve this issue.

Moreover it is necessary that both countries reach a middle path. India should accept the historic claims of Pakistan as they carry more weightage. At the same time Pakistan should also accept the logic of India as per the Thalweg Doctrine. And keeping both these ideas in mind a compromise must be reached between the parties so as to put an end to this long standing dispute between both the nations

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