

Ceylon (Applicant) v. India (Respondent)

Competition note

The “facts” set forth below are purely fictional and are designed for the ASCENT International Moot Court Competition. It is the expectation of MCS that teams will focus on the merits of the case; arguments about standing, exhaustion, indispensable third parties, and appropriate forum are beyond the intended scope of the competition.

Jurisdiction

1. This case has been jointly submitted by Ceylon (Applicant) and India (Respondent) under the International Court of Justice’s (ICJ) *ad hoc* jurisdiction pursuant to Article 36(1) of the ICJ Statute. In accordance with Articles 26-28 of the ICJ’s Statute, the two sides have agreed that the case will be referred to a “special chamber” of the ICJ, consisting of three judges. This *Compromis* reflects the agreed facts as negotiated by the Parties.

Facts

2. In August 2003 Snow Boiling (hereinafter ‘Snow’), a Ceyloni citizen then living in Maldives, Island decided to move to New Delhi, India to attend Delhi University, where he enrolled in a three-year bachelor’s degree program in Law & Literature. At that time Snow was 21 years old and was a gay man.

3. In September 2005 Snow met Rock-n-Rolling (hereinafter ‘Rock’), an Indian citizen, at Café Qahwa, a popular gay bar in KG-II New Delhi. Snow and Rock began dating and decided to move in together in November 2005. At that time Rock is a professor of Political Science at Step In College, Delhi University and a popular author on extremist movements. He had opportunities to live and travel with some extremist ideologues to pen their voice and mediate with establishments.

4. When Snow graduated from DU in May 2006 Rock offered him a position of intern-editor and translate the work of Rock. Snow accepted Rock’s offer. Snow was paid Rs.13,000 per month, from which Snow paid Rock Rs.3750 per month for Snow’s share of the food and other domestic expenses.

5. Snow and Rock enjoyed each other’s company. They hiked, biked and canoed together and, after moving in with one another, otherwise lived as a couple by sharing domestic chores. Snow did most of the cooking and laundry. Rock was responsible for shopping, car repairs and the yard work around their rented Arts & Crafts-style bungalow in the trendy Waist-land of Delhi. On weekends they often went to see movies or visit coffee shops and had a mix of their gay and straight friends over for potluck dinners and parties.

6. On month ends regularly, Snow and Rock went for sailing together on a 22-foot mono-hull sailboat called *Sail into Me*, at Rameshwaram which they initially rented from the local area marina, but which they later purchased as a couple and rechristened *The Titanic*. Together, they sailed the waters of the Indian Ocean’s various Islands, which were challenging, but which taught both men much about sailing. *The Titanic* was registered and flagged as an Indian vessel.

7. Rock authored *Hari Putter* fantasy series. The *series* have gained worldwide attention, won multiple awards, and sold more than 400 million copies. They have become the best-selling book series in history, and been the basis for a series of films which has become the highest-grossing film series in history. Rock had overall approval on the scripts and maintained creative control by serving as a producer on the final instalment. Snow in search of better went for a year Brightfull scholarship to Stand Bye University, Bangalore then employed by National Security Agency, Bangalore contractor Boo All Ham for data classification.

8. Things were going well between Snow and Rock. They began to think about how they could make their relationship more permanent. After a Gay Ride at Jantar Mantar one evening in March 2007 Rock proposed to Snow and Snow immediately accepted. An immediate issue for them both was how to formalize their relationship.

9. Due to a successful ballot initiative in 2004 known as, the Civil Marriage Act, 2007 (hereinafter CMA, 2007) was introduced to read:

Policy regarding marriage. It is the policy of India, and its political subdivisions and territories, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage. A number of challenges brought in various High Court to the amendment were unsuccessful at the time of its passage and afterwards. When Rock and Snow went to the Patiala House Court, New Delhi in April 2007 seeking to marry, they were denied a marriage license by the Court, who cited CMA, 2007 that effectively prohibited Same-sex marriage.

10. Both Rock and Snow were devastated by the Judge's decision and contemplated moving away from India. However, a local friend of the couple, Water Cooling, was a family lawyer in New Delhi and confidant to both of them. One night over drinks at a Gay-Day restaurant after the decision he told them to "wait it out in Delhi ... Change is coming ... I can *feel* it!"

11. What Water was referring to was the writ petition by Naz Foundation, a Non-Governmental Organisation (NGO) as a Public Interest Litigation to challenge the constitutional validity of "Section 377 of the Indian Penal Code, 1860 (IPC)". The ruling in "Naz foundation v. NCT of Delhi (1 May 2007)" made grounds for amendment to CMA, 2007 which created a status of "domestic partnership" in Indian law in order to afford certain rights to Same-sex couples who register under CMA, 2007. President of India Jaata Dada signed the amendment on May 9, 2007. While January 1, 2008 was the date the statute would have taken effect, a court challenge delayed its implementation. The challenge was resolved on February 1, 2008, and the law went into effect that day, with registrations beginning on February 4, 2008.

12. The *Civil Marriage (amendment) Act, 2008* only applies to Same-sex couples. It provides that two individuals of the same sex wishing to become partners in a domestic partnership may complete and file a Declaration of Domestic Partnership with the court of registrar's in India. Thereafter, they are recognized as "domestic partners", which gives partners in such relationships the right to make medical decisions for a partner in crisis, to exercise rights and responsibilities related to property and inheritance, and to benefit from provisions to protect children and other dependents. However, s. 2(7) of the *Act* states:

The Legislative Assembly recognizes that the personal laws limits marriage to the union of one man and one woman. The Legislative Assembly does not seek to alter this definition of marriage in any way through the *Act* and recognizes that the Legislative Assembly cannot bestow the status of marriage on partners in a domestic partnership. The Legislative Assembly recognizes that numerous distinctions will exist between

these two legally recognized relationships. The Legislative Assembly recognizes that the legal recognition of domestic partnerships under the laws of India may not be effective beyond the borders of India and cannot impact restrictions contained in other central laws.

13. At Water Cooling's urging, Snow and Rock decided to register their relationship under the *CM (A) Act, 2008* and do so before the Mahish Butt, Court of Registrar of Marriage Registration New Delhi at the Patiala House Court in March 2008. At the time of their registration the Mahish Butt came out of his office, winked at both of them and said with a grin, "So you guys are back." Rock retorted, "Listen, I didn't ask him to 'domestically partner' me!" Snow and Rock completed the necessary paperwork and, a few minutes after their application was accepted, they were informed by the Clerk that they become domestic partners under Indian law. Afterwards, Water Cooling hosted a reception for them at Café Defuse a popular soul food bistro in Aerocity.

14. Snow and Rock remained deeply disappointed that they could not legally marry in India, but there were more pressing issues on the horizon after they registered. By mid-2010, due to the global recession, Indian economy was particularly in trouble. Snow and Rock began to contemplate their options. Rock decided to move to Mannar Island with Snow. Rock believed he could re-employ quickly in their work there since an influx of foreign money was priming the local tourism market there. Rock penned a novel '*Naked Truth*' on the bare tribes of Mannar Island that used to be a customary drop of flesh trade. The work become famous attraction among tourists world over and infamous among literary world.

15. Snow and Rock moved to Mannar Island in mid-2012. Snow got a job with CNN-IBN news network as data editing and classification, to assist Editor-in-chief Sir Deep Raj Desai to whom Snow sensed that he classified the National Security Agency data, while Rock worked as an author for Kiwi Publishing, India. On the weekends the couple continued to sail together on *The Titanic*, which they moored at a slip in Mannar's False Creek. The couple hosted parties onboard and went sailing through the Gulf of Mannar, often into international waters in Indian Ocean.

16. *The Titanic* was built with a stabilizer system, a 'sea anchor', that serves as a drag device and helps steady the sailboat in stormy seas. With use of the sea anchor, *The Titanic* could remain virtually stationary for several hours, meaning that Snow and Rock could sleep aboard the vessel without worrying that the boat would crash into other boats, shallows, or the shore. There Snow shared much of his experiences as Brightfull scholar at Stand Bye University, Bangalore and data classification at National Security Agency, Bangalore.

17. One evening in May 2013 while Snow and Rock were asleep on the vessel in international waters, Rock heard a knock on the hull and left the interior cabin to investigate. Rock thought that the sea anchor had somehow become detached and that the vessel had hit some rocks. Instead, Rock was abducted by masked men who had boarded and then left *The Titanic* taking Rock with them. Snow remained asleep in the hold, unaware of what was happening. Snow only discovered that Rock was missing several hours later when, at first daylight, he found that Rock was gone and radioed for help. In the beginning Snow did not know that Rock had been abducted and feared that Rock had fallen overboard. Subsequently, the Ceyloni Sri Lankan Coast Guard conducted a four-day sweep of the area with ships and aircraft that yielded nothing. Snow returned to Mannar Island distraught, thinking he had lost his life partner.

18. When Snow returned to Mannar Island he gave interviews to the media, web-based news outlets and social net-working about the sad story of Rock's disappearance. Two weeks later, while at work, Snow received an email from "Maoist Andrew", an individual who identified himself as a member of the Jaffna Liberation Front (JLF). The JLF is an organization working for the creation of an independent state out of Ceylon. Maoist Andrew's message indicated that Rock was alive and healthy and was being held at an undisclosed location in Indian Ocean by the JLF guerillas, who demanded \$5 million for Rock's release. The JLF are known terrorists who have conducted a campaign of violence in Asia, blowing up bridges and buildings, and have been implicated in terrorist attacks in Ulan Bator, the Asian capital. They are the biggest link in illegal arms trade, arms supply, contract bombing etc. more specifically named in Bali bombings in 2002. The JLF has been designated as a terrorist organization on lists maintained by Public Safety Ceylon and Ministry of Home and External Affairs India. Andrew's email warned that if payment was not received soon by a certain bank in Facelift, the capital of Jwalamukhi, "the worst consequences will follow for your friend".

19. The JLF is known to be active in a wide area across several seas. It is particularly reviled because it has developed close ties with Somali pirate groups. JLF crews have met Somali counterparts on the Indian Ocean, where they have conducted training sessions and exchanges of information and ammunition. In several instances it appears that the JLF and Somali pirates have conducted joint attacks on vessels in that region and beyond. The JLF's strategy of long-range attacks, now spanning the Indian Ocean and including all the archipelagic triangle between Ceylon, Indonesia and India, is consciously modeled on the Somalis' long-range experience off the coasts of Africa and India.

20. Back in Mannar, Snow was deeply upset by Maoist Andrew's email and did not know how he would raise the necessary ransom funds. Snow started a web-based appeal for money, explaining his and Rock's story. Snow hoped to crowd-source at least some of the cash, a fact he conveyed on the internet. One other option for ransom money was the sale of *The Titanic*, which remained flagged as an Indian vessel but was moored in False Creek. Kiwi publishing made up their mind for disclosure and approached Snow with \$1.5 million advance and \$1.5 million post one lakh sale for the pre-publishing consent to the latest work of Rock with pseudonym Robber Gall Birth a fiction novel *The Ruckus Calling*, the first of a series that revealed a large number of NSA's classified documents. The release of novel is called the most significant leak in the media history by Hexagon Papers leaker Daniel Elsewhere. The documents revealed operational details of global surveillance programs run by the NSA and the other Five Eyes governments of the United Kingdom, India, United States, and Australia, with the cooperation of a number of sports, businesses and European governments. It revealed Internet surveillance programs such as PRISM, X Keyscore and Tempora, as well as the interception of India in European telephone metadata and social networking. The novel is based on the information Snow shared with Rock while Snow was employed by NSA contractor Boo All Ham. By the novel, Rock is publishing only one percent of the documents, with "the worst yet to come". JLF now realizes the worth of Rock and asked him to reveal all for them to be sold to international news corporations which Rock needles to Snow employed at CNN-IBN News network.

21. News of Snow's efforts to raise funds quickly came to the attention of the Office of the Foreign Exchange Management Agency (FEMA) and Reserve Bank of India (RBI), which took the position that payment of any part of the ransom to the JLF would "materially assist, sponsor or provide financial support" for terrorists, contrary to Indian and international law. FEMA and RBI was particularly concerned that proceeds from the sale of *The Ruckus Calling* and *The Titanic* would end up funding terrorists. On June 1, 2013 RBI therefore prohibited the sale of *The Titanic* to any party and issued a communiqué through the FEMA website about

private efforts to contribute to the ransom for Rock as contrary to the India and international law. Additional Solicitor General of India Mr. Sid Luth on behalf of Ministry of Home affair filled a writ petition in the Supreme Court of India to ban the publication of *The Ruckus Calling* immediately as it is dangerous to national and international security moreover particularly national order and international relations of India with other nations. The Supreme Court of India has imposed an interim ban on the publication and sale of all such contents in India and outsourcing abroad the same, and allowed MoH to file FIR against Snow & Rock. They are both charged under sections 3 and 4 of the Official Secrets Act, 1923, as well as section 124A of the Indian Penal Code, 1860. Subsequently Snow is arrested by the Indian Coastguard aboard *The Titanic* while he was moored at Mannar Islands bay. Zuk Mark the CEO of Lookbook Inc., Cost Lodick CEO Peeper Inc. sent a letter of condemnation to the President of India Mr. Jaata Dada for alleged illegal surveillance done into and through their social networking by global surveillance system to be stopped and dislodged immediately. President of Germany, France and Russia called the President of India Jaata Dada condemning global surveillance system and are holding an emergency meeting at Oslo to discuss formal action to be taken against India and the other countries involved.

Dispute Resolution

22. On the advent of downpour of legal problems Snow approached his Member of Parliament, Kiran Johar, for assistance. Kiran's office referred the matter to Ceylon's Department of Foreign Affairs and International Trade (DFAIT), which took up the issue in a series of meetings held between Ceyloni diplomats and officials of the Ministry of Home Affairs, India on June 10-12, 2013 at the Ceylon Embassy in New Delhi. Ceyloni officials described the matter as an issue of serious concern between the two countries, particularly since Ceyloni Foreign Minister, Kumar Senanayke, had repeatedly expressed strong support for both Same-sex rights and anti-terrorism efforts internationally. Media publications alleged that the charging of the duo and consequent arrest of the Snow exposed the Indian state's latent homophobia.

23. On July 8, 2013 Ceylon issued a Diplomatic Note to India asserting that India had incurred international responsibility because the Indian state first failed to grant Snow and Rock a marriage license, then commenced unwarranted actions against Snow and fund raising efforts through the Supreme Court of India, FEMA and RBI, while "the payment of a ransom is not contrary to international law, however, in arresting Snow the Indian state had violated the international law." The Ministry of Home Affairs, India conveyed the Indian response, also in the form of a Diplomatic Note, to Ceylon on July 12, 2013 in which it rejected the Ceyloni position. The Indian Note asserted that "every nation has the right under international law to establish pre-conditions for marriage as it sees fit, further, that India has exercised legitimate criminal jurisdiction". The Indian Note also observed that every country has the right to protect itself from terrorism and expressed the view that the actions of the honorable SC, RBI and FEMA in this pursuit were an appropriate response to imminent threats.

24. High-level diplomats from Ceylon and India met into late July 2013 in an effort to resolve the dispute. However, no agreement was forthcoming. Ceyloni officials then made it clear that Ceylon viewed the matters at issue as extremely serious and, accordingly, was prepared to take additional action, including blocking the business of the Regional-Trade Agreement (RTA) and SAARC summit, if the dispute was not adjudicated before a neutral tribunal. In light of both the threats of negative publicity surrounding Global Surveillance System and the JLF's demand, the two countries agreed in late August 2013 to submit this *Compromis* with pertinent legal questions to a special chamber of the ICJ for a binding decision.

25. Ceylon respectfully requests that this Court:

(a) DETERMINE that India's action to arrest Snow Boiling constitutes a violation of international law; and

(b) DETERMINE that India's blocking of sale proceeds of *The Ruckus Calling* and sale of *The Titanic* constitutes a violation of international law.

26. India respectfully requests that this Court:

(a) DETERMINE that India's action to arrest Snow Boiling is consistent with international law; and

(b) DETERMINE that India's blocking of sale proceeds of *The Ruckus Calling* and sale of *The Titanic* is consistent with international law.

27. Both Ceylon and India agree that all standing and exhaustion requirements are met for the Court to proceed to the merits of this case. Ceylon and India further agree that the ICJ is a proper venue for resolving the fate and questions. In addition, Ceylon and India have agreed to take no further action to enforce their positions with respect to this dispute pending the outcome of this case. Finally, both Parties have agreed to fully and immediately implement whatever decision the ICJ renders in this case.

Signed this 28th day of February 2014 in New Delhi

/S/

Kumar Senanayke

Minister of Foreign Affairs, for Ceylon

/S/

Babu Betiya

Minister of Foreign Affairs, India

*. For the purposes of the moot, you may assume that Snow Boiling is at all times a Ceyloni citizen with authorization to remain in India for the period outlined in the *Compromis*. You may also assume that Rock-n-Rolling is at all times an Indian citizen with authorization to remain in Ceylon for the period outlined in the *Compromis*.
