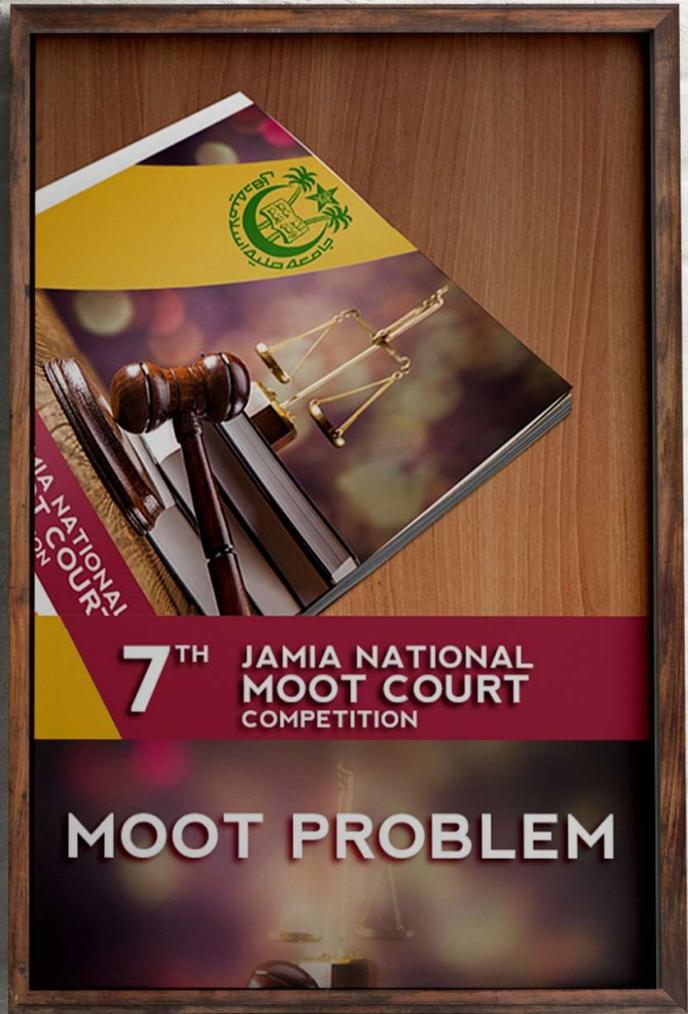




ORGANISED BY
FACULTY OF LAW
JAMIA MILLIA ISLAMIA
NEW DELHI
110025





IN THE SUPREME COURT OF OZ

[PETITION UNDER ARTICLE 139-A OF THE CONSTITUTION OF OZ]

PARRY HOTTER & ORS. v. STATE OF KRONOS

[Cr. App. No. 221-226 of 2016 from the High Court of Kronos]

Along-With

DLBUS AUMBLEDORE v. UNITED STATES OF OZ

[W.P. No. 08 of 2016 from the High Court of Hogsmeade]



The United State of Oz [Hereinafter USO] is one of the leading developing countries in South Asia. It achieved its independence from the British on 15th August 1947, which also resulted in the creation of Union of Draco Socialist Republics [Hereinafter UDSR]. The United State of Oz recently attained the top spot as the world's largest economy with the GDP worth 2073 billion US dollars. It is a “sovereign socialist secular democratic republic” and is a union of 30 constituent states. State of Kronos, which is one of the 30 states which constitute USO, is the capital city and the State of Hogsmeade is unofficially considered as USO's financial capital. The majority population in USO, called the Rumees (79.80%), follow the religion of Rumi while the Illahees, which are the second largest religious ethnicity (14.23%), follow the religion of Din-i-Illahi. There is a history of communal clashes between the two groups, particularly at the time of the division of the country. Since independence there has been a huge proliferation of communal violence in USO. There have also been reports by leading international organisations regarding the insecurity suffered by religious minorities in USO. In 2015, the Forum for International Religious Freedom [Hereinafter FIRF] placed USO at 96th rank in its Annual Religious Tolerance Index [ARTI].

The Union of Draco Socialist Republics [Hereinafter UDSR], which shares a 100 mile border on its southern side with USO, is another developing country in the same region. The majority population in UDSR is Ilahees (90%) while as Rumees are a minority community (8.3%). The condition of minorities in UDSR is worse than the condition of minorities in USO. UDSR's ARTI ranking for 2015 was 159. Post independence, a dispute arose between USO and UDSR over a part of the territory [now the State of Kammu and Jashmir (K&J)] over which both the nations claim sovereignty. As of now, the entire territory of the State of K&J is under the sovereignty of USO. K&J was the only state in USO where Ilahees were in majority. The two countries have a deep history of unfriendly relationship with each other and have fought two wars. Both countries blame each other for funding and facilitating cross-border terrorism.

The tension between the two countries reached a new level after Achhe Din Janta Party [Hereinafter ADJP], a right-wing political party, came to power in USO in 2014. One of the first decisions made by the new government was to review the foreign relation policy of the previous government, particularly in relation to UDSR. The new government adopted a tough foreign policy in relation to UDSR and the new Prime Minister of USO, Mr. T.M. Riddle, clearly stated that there will be zero tolerance towards terrorism. One of the many such policies was USO foreign policy 420 which created a colour coded degree system for grant of visa to foreigners travelling to USO [See *Annexure I*].



On 5th March 2015, the National Investigation Agency [NIA] of USO informed different authorities about a possible terrorist attack in the State of Kronos. All governmental agencies were asked to tighten security, particularly at governmental institutions, airports, railway and metro stations. Such security measures were accordingly taken. On 12 March 2015, three bomb blasts took place at different locations in the State of Kronos. At least 400 people lost their lives and more than 1200 were injured. This was one of the worst terrorist attacks on the country and the whole nation was shocked. At 8:00 p.m. local time, Mr. Riddle addressed the nation and promised swift action against everyone involved in the incident. Some excerpts from his speech are as follows:

“My dear countrymen, brothers and sisters, it is a moment of great loss and tragedy for this country. The whole nation stands with the families who have lost their loved ones and with those who were injured in this cowardly attack.....

I make this promise to you that everyone involved in this incident will be punished. We all know who is responsible for these attacks. It is high time we start to tackle this problem using more aggressive techniques and approaches. It is time that we teach these cowards a lesson. No one is above this country. Jai Oz”

The investigation was handed to National Investigation Agency. The forensic evidence from the blast sites revealed that all the bombs were IEDs and Ammonium Nitrate was one of the chief ingredients used in them. It was also revealed that black bags were used to transport and hide the bombs. The NIA was able to make the first arrests on 20th March 2015. The NIA arrested Jom Terry, Hom Tanks and Saylor Twift from Hatla Bouse area of Kronos and brought them in for interrogation. All three of them were Oz citizens and belonged to the State of Kammu and Jashmir. The house from where they were arrested belonged to Jom Terry, a businessman by profession. He owned a large scale Ammonium Nitrate based fertilizer manufacturing industry, Olivander Fertilizers Pvt. Ltd. [OFPL], which was located in the State of K&J. Hom Tanks worked as an Assistant Manager in OFPL and handled most of the business including the arrangement of Ammonium Nitrate for the industry. Saylor Twift was Mr. Terry’s cousin sister who was a 3rd year law student at Faculty of Law, Kronos University. She was very vocal about Jashmir’s right to self-determination and ran a blog titled “shackled-valley”. A large number of blog-posts reflected her separatist ideology with references to how it was justified to use violence as a response to extreme cases of human rights violations.



After their arrest, all three accused were detained in a special prison at NIA headquarters. Each of the accused made statements under Section 161 of the Ozian Criminal Procedure Code, 1973 whereby all of them pleaded innocence. However, with a little convincing by the Inspector in charge of the investigation, Ms. Twift agreed to a narco-analysis test. The police claim that Ms. Twift was informed about her right to have a lawyer during the narco-analysis test and she waved off the same. The police further claimed that she stated that being a law student she was aware of her rights and did not require any legal representation.

She was subjected to a narco-analysis test on 6th April 2015. There was no lawyer present during the process and nor was the video recorded for the same. According to the police, the story revealed by her during the narco-analysis test ran contrary to her statement under section 161 of the Ozian Criminal Procedure Code, 1973. On the basis of the preliminary information gathered by the NIA, primarily through the narco-analysis test, it became evident that three foreign diplomats, working at the UDSR embassy in USO, were directly involved in the bombing incident.

Pursuant to this, the Government of Oz sent a diplomatic note to the government of UDSR on 21st April 2015, making a formal request to question the three diplomatic agents, Mr. Parry Hotter, Mr. Won Reasley and Ms. Germione Hranger, regarding the bomb blasts. The diplomatic note also suggested that due to the nature of the terrorist attack, the Government of Oz would have to take extreme measures if the Government of UDSR would not co-operate. However, the UDSR government denied such permission stating that three agents enjoyed diplomatic immunity under international law and any breach of the same would result in serious diplomatic consequences.

The UDSR Government also asked the Government of Oz to share the evidence against the three agents. They assured the USO Government that after considering the evidence, appropriate criminal action would be taken against the agents in accordance with the UDSR laws. The Prime Minister of UDSR, Mr. Sawaz Nharif, said that while UDSR was deeply saddened by the terrorist attack on USO and was ready to assist and co-operate with USO's investigation agencies, his Government would not allow or tolerate any kind of legal action against their diplomatic agents residing in USO.



On 5th May 2015, the NIA received an anonymous tip about an industrial unit on the outskirts of Kronos where the bombs could have been possibly assembled and made. The NIA cordoned off the area and conducted a thorough search of the industrial unit. The NIA found a stockpile of tools and instruments used to make IEDs including traces of Ammonium Nitrate. On further investigation, it was found that the industrial unit was owned by a bankrupt fertilizer company [Nwet Schamander Fertilizers Private Ltd. (NSFPL)] which had stopped its operations in 2010. However, the investigation also revealed that NSFPL had purchased the unit from OFPL in 2005 and that OFPL owned 13% shares in NSFPL at the time when bankruptcy was declared.

On 7th May 2015, the NIA team, investigating the matter informed the Government that the evidence gathered by them from Mr. Terry's house in Kronos and in State of K&J, his factory office in K&J, NSFPL industrial unit and some other places highlighted that the terrorist incident was part of a conspiracy in which the above-mentioned three agents were directly involved. The team also informed the Government that there was a possibility that the conspiracy to commit the terrorist act was hatched and planned at the UDSR embassy and that the funds for its execution may have very well been provided by the three diplomatic agents. This information was somehow leaked to the press and whole nation was demanding that the culprits, domestic as well as foreign, be prosecuted and punished.

Large number of protests took place across USO regarding the failure of the Government to bring the actual perpetrators to justice. On 20th May 2015, the protests took a violent turn when a huge crowd attacked the UDSR embassy in Kronos. The law enforcement agencies were able to disperse the crowd and there was no damage to life or property. On 25th May 2015, a large number of attacks took place against Jashmiris residing in State of Kronos. A national level student organisation by the name Whole Oziarhi Student Assembly [WOSA] took responsibility for the attack. The organisation also released a video which said that it will continue to attack these "terrorist Jashmiris" and asked for popular support. The next three days saw a rise in attacks not only against the Jashmiris but against some non-Jashmiri Ilahees as well. The situation soon got worse and there was an apprehension of full scale communal violence in the State of Kronos. The Government of USO decided to sever all diplomatic ties with UDSR and re-called its ambassador and other diplomatic agents from UDSR.



On 24th June 2015, the Government of USO sent another diplomatic note to the Government of UDSR informing them of its decision to arrest, detain and investigate the abovementioned diplomatic agents. The NIA was asked to get an arrest warrant against Mr. Parry Hotter, Mr. Won Reasley and Ms. Germione Hranger. The same was received on 29th June 2015. Pursuant to the same, a special team of the NIA arrested Mr. Parry Hotter, Mr. Won Reasley and Ms. Germione Hranger at the Gndira Iandhi International Airport, Kronos while they were trying to leave the country. The order of the Government also provided that in case there was sufficient evidence against Mr. Parry Hotter, Mr. Won Reasley and Ms. Germione Hranger, the competent authorities were authorised to prosecute them in accordance with the laws of USO. The subsequent investigation revealed that there was enough evidence to prosecute all the six people. Mr. Hotter, Mr. Reasley and Ms. Hranger were arrested again and held in the same jail as Mr. Terry, Mr. Tanks and Ms. Twift. The NIA subjected their SIM cards to SBMTT software and the same placed Mr. Terry and Mr. Tanks at areas near the NSFPL industrial unit. The software also revealed that the frequency of visits were maximum in the month of February 2015. However, the software also revealed that visits were also made in December 2014 and January 2015. When asked as to why they frequently visited the area, they referred to a humanitarian project that the UDSR embassy had undertaken with the permission of USO Government. The documents related to the project revealed that the UDSR embassy was in fact given the permission to conduct a humanitarian relief project in the area. The documents also revealed that the deadline for finishing the project was August 2015. A background check on Mr. Hotter and Mr. Reasley also revealed that both of them had a Masters degree in chemical engineering.

On, 1st September 2015, the Government constituted a special criminal court to hear the matter (Criminal Case No. 12 of 2015) and Mr. Knowall Goswami was appointed as a special public prosecutor. The charge-sheet was filed on 5th September 2015 and Mr. Hotter, Mr. Reasley, Ms. Hranger, Mr. Terry, Mr. Tanks and Ms. Twift were named as accused. The accused were charged for different offences which are detailed as follows:



Accused No.	Name of the Accused	Offence Charged With
1.	Ms. Saylor Twift, D/O Jack Twift , R/O 123 Nebula Road, Dalbazar, State of K&J, USO	<ul style="list-style-type: none">• Conspiracy to Wage War against the Government of USO;• Criminal Conspiracy to Commit Murder;• Abetting the Waging of War against the Government of USO;• Section 13 of the UAPA, 1967.• Conspiracy to Cause Explosions punishable under the Explosive Substance Act, 1908.
2.	Mr. Hom Tanks, S/O Lom Tanks, R/O 17 Godric Hollow, State of K&J, USO	<ul style="list-style-type: none">• Conspiracy to Wage War against the Government of USO;• Criminal Conspiracy to Commit Murder;• Abetting the Waging of War against the Government of USO;• Section 13 of the UAPA, 1967.• Conspiracy to Cause Explosions punishable under the Explosive Substance Act, 1908.
3.	Mr. Jom Terry, S/O Phill Terry, R/O 221 Burrow, State of K&J, USO	<ul style="list-style-type: none">• Conspiracy to Wage War against the Government of USO;• Criminal Conspiracy to Commit Murder;• Abetting the Waging of War against the Government of USO;• Section 13 of the UAPA, 1967.• Conspiracy to Cause Explosions punishable under the Explosive Substance Act, 1908.



4.	Parry Hotter, S/O James Hotter, R/O 11-Knocturen Alley, UDSR	<ul style="list-style-type: none">• Conspiracy to Wage War against the Government of USO;• Collecting Arms with the Intention of Waging War against the Government of USO;• Abetting the Waging of War against the Government of USO;• Criminal Conspiracy to Commit Murder;• Criminal Conspiracy, Common Intention and Abetment to Commit Murder;• Section 13 of the UAPA, 1967.• Conspiracy to Cause Explosions punishable under the Explosive Substance Act, 1908.
5.	Ms. Germoine Hranger, D/O Lucifer Hranger, R/O 72-Diagon Alley, UDSR	<ul style="list-style-type: none">• Conspiracy to Wage War against the Government of USO;• Collecting Arms with the Intention of Waging War against the Government of USO;• Abetting the Waging of War against the Government of USO;• Criminal Conspiracy to Commit Murder;• Criminal Conspiracy, Common Intention and Abetment to Commit Murder;• Section 13 of the UAPA, 1967.• Conspiracy to Cause Explosions punishable under the Explosive Substance Act, 1908.



6.	Mr. Won Reasley, S/O Arthur Reasley, R/O 23 – Pablo Alley, UDSR	<ul style="list-style-type: none">• Conspiracy to Wage War against the Government of USO;• Collecting Arms with the Intention of Waging War against the Government of USO;• Abetting the Waging of War against the Government of USO;• Criminal Conspiracy to Commit Murder;• Criminal Conspiracy, Common Intention and Abetment to Commit Murder;• Section 13 of the UAPA, 1967.• Conspiracy to Cause Explosions punishable under the Explosive Substance Act, 1908.
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On 25th September 2015, Mr. Parry Hotter, Mr. Won Reasley and Ms. Germione Hranger filed a writ petition in the High Court of Kronos challenging the validity of the order of the Government to arrest and prosecute them. The High Court stayed the trial and ordered the immediate release of the petitioners on the ground that they *prima facie* enjoyed absolute immunity against arrest and detention in accordance with the principle of “personal inviolability” under Article 29 of the Vienna Convention on Diplomatic Relations, 1961. However, the court ordered the petitioners not to leave the country till the writ petition was finally disposed off by the court. At the final hearing, it was argued by the petitioner before the High Court that the Oz law enforcement agencies had no authority to arrest and investigate them and even the courts did not have the jurisdiction to prosecute and convict them.



Moreover, it was also argued that assuming that a conspiracy took place, the evidence suggests that same may have happened within the UDSR embassy and therefore happened on foreign soil. It was argued that the only authorities who would have jurisdiction over the case were the UDSR authorities. It was also argued that the only place where they could be prosecuted for the alleged offence was UDSR. They argued that the failure of the Oz Government to guarantee diplomatic protection under the Vienna Convention on Diplomatic Relations, 1961 [Hereinafter VCDR, 1961] and the decision of the Government to prosecute them violated their right to life guaranteed under Article 21 of the Constitution. The Attorney General of Oz argued that the nature of offences was such that the High Court had to read down the provisions of diplomatic immunity in terrorism cases. It was argued that the diplomatic immunity of the petitioners was dissolved due to the nature of the offences committed by them. It was argued that the offences fell within the category of “*jus cogens*” norms of international law and by prosecuting the accused the State was actually fulfilling its responsibility under international law and not violating it. He also argued that the international obligations of the USO in relation to prevention of terrorism weighed over the ones required in relation to diplomatic immunity.

The High Court dismissed the writ petition on 23rd December 2015. Agreeing with the Attorney General that terrorism was a serious problem, particularly in USO, and that the duty to fight the same was a responsibility under the “*jus cogens*” norm, the court ruled that same resulted in the dilution of diplomatic immunity granted under VCDR, 1961. Aggrieved by the decision of the High Court, Mr. Hotter, Mr. Reasley and Ms. Hranger filed an appeal before the Supreme Court of Oz on 6th January 2016 [Parry Hotter & Ors.v. State of Kronos (Miscellaneous Appeal No. 120 of 2016)]. The SC dismissed the appeal and the relevant portion of the judgment is provided in *Annexure 2*. All the subsequent review petitions and associated Special Leave Petitions against Miscellaneous Appeal No. 120 of 2016 were also dismissed on similar grounds and the trial court was asked to proceed with the trial.

The special court found that there was sufficient evidence to prosecute all six accused and thereby took the cognizance of the matter on 10th March 2016. Due to security reasons the trial was conducted inside the Faansi-ka-fanda prison. During the trial, the Special Public Prosecutor introduced as many as 36 witnesses and other oral, documentary and electronic evidence to establish the guilt of the accused. He introduced photographs retrieved from different sources. The details of the picture are provided in *Annexure 3*.



Mr. Rahul Pappu [PW-03], who sold newspaper and magazines outside the UDSR embassy, gave testimony that he saw Ms. Germione Hranger and Ms. Saylor Twift frequently visiting the nearby Rard Hock Cafe. However, while he had seen them visiting the place on same days, he had never seen them entering or leaving together. Mr. Chhapan'ki Chhati [PW-05], manager of Rard Hock Cafe, gave testimony to the fact that he had seen Ms. Germione Hranger and Ms. Saylor Twift interact with each other inside the Cafe, but only for a few minutes. However, he had never seen them sitting at the same table. The Special Public Prosecutor also introduced CCTV camera footage from the Rard Hock Cafe which shows Ms. Germione Hranger going into the washroom and Ms. Saylor Twift following her after 3 minutes. The footage also showed them leaving the washroom together.

The Special Public Prosecutor also submitted the "Ammonium Nitrate sale and purchase records" of OFPL for the last 5 years [2011-2015]. The purchases of Ammonium Nitrate in 2011, 2012 and 2013 happened in the month of June. However, in case of 2014 it happened in February and in case of 2015 it happened in January. The records also showed variance in the amount of Ammonium Nitrate purchased every year. It was same in 2011 and 2012 [100 tonnes]. It was increased to 120 tonnes in 2013 and to 150 tonnes in 2014. However, OFPL purchased 350 tonnes in 2015. Moreover, OFPL's annual profit sheet showed that 2014 and 2015 were the most profitable years.

The Special Public Prosecutor also introduced CCTV recordings from one of the Metro Stations located in State of Kronos (Cajiv Rhowk Metro Station). The recording showed Parry Hotter, Germino Hranger and Won Reasley entering the station together and separating after buying the tokens. Each of them was carrying a heavy black bag. The other recordings showed the accused boarding different trains which all led to places where the bomb blasts took place. The CCTV recordings were dated 12.03.2016 and showed events between 9:30 a.m. to 10:15 a.m.

The defence counsels for the accused challenged the evidence vehemently. They argued that the digital photographs and video recordings submitted by the prosecution did not satisfy the tests of admissibility and authenticity under the relevant provisions of evidence law. It was also argued that the sale and purchase record of the company had to be read with its profit records. With the increase in profits the company expanded its business and therefore there was an increase in the amount of Ammonium Nitrate. They also argued that the increase was not only in relation to Ammonium Nitrate but in relation to other ingredients used in the manufacture of fertilizers. Moreover, there were too many loopholes in the prosecution's story that created reasonable doubt regarding the involvement of the accused.



After hearing the evidence introduced against the accused, the trial court convicted all the accused. And after balancing the mitigating and aggravating factors, the court came to the conclusion that the case fell within the rarest of the rare doctrine as highlighted by the Supreme Court of Oz in *Bachan Singh v. State of Punjab* and sentenced all the accused to death. On 18th March 2016, all the accused filed an appeal against the conviction and the sentence in the High Court of Kronos [Criminal Appeals No. 221-226 of 2016]. The main arguments taken by the accused were as follows:

1. That there was not sufficient evidence to establish guilt beyond reasonable doubt.
2. That the doctrine of rarest of rare case laid down by the Supreme Court in *Bachan Singh v. State of Punjab* was no longer a good law and had to be revisited. And that death penalty as a form of punishment was unconstitutional. To this effect, the petitioners relied heavily on the dissenting opinion of Justice P.N. Bhagwati in *Bachan Singh* case and on a lot of other extensive literature from USO and abroad.
3. That the judgment of the Supreme Court in *Parry Hotter & Anr. v. State of Kronos* (Miscellaneous Appeal No. 120 of 2016) was *per incurium* and needs to be reconsidered for following reasons:
 - a. That the division bench of the Supreme Court which heard the matter should have referred the same to a higher bench;
 - b. That the Supreme Court failed to realise that it did not have the authority to apply or interpret international law directly;
 - c. Assuming that it did have the authority to do so, it still failed to apply VCDR, 1961 correctly. The Supreme Court's failure to go into the history and context of VCDR, 1961 as well as the accepted international state practice regarding the same renders its' decision legally unsound.
 - d. That the *in limine* dismissal of the subsequent petitions by the Supreme Court and therefore its' failure to review the issues related to diplomatic immunity should also be taken into account before accepting the case as a binding authority.



While the High Court of Kronos was considering this matter, Prof. Dibus Aumbledore, who had been a class mate of Ms. Germione Hranger, and was the Director of Centre for Death Penalty at Hogwarts University of Juridical Science, Hogsmeade [HUJS] filed a Public Interest Litigation [W.P. No. 630 of 2016] in the High Court of Hogsmeade challenging the constitutionality of death penalty in the High Court of Hogsmeade. He argued that the case of *Bachan Singh v. State of Punjab* was decided long back and a lot of things have changed since then. He particularly relied on the 2016 Death Penalty report of NLU Kronosto highlight the inhumane and degrading treatment, particularly the ineffective representation that the death penalty convicts receive. He also placed reliance on a lot of foreign and international material to argue his point. Agreeing with Prof. Dibus Aumbledore that the case of *Bachan Singh v. State of Punjab* needs to be reconsidered and the matter of Death Penalty revisited, the High Court referred the matter to the Supreme Court.

The Attorney General of India asked the Supreme Court to withdraw Criminal Appeals No. 221-226 of 2016 from the High Court of Kronos and club them with Aumbledore's PIL [W.P. No. 630 of 2016] reference from the High Court of Hogsmeade and to dispose them off itself.

Realising that the matter involved substantial questions of law, the Chief Justice of Oz constituted a constitution bench to hear the matter. Following issues were raised to be considered by the bench with the permission to deal with any other issue that may arise during the consideration of the matter:

1. Whether the constitutional courts of Oz (the High Courts and the Supreme Court) can directly interpret and apply international law to determine legal rights and duties of interested parties?
2. Assuming that is so, whether the decision of the division bench of the Supreme Court in *Parry Hotter & Ors. v. State of Kronos* (Miscellaneous Appeal No. 120 of 2016) is legally sound and whether the disregard of the diplomatic immunity of Mr. Parry Hotter, Won Reasely and Germione Hranger by the Government of USO violates Article 21 of the Ozian Constitution?
3. Whether the decision of the lower court convicting all the accused in Criminal Case No. 12 of 2016 correct?
4. Whether *Bachan Singh v. State of Punjab* is *per incurium* and needs to be reconsidered and overruled?
5. Assuming that is so, whether death penalty as a form of punishment violates Part III of the Constitution?



INSTRUCTIONS

1. Looking at the nature and importance of the issues involved, the Supreme Court has given the parties the liberty to raise additional grounds/issues (if they want to) even if such grounds/issues were not raised before any other court.
2. Following things are *pari materia* to Indian Law:
 - a. The Constitution of Oz to the Constitution of India.
 - b. The laws of Oz to the laws of India.
 - c. The decisions of the Supreme Court of Oz to the decisions of the Supreme Court of India.
 - d. The reports of the NGOs, Governmental Commissions (including the Law Commission) and all Committees of Oz to those of the NGOs, Governmental Commissions and Committees of India.
 - e. The statistical data regarding the capital punishment cases in Oz is similar to that of India. NLU, Delhi is to be regarded as NLU, Kronos. The 2016 Death Penalty Report of the Center for Death Penalty, NLUD is to be treated as research work done in relation Oz with following difference:
 - i. The data related to New Delhi in the report will be treated as data related to State of Kronos.
 - ii. The data related to State of Maharashtra will be treated as data related to State of Hogsmeade.
 - iii. The data related to State of Jammu and Kashmir will be treated as data related to State of Kammu and Jashmir.
3. The USO is a signatory to all the treaties to which India is a signatory. Moreover, the USO has ratified all those conventions and treaties which Union of India has ratified. This will include everything from International Conventions, Treaties, Protocols, Declarations, Proceeding and Resolutions of every UN as well as Non-UN agency up to the date on which the Supreme Court will consider the matter (i.e. up to the date of hearing).
4. The question of “domestic application of international law” has been deliberately raised so as to force the Supreme Court to consider this question properly. The scholars in India and abroad are divided on the question of “dilution of diplomatic immunity in serious crimes” and the participants are expected to refer to extensive literature (including authoritative article and books) so as to convince the court to take a proper legal stand on the same.



5. The challenge to the case of *Bachan Singh v. State of Punjab* [1980 (2) SCC 684] is also deliberate. While arguing the reconsideration of this case as well as that of the death penalty as a legitimate form of punishment, the participants are expected to refer to extensive literature and should not restrict themselves to precedents alone.



Annexure 1

MINISTRY OF EXTERNAL AFFAIRS
GOVERNMENT OF UNITED STATES OF OZ
FOREIGN POLICY 420 DATED 08TH DECEMBER 2014

In order to fulfil its mandate on preventing cross-border terrorism, the Government of USO hereby declares the following colour-coded degree system for the grant of visas:

S. No.	Code	On-Arrival Visa	Time-Period	Countries
1	Green	Yes	Not Applicable	USA, Canada, Members of the European Union.
2	Yellow	No	Between 1-2 months	All countries other than those mentioned in S.No. 1 and 3.
3	Red	No	Between 5-7 months	Pakistan, UDSR, Saudi Arabia, Afghanistan, Russia, Iran, Iraq, UAE.



Annexure 2

Portion of Judgment Dealing with Miscellaneous Appeal No. 120 of 2016

“52. Two essential points have been raised by the counsel for the appellants. Firstly, that the High Court did not have the jurisdiction or the authority to interpret VCDR, 1961 so as to determine the nature of rights guaranteed to foreign diplomats or the duty imposed on the government of USO. The only authority that the High Court had was to apply the provisions as they are. The decision of the High Court to go ahead and dilute to nature of immunity was beyond its’ jurisdiction. Secondly, the counsel argues that even if the High Court did have such authority, it still failed to realise that the nature of immunity guaranteed against arrest, detention and prosecution under the VCDR, 1961 is absolute. The counsel has relied upon a lot of jurisprudence and has particularly relied upon the decisions of the International Court of Justice to argue that VCDR, 1961 does not provide for any exceptions even in extreme circumstances. In relation to the first point the Attorney General of India has argued that there is no bar on the constitutional courts in Oz which prevents them from referring to, or interpreting or applying international law. He referred to a lot of cases where the constitutional courts of Oz have actually engaged in such practice. In relation to the second issue, the Attorney General has reiterated the arguments which were raised before the High Court. He argued that the international obligation to prevent terrorism is greater than the one to guarantee diplomatic immunity. In case of conflict between two obligations, preference needs to be given to international law on terrorism.

53. As far as the first issue is concerned, we cannot agree with the counsel for the appellants. As and when an international convention is ratified by the competent authority in USO, it becomes the law of the land to the extent that it is not in conflict with the domestic law. In this regard, a reference can be made to the Paquete Habana case [175 U.S. 677 (1900)] decided by the U.S. Supreme Court whereby the court stated that as an when the ratification of a treaty is secured, the same become the law of the land.



The constitutional courts (including the High Courts') therefore have the authority to interpret the same. Our courts have frequently relied on international law and interpreted the provisions of treaties and conventions for domestic purposes. However, there are cases where the judges have been sceptical about doing the same. The unfortunate result of the same is that we now have conflicting judgments on this issue. We do hereby want to set the record straight and declare that as and when we ratify a treaty or a convention, same becomes the law of the land and the constitutional courts have the authority to apply the same directly.

54. As far as the issue of interpretation of Article 29 of VCDR, 1961 is concerned, we cannot again agree with the counsel for the appellant. While appreciating that Article 29 codifies an internationally established practice regarding diplomatic immunity and that any digression from the same would set a very dangerous precedent, we have to interpret the provisions in the light of the recent developments as well as according to the context of our country. The position related to "global terrorism" is not same as it was in 1961. A lot has changed since then and more so after the 9/11 incident. Our country has a long and bloody history with "terrorism". For a very long period of time we have suffered at the hands of cross-border terrorism with very limited options available to counter the same at domestic level.

55. The fight against terrorism has to be fought at every level. Our armed forces should not carry the burden of fighting terrorism alone. It is the responsibility of every Indian and every governmental institution to effectively contribute to the fight against terrorism. The judiciary should also share this burden and it should co-ordinate with other law enforcement agency to ensure that those responsible for terrorism are punished in accordance with due process of law. Keeping this in mind, we believe that we owe it to the people of this country to send a message through this judgment that those who threaten the integrity and sovereignty of USO will not be able to escape punishment on technicalities like diplomatic immunity. We place particular reliance on Article 41, paragraph 1 of the VCDR, 1961 which states that "without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State".



56. An additional factor to read down or dilute the absolute nature of diplomatic protection is the obligation of the international community, including USO, to prevent terrorism. This obligation itself is laid down in different international treaties and conventions.

57. The incident, which resulted in heavy casualties, shook the entire nation and if we do not find out and punish the people responsible for the same, we as a society will never heal. We are not saying that the appellants are guilty. That is not our job. However, we are concerned that if we let them go we may never be able to find out. We do owe a duty to the people of this country and to our constitution to uphold the rule of law and to ensure proper administration of criminal justice. Terrorism cases need to be treated differently and should at the same time be subjected to highest standards of evidence. The collective conscience of the society will only be satisfied if the alleged offenders are prosecuted and then properly punished (if found guilty). The challenge to the unity, integrity and sovereignty of Oz by these acts of terrorists and conspirators, can only be compensated by making sure that no one responsible for the same escapes trial, sentence and punishment.

58. Therefore, while the principles of 'personal inviolability' and 'absolute prosecutorial immunity' are the rule, their dilution in the terrorism cases is the exception.

59. We also hold that there is no violation of Article 21 of the Constitution of Oz. The judgment of the High Court is upheld and the prosecution of the appellants to continue. No order as to the costs."

Dated: 23rd February 2016

Justice Rubeus Hagrid

Justice Olympe Maxime



ANNEXURE 3

PHOTOGRAPHIC EVIDENCE UNDER OZIAN EVIDENCE ACT, 1872 AND RELEVANT CASE-LAW

PHOTOGRAPH SERIAL NUMBER	DESCRIPTION	SOURCE
PSN - 1	Shows the six accused holding hands and standing in front of a seminar banner which states:“Five Day Seminar on Political, Legal and Constitutional Issues related to Kammu and Jashmir” organised by the Research Division of UDSR Embassy from 10 th November 2014 to 15 th November 2014 [Hereinafter 2014 Seminar]	Parry Hotter’s Laptop
PSN - 2	Shows Parry Hotter, Won Reasley and Hom Tanks in conversation with the chairman of All K&J Liberation Front [AKJLF], Mr. Masin Yalik at the 2014 Seminar.	Parry Hotter’s Laptop
PSN - 3	Shows the selfie of Ms. Hranger and Ms. Twift at the 2014 Seminar.	Ms. Twift’s Facebook Page.



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PSN - 4	Shows Ms. Twift as one of the panel members at the 2014 Seminar. It also shows Mr. Hom Tanks as moderating the same panel.	Website of UDSR's Embassy in USO.
PSN - 5	Shows a still picture of the video recording from Rard Hock Cafe. The date and the time stamp on the picture is 5.01.2015 at 4:30 p.m.	Evidence collected by the Investigation Agencies.