CHAPTER- I

INTRODUCTION
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1.1 Background of the Research Proposal

The law of the sea including maritime delimitation law, is one of the oldest areas of international jurisprudence. Although its origins date back to Roman times, maritime delimitation law has traditionally been ill-defined and poorly documented. Historically, usage of the world’s oceans operated on the unwritten principle of ‘freedom of the seas’ which provided unrestricted access for the common activities of fishing and navigation. In the seventeenth century, the ideology of a ‘closed sea’ was developed. Also referred to as ocean enclosure, the closed sea regime proposes to the creation of property rights for a particular area of ocean. Within a defined area, the so-called owner would have the right to ban usage and access by others. The closed sea approach was widely supported by countries such as Britain and Spain who wished to extend their empires. But the adoption of such a closed sea regime represented a real threat to trading companies who were natural supporters of freedom of the seas. In 1608, the Dutch scholar Hugo Grotius, an employee of the Dutch East Indies Company, penned ‘Mare Liberum’ (The Freedom of the Seas). Grotius’ work codified the generally accepted principle of freedom of the seas, giving everyone equal and unrestricted access to the oceans and to the resources they contained. The freedom of the seas philosophy eventually widely accepted. The only restrictions to the extent of that freedom of seas was applied to a narrow band of water adjacent to a nation’s coastline within which sovereign jurisdiction by the adjoining nation was granted. The breadth of this strip of sea (referred to as the
The principles of Grotius’ work formed the basis of international maritime law for the following three and a half centuries. While *Mare Liberum* contained some flaws, many of its basic principles remained relevant into the twentieth century. However, the rapid technological development that then occurred created the need to comprehensively define a modern law of the sea.

Maritime boundary delimitation in international law is of great importance to those coastal States whose coasts are opposite or adjacent to each other. This importance is reflected in the increasing complexity of practical delimitation. In this regard, equity has played a very important role in the settlement of maritime delimitation disputes. Delimitation means amputation. Delimitation consists in drawing a demarcation line, a boundary, between two neighbouring States when the geographical situation does not allow both the parties concerned to enjoy their title to its full extent. The essence of delimitation remains very simple: the delimitation process operates within a general movement away from certainty and towards flexibility, not only in the application of the rules of delimitation but also in their very content. Whilst such flexibility enhances the possibility of achieving an equitable solution, it also causes the subject to become shrouded in confusion and open to the charge of straying towards subjectivity. Nevertheless, delimitation is the product of equity operating within a legal framework that embraces flexibility in order to enhance equitability, not to detract from it.

The sea covering five-seventh of the globe has been used traditionally for fishing and for navigation. Traditionally, the coastal State enjoyed exclusive
jurisdiction only a small belt of territorial sea along its coastline justified mainly on grounds of security. Their fishing interests led to the extension of the breadth of the territorial sea or to the claims for a fishery zone beyond the territorial sea. The discovery of petroleum and gas underneath the submarine areas beyond the territorial sea, and the development of technology to recover it by vertical and directional drilling from the sea, led to the emergence of concept of the continental shelf, claims to which were based first on discovery and effective occupation and later on the doctrine that the continental shelf was the natural prolongation of the land territory of a coastal State under the sea.

In maritime delimitation, the main question involved is, determination of limits between the jurisdiction and maritime rights of neighbouring States with opposite or adjacent coasts. The need for delimitation has existed ever since the territorial sovereignty of the coastal State was extended beyond its land territory and so called internal waters, over an area of adjacent sea known significantly, as the territorial sea.¹ But the maritime limits of three, six or twelve miles thus generated collided very less often and the difficulty caused by such a collision was easier to resolve than maritime limits extending great distance from the coasts. This reveals that maritime delimitation today is related to its magnitude which is unknown previously.

1.2 Importance and Need of the Research:

The subject maritime boundary and its delimitation had been neglected in international law. The lack of legal concern to delimit the boundaries is mainly

attributable to the fact that the seabed and subsoil have no human population, warranting legal control and they contain valuable resources which did not come within human control until recent times.

Since 1954, the subject has assumed greater and sensitive importance with the acquisition by a coastal State of sovereign rights and specific jurisdiction over its continental shelf, the exclusive economic zone and other maritime zones that is, in respect of marine and submarine areas beyond a narrow belt of territorial sea along its coasts. Maritime boundary may now extend to large distances from the coasts and involve questions of resources namely fisheries, petroleum, gas, minerals, energy and other aspects of the uses of the sea including marine scientific research and preservation of marine environment. As a result, the subject has grown into prominence.

Maritime Boundaries are as sensitive and as intensely disputed as boundaries on land. Maritime Boundaries and limits are closely connected with the ownership of valuable resources and coastal state jurisdiction over foreign shipping. There are numerous Maritime Boundary Disputes particularly in Continental Shelf Delimitation between states with opposite or adjacent coasts, some of which could endanger International Peace and security. To resolve the conflicts, the law of Maritime Delimitation has been the subject of considerable examination during past half century and efforts to that end made at International Conferences and in International Courts and Tribunals to reach consensus on some legal principles and practical methods. The United Nations Convention on the law of the sea (UNCLOS) is one of its most notable achievements codifying the rules governing maritime boundary delimitation.
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The study of law of maritime delimitation has become significant as most of the maritime States are unable to reach an agreement through negotiation on a line of separation. When States are unable to reach agreement, third party settlement on maritime delimitation becomes indispensable. If international law does not provide rules suitable to different situations on the basis of which the disputes can be settled, it is inevitable for the courts to decide *ex aequo et bono*.

1.3 Aims and Objectives of the Research:-

The aims and objectives of the research on the topic “The Role of Equity in Maritime Boundary Delimitation Disputes particularly in Continental Shelf Delimitation cases and the contribution of international court of Justice (ICJ) to the development of the Law of Maritime Delimitation” are:
i) To analyse the role of Equity and Equitable principles in Maritime Boundary Disputes particularly in Continental Shelf Delimitation Cases.

ii) The study would explore the various possibilities that might have emerged in the practical application of equitable principles in the maritime boundary disputes.

iii) The study also will examine the contribution made by International Court of Justice (ICJ) by its judicial decisions to the development of the Law of Maritime Delimitation.

iv) The role of equity, its links with the law, the dialectic of equitable principles, relevant circumstances and an equitable outcome, the controversy over equidistance, in the delimitation of the continental shelf will also be examined.

v) As significant development in the law of maritime delimitation has taken place since the United Nations Conventions on the Law of the Sea was adopted in 1982, in the light of that development, the basic precepts of International maritime law together with the concepts of continental shelf regime will be reviewed.

vi) The settled principles for the maritime law, identified in legal decisions and cases before the international Court of Justice and International Tribunal including courts of Arbitration will be analysed.
1.4 Hypothesis:

By analyzing the customary law, agreements already entered into by different States and the decisions given by international courts and arbitral tribunals with regards to the delimitation of maritime boundaries, this research proceeds to test the hypothesis that:

i) As the rule of median equidistance line is not always acceptable, different principles may be applied according to needs.

ii) Judicial processes apply principles of equity inconsistently.

iii) To delimit the maritime boundaries, considering economic criteria may not be useful.

1.5 Statement of Problem:

(i) The study is relating to the role of equity in maritime boundary delimitation disputes particularly in continental shelf cases. Maritime boundary delimitation is a painful process. It implies an amputation of area which the states involved could appropriate if it faced the ocean on its own. This is a case of international conflict whether it is solved by ICJ or not and if it so to what extend. This question is the focus of the study.

(ii) To find out whether the development of law of maritime delimitation has been continuous or not.

(iii) To ascertain the role of equity and its relation with the law on the legal nature of equitable principles and the method of delimitation on the structure of the process of delimitation.
This research aims to infer the current state of the principles framed by international courts and arbitral tribunals with regards to the delimitation of maritime boundaries and then attempt to analyse their implications.

1.6 **Scope of the work:**

The origin and development of equity and its application in various maritime delimitation disputes by negotiated agreement between the States concerned or, in the case of disagreement, by the decision, judicial or arbitral of third party has been analysed in this research. The law relating to maritime delimitation evolved in the Law of the Sea Conventions 1958 and 1982 is probed.

Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline. It is therefore not a question of totally refashioning geography whatever the facts of the situation.

Delimitation must take the coast as they are, in their likeness if their configuration is similar, with their differences if nature has made them dissimilar. Just as a State without access to the sea will be disadvantaged by

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1 North Sea Continental Shelf cases, -Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands , 1969 I.C.J Reports, Judgment of 20 February pp49-50
comparison with a State which has a coast, so in relation between two
neighbouring coastal States, one may be better off than the other because of the
configuration of their respective coastlines. Delimitation does not seek to make
equal what nature has made unequal. It should be remembered that nature to be
respected, and the geography to be followed, are not pure nature and pure
geography. Even if it is natural and geographic, the coastal opening is
nonetheless the fruit of political history. It is, after all, the latter which has given
maritime access to one and denied it to another, or which has caused one to
benefit from a ‘good’ coastal configuration and given another a bad one.
Delimitation depends on a nature already formed by law, on a geography as
much political as natural. The significance of the principle that nature and
geography are not to be refashioned should not be exaggerated. It is simply a
matter of not refashioning nature ‘entirely’ remaking geography totally.

If international law had given prominence to the principle that delimitation
must not reshape geography, this would have meant taking nature as it is, with
all its quirks, however inequitable the result might seem. After all, neither
physical geography nor the land boundaries as carved out by political history
can be judged according to reason or justice. Maritime boundaries would then
have been a faithful reflection of the political and physical course of the shore
line. Whether they were reasonable or fair would not have been the question. On
the other hand, however, it would not have been inconceivable to use maritime
delimitations to make maritime boundaries more just and reasonable than are
land frontiers, and to apply to the sea the international social justice which is so

\[^{3}\text{Prosper Weil, see note 1 above, p87}\]
conspicuously lacking in the distribution of territorial sovereignty. It would not, \textit{a priori}, be more, or less, justifiable to seek to put right the inequalities, of nature than not to do so. Among the above mentioned two approaches, the logic of coastal projection might have dictated the former. Since it is the coast which serve as intermediary between State sovereignty and maritime jurisdiction, why not, for delimitation purposes, take the coasts as they are? The Courts do, indeed, at times seem to have been attracted by this idea. The North Sea judgment, for example, after noting that, since the land dominates the sea, ruled that, it is necessary to examine closely the geographic configuration of the coastlines of countries concerned. Later, in Gulf of Maine, the Chamber was to reject the idea, that certain geographical features are to be deemed to aberrant by reference to the presumed dominant characteristics of an area, coast or even continent.

A law of delimitation is not necessary when two States try to reach agreement through negotiation on a line of separation. But it is when governments unable to reach agreement, seek a third-party settlement that a law of maritime delimitation becomes indispensable, for how is the judge or arbitrator to avoid deciding \textit{ex aequo et bono} - which States generally do not want - if he does not have a body of rules on the basis of which to settle the disputes submitted to him.

Scarcely forty years ago, when the International Law Commission began to study the problems of maritime delimitation, there was hardly a single rule of law to regulate this new chapter in international relations. States had an obligation to delimit their maritime jurisdictions - at that time it was a question
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of the territorial sea and the continental shelf - by means of agreement with a view to reaching an equitable result. As there were no substantive norms governing maritime delimitation, States were under a legal obligation to negotiate, failing which judicial or arbitral settlement, applying *ex aequo et bono* was the only way out. The legal norms developed slowly which can now be called, a law of maritime delimitation.


Maritime delimitation must, inevitably, be a painful process since, by its very definition, it implies an amputation of the area which each of the States involved could hope to appropriate if it faced the oceans on its own. Unless one appropriation is to be completely sacrificed to the other and this would conflict not only with the demands of justice, and good sense but also with the principle of equality of States- the sacrifices must be shared equally.

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and so called internal waters, over an area of adjacent sea known significantly, as the territorial sea.\(^4\)

But the maritime limits of three, six or twelve miles thus generated collided very less often and the difficulty caused by such a collision was easier to resolve than maritime limits extending great distance from the coasts. This reveals that maritime delimitation today is related to its magnitude, which is unknown previously.

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The two proclamations issued by Harry S. Truman, President of the United States, on 28 September 1945, one concerning fishery interests beyond the territorial sea and the other concerning the continental shelf had a generating effect on the evolution of international customary law, set out the guidelines for delimitation criteria between neighbouring State

1.7 Research Methodology:

The methodology adopted in the research work is Doctrinal in nature

\(^4\) Prosper Weil, \textit{see note 1 above}, p.3
consulting the primary and secondary sources, involving examination and analysis of legal principles relating to the delimitation of maritime boundaries with the help of apt decided cases.

1.8. Reference material:

Adopting the method of doctrinal research, the relevant provisions of the 1958 and 1982 Law of the Sea Conventions have been studied and analysed and their application to the specific facts - situations have been examined, in the context of the decided cases by the International Court of Justice and other arbitral bodies. Historic background of the subject has also been studied.

1.9. Chapterisation:

**Chapter I - Introduction:** In this chapter, the background of the research proposal is stated. Importance, need, aims, objectives, hypothesis and scope of the research are stated. The problem and research methods applied are stated. Lastly chapterisation is presented.

**Chapter II - Historical Development of maritime Law and Equity in International Law:** The origin and Historical development of maritime law and equity in the process of delimitation of maritime boundaries is analysed in detail. The place of equity in the Law of the Sea Convention 1982 and the distinction between law, equity & *ex aequo et bono* are explained. The issue of maritime boundary delimitation is studied in three periods. The first period, from the 18th century to start of Second World War, witnessed the general acceptance of some basic principles of delimitation. The Second period starting with the first agreement delimiting maritime
areas beyond the territorial sea (the Treaty of Gulf of Paris 1942) and the Truman Declaration on the Continental Shelf (1945) saw the issue of maritime boundary delimitation expand to cover the Continental Shelf. The Third period after 1969 continental shelf cases, the issue acquired a new dimension as new definition of continental shelf were embodied in the provisions of the United Nations Conventions on the Law of the Sea.

Chapter III – Legislative Background of the Criteria of Equity for the Maritime Delimitation of Continental Shelf:

The legislative provisions of criteria of equity for the Maritime Delimitation of Continental Shelf that were existed under the following three periods are analysed. Pre- International Law Commission period (1945 to 1949) and International Law Commission period (1945 to 1956) are analysed:

(i) Before 1958 convention

(ii) Under UNCLOS I

(iii) Under UNCLOS III

Chapter IV - Judicial and Arbitral Decisions – The Emerging Principles from the decisions of International Court of Justice and International Tribunals are analysed under two different periods.

i) Under Pre 1982 Convention: During this period, the following cases explaining the equitable principles applied in the settlement of maritime delimitation disputes are studied.


3. Controversy concerning Beagle Channel Region (Chile /Argentina) - Decision of the Court of Arbitration dated 18th, February 1977- Award dated 2nd May 1977.


ii) Under Post 1982 Convention: A Critical Appraisal of decisions of the following cases is made.

1) Case Concerning the Continental Shelf (Tunisia/ Libyan Arab Jamahiriya) I.C.J. Rep. 1982,

2) Case Concerning Delimitation of Maritime Boundary in the Gulf of Maine Area (Canada V United States of America) I.C.J. Rep. 1984

3) Case Concerning the Continental Shelf ( Libyan Arab Jamahiriya / Malta) I.C.J. Rep. 1985,

4) Case concerning Land, Island and Maritime Frontier Dispute ( El Salvador / Honduras: Nicargaua Intervening) ICJ Reports 1992
5) Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark V Norway) ICJ Reports 1993

6) Case concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar V Bahrain) ICJ Reports 2001 and

7) Case concerning Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua V Honduras) ICJ Reports 2007

Chapter V - The Contribution of International Court of Justice (ICJ) to the development of the Law of Maritime Delimitation: The analysis of the cases in Chapter IV is made to know, how the I.C.J, besides finding the law in the settlement of disputes in the above cases, contributed for clarification, systematization and development of law of maritime delimitation.

Chapter VI - Appraisal, Conclusions and Suggestions: By way of assessment and appraisal of the study, conclusions and corresponding appropriate suggestions are made to improve the law.