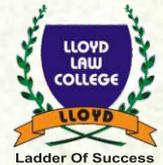




SOUTH ASIAN ASSOCIATION FOR REGIONAL
COOPERATION IN LAW



**FOURTH
PROF. N. R. MADHAVA MENON SAARCLAW MOOTING
COMPETITION - INDIA ROUND, 2018-19**

26th to 28th October, 2018

**MOOT
PROPOSITION**

THIS MOOT PROPOSITION HAS BEEN AUTHORED BY MR. RAVI PRAKASH, ADVOCATE, SUPREME COURT OF INDIA FOR THE INDIA ROUND OF 4TH PROF. N. R. MADHAVA MENON SAARCLAW MOOTING COMPETITION, 2018-19. THIS MOOT PROPOSITION HAS BEEN FORMULATED SOLELY FOR THE PURPOSE OF THIS COMPETITION FURTHERING THE ACADEMIC EXERCISE.

MOOT PROPOSITION

- [1.] Globalization is a reality and technology is all pervasive. The growth of telecommunication technology has spurt a new era of development, economic growth and has potential to offer solution to archaic and incurable problems which existed in society at large. For e.g. real time communication / message about natural calamities, their accurate predictions and advanced warning system has helped not only in responding and meeting the emergent situations, rather it has also helped the humanity in mitigation, rehabilitation and readjustment with an unprecedented efficiency.
- [2.] It establishes 'Republic of Indica' as a 'Union of States' of which 'Federalism' is one of the basic features. The Constitution of Indica establishes the Supreme Court of Indica which is the final interpreter of the 'Constitution of Indica' and is considered as the custodian of basic civil rights and liberties of its citizens. The Supreme Court of Indica has not only devised new methods and secured justice to its citizens as per law rather it has a rich history and legacy of contributing some of the overarching principles of constitutionalism like 'basic feature of the constitution doctrine', 'absolute principle liability', 'letter –petitions as social action litigation' etc. With such enrichment, the constitutional governance in Republic of Indica is described as one of the most progressive governance based on the principles of 'rule of law' and liberal democracy. It guarantees several fundamental rights, broadly corresponding to those recognized in international human rights instruments. The constitutional, legal and policy framework of Republic of Indica are *pari materia* to the Republic of India.
- [3.] Under the constitutional scheme of Indica, the State of A&P has a chequered history. Special constitutional arrangements have been accorded in the federal scheme like a greater degree of state autonomy as well as special powers to conduct their own affairs. The autonomy of A&P is *pari materia* to the Article 370 of the Constitution of Indica. The State of A&P shares very hostile international boundary from three sides. Due to the continuous tension and violation of ceasefire on its western front in the State of A&P, the Republic of Indica is facing higher militancy and internal insurgency at the behest of some of the banned outfits/ organization.

PART II.

- [4.] Covert operations are a valuable law enforcement tool in the present day. They can assist in detecting or obtaining evidence of offence that is otherwise difficult to investigate (for example, because there are no witnesses who are willing to report it or give evidence to support a prosecution).
- The Government of A&P has formulated a '*Covert Operation Policy*' to break into the

syndicate of illegal drugs trafficking and their supply to the youth in the State of A&P.

- [5.] In the State of A&P, the rate of drug abuse is alarming! Youths, aged 13 – 35, are reportedly more involved in drug abuse. Further, the Govt. of A&P also believed that the local militancy and insurgency is also financed in the 'State' from the proceeds of the income generated from the illicit drugs trafficking and their supply. The local police authorities of A&P believed that the gang/ group which is involved into the illegal drugs trafficking in the state through international boundaries operates in a very sophisticated manner based on codes and the entire exercise (i.e. smuggling through international border to supply in the market locally) gets executed through several agents (mules) who hardly have any idea about the entire syndicate.
- [6.] The police authority / law enforcement agencies in the State of A&P begun the undercover operation against the menace of illegal drugs trafficking. It placed two police officers (one female and one male) aged between 21 & 23 years respectively, posing as a couple, in one of the syndicates popularly known as 'Little Blue Fancy'. The police authorities in the State of A&P facilitated the undercover operation by every means as well as also created and executed various 'scenarios' to integrate and penetrate its officers into the syndicate.
- [7.] The police authority/ law enforcement agencies gathered many evidences, case properties, seized consignments of illegal drugs, codes used by the agents (mules) of the syndicate, DNA samples collected in pursuance of '*Covert Operation Policy*' without the consent of individuals (suspects) etc. During the two years of the undercover operation, many unknown FIRs have been registered by the police of A&P. Based upon the analysis of tape-recordings, confessions, statements made to the undercover agents, corroboration from the evidences collected during the operation, the Forensic Science Lab (FSL) reports prepared by the State Agencies, several arrests were made.
- [8.] After continuing the so called 'covert operation' for two long years, with the change of government in the State of A&P in the year 2012, the new government immediately abandoned such operation and systematically withdrew the two police officers. The Director General of Police (DGP) of A&P called a press conference dated 21.02.2012 and further stated that all the cases arising out of the so called 'undercover operation' would be closed by the State Govt. He also stated that the organized crimes like 'illegal drugs trafficking and their distribution' as well as 'internal insurgency' / 'militancy' are closely interlinked as the proceeds of the income generated from the former is being used to finance the later. Hence, as a matter of policy and in tune with the laws of the land, the State Police will share the entire evidence collected and related case files with the premier investigative agency of the Republic of Indica, Central Bureau of Investigation i.e. CBI. It would be in the domain of CBI / Central Govt. of Indica to re-open, re-investigate and re-assess the evidences in any of the FIRs made pursuant to the so called 'undercover operation' as

internal insurgency/ militancy in the State of A&P poses a threat to the 'national security' and the very idea of 'Indica'.

PART III.

- [9.] Mr. 'X' is a local resident of Satna town in the State of A&P. He is involved in the vocation of teaching in one of the remote villages i.e. Rusul of Satna in A&P since the year 2010. The State Govt. as well as Govt. of Indica had declared the district of Satna as the most backward district in the State as well as the country respectively. As there was no basic infrastructure of education i.e. Govt. school for the local children to study, the elementary education as imparted by Mr. X voluntarily made him very popular and revered among the local population. However, the education imparted by him was not having any feature similar to modern day school education. Mr. X used to take classes of children in irregular manner.
- [10.] On 13.06. 2013, a ghastly incident of rape on 8 year old child took place in the vicinity of the school run by Mr. X in village Rusul. The victim girl child was found in an unconscious state but subsequently succumbed to the injuries on the same day. The medical report at the District Hospital of Satna recorded her as 'brought dead'. The medical report further indicated absence of any further incriminating evidence which could suggest a rape on the girl child.
- [11.] The victim belonged to one of the nomadic communities who are traditionally and still, practice the occupation of goatherds and shepherds. They trace their ancestry to the 'Mawi community' which is a major and dominant population in the neighboring States. Initially, the local police investigated the crime but despite the lapse of sufficient time, there was no arrest made in relation to the case. As pressure mounted on the Govt. of A&P, the case was transferred to the Special Crime Branch- CID from the police. As the investigation authorities were not able to find any important lead in the crime, it collected the DNA samples from the crime scene as well as of all the individuals from the household which was in the vicinity of 500 meters of the school. Although the DNA sample of Mr. 'X' was also collected, the mystery of the crime remained intact.
- [12.] As there was no arrest and sufficient development in relation to the case even after three months of the incident, the local community called for a bandh in the district of Satna. Very soon, the incident made to the national news as not only the locale of the population protested against the faulty investigation and sordid approach of the police as the law enforcement agency but the support also swelled by the Mawi community's call for 'State wide bandhs' in one of the neighboring states of A&P.
- [13.] The State Govt. of A&P ordered the transfer of the entire case to the premier investigative agency i.e. CBI. The CBI seized every evidence including the DNA samples collected by

the Special Crime Branch- CID and all the case properties and started investigating the case. During its investigation, the CBI found the curious case of Mr. 'X' who was not a duly appointed teacher but engaged in the vocation of teaching in the remote village of Rusul in an irregular manner.

- [14.] As the CBI proceeded with a systematic enquiry into the June 2013 incident of the village Rusul, it found that the DNA sample of Mr. 'X' matches with one of the DNA samples collected during the undercover operation in the State of A&P.
- [15.] The CBI immediately arrested Mr. 'X' and decided to reopen one of the FIRs made during the undercover operation. The lawyer of Mr. 'X' filed a Writ Petition (Criminal) No. 980 of 2013 under Article 32 of the Constitution of Indica alleging the arrest of Mr. 'X' as violative of various fundamental rights and basic civil liberties based upon a suspected matching of DNA sample collected during the undercover operation which was abandoned/ closed by the State Govt. of A&P itself. The petition seeks a declaration that the entire 'search and seizure' made during the undercover operation is illegal, unconstitutional and without authority of law. The confessional statements made by so called agents (mules) involved in illicit/ illegal drugs trafficking have been made in violation of one of the constitutionally cherished rights i.e. the right to refrain from making a statement and to be informed of that right. This right is breached where a confessional statement is "actively elicited" by undercover officers from a person who is arrested or detained.
- [16.] The W.P. (Criminal) No. 980 of 2013 also contended that the entire undercover operation of two years as 'Search' was carried out without authority of law. It further contended that the very idea of the undercover operation was 'to continuously look for something or somebody' which amounted to investigation or scrutiny in order to expose or uncover a crime. Such an action at the behest of 'State' without the consent or knowledge of the individuals is illegal, unconstitutional and impermissible in law.

PART IV.

- [17.] In the year 2017, during the monsoon season, one of the coastal states of Indica received incessant rains for three consecutive weeks. Although the Republic of Indica declared it as a 'national calamity of severe nature' and mobilized all assistance in rescue, rehabilitation and re-building the State besides coordinating with the State Govt. in responding to the calamity itself. Incessant rains and opening of the gates of dams built on various rivers not only caused flooding and landslides but also led to extensive damage to crops and homes, loss of lives, with many people missing and displaced.
- [18.] The calamity was of such a nature that it attracted coverage from national and international media. Relief materials, donations and other help started pouring from the international community. The wide coverage in the media also helped in mobilizing all aid and

resources. The New York Times – the world's leading newspaper also covered the story of 'Master Z'; who was in one of the rehabilitation camps. It was learnt that 'Master Z' – a 9-year-old boy lost all his immediate family members and had become an orphan. On being asked by the reporter of the New York Times, with all glitter and belief in his eyes, he wished to serve the nation after acquiring good education. He also asserted that his mother (now presumably deceased) told him once about his biological father being alive in some other part of the country whom he never saw or met.

- [19.] Several leading NGOs and self-help groups expressed their interests in extending all support to 'Master Z' to realize his dreams. However, the State Government expressed its willingness to find the immediate family member of 'Master Z' and reintegrate the child with the surviving family members. As the story relating to 'Master Z' caught attention of international media, several column and suggestions pointed towards absence of a proper legal framework for the use DNA technology as an enabling tool in such disaster victim identification in the Republic of Indica. It also noted the various draft Bills floated by several agencies and instrumentalities of the State for consideration before the appropriate authority in Republic of Indica.
- [20.] Considering the importance of DNA technology as the ultimate diviner of guilt, its role in increased public safety, in assuring freedom from false conviction and incarceration and in disaster victim identification. – a leading NGO named 'Technology for All & Justice - (TAJ)' approached the Supreme Court of Indica by way of public interest litigation (PIL) for establishment of necessary infrastructure to have a full proof DNA database for the DNA profiling of the individuals involved in heinous and brutal crimes in pursuance of the legislative mandate under the Code of Criminal Procedure, 1973. It further argues that ethical retention and preservation of the DNA sample poses no threat to the privacy concern of the individual and any other civil liberties. It seeks a series of guidelines for the use and application of DNA technology in crime resolution and disaster victim identification. However, the hazards associated with such technology on core civil liberties, fundamental values as well as rights are inconceivable.
- [21.] Another interesting development to the story of 'Master Z' was that the lawyer of Mr. 'X' moved an application before the Supreme Court of Indica claiming to be the biological father of 'Master Z' and he wants a declaration to that effect. He peculiarly asserted that his DNA sample collected and stored by the law enforcement agency be used to determine the paternity.
- [22.] The alleged minor biological son i.e. 'Master Z' of Mr. 'X' through his *next friend* also approached the Hon'ble Supreme Court of Indica seeking a direction as not to release or use/ misuse of DNA samples collected by law enforcement agency for the paternity test as claimed by Mr. 'X'. Master 'Z' in his petition further contends that there is a material

difference between DNA samples and DNA profiles. The prayer of release of DNA profile of Mr. 'X' collected by law enforcement agency would not only be detrimental to the privacy as well as invasion into the basic rights of the family. The petition also sought to protect the future of 'Master Z' coupled with his right to reputation, right to dignity by placing strong reliance on the 'best interest of the child' principle and contended that his familial affinity be not disclosed, even if Mr. 'X' is found to be his biological father. One of his specific prayers is to dismiss the application of Mr. 'X' in pending W.P. (Crl.) No. 980 of 2013.

PART V.

- [23.] The petitions have been slated for hearing by a constitution bench of the Supreme Court of India. In terms of Article 32 of the Constitution read with the Supreme Court Rules, 2013, only substantial questions involving the interpretation of the provisions of the Constitution will be dealt by a constitution bench. The Court has directed all the parties to frame such substantial questions for its considerations including preliminary issues relating to jurisdiction.
- [24.] Considering the substantial questions of law relating to the interpretation of the Constitution involved, the three petitions along with applications have been referred to the constitution bench, which is scheduled for hearing on 26th -28th October 2018.
