



SOUTH ASIAN ASSOCIATION FOR REGIONAL
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**FOURTH
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Clarifications#2

1. Clarity is needed with regard to the identity of the next friend of the minor, i.e., Master 'Z'
Ans. – It is a petition by ‘next friend’ of minor i.e. Master ‘Z’.

2. Who currently has the custody of Master 'Z' and where is he residing? The moot prop Only states that Master 'Z' lives in one of the rehabilitation camps. Clarification is needed Regarding whether Master 'Z' is in the safe place or not?
Ans. - Query is irrelevant. Master ‘Z’ is in safe place.

3. Clarification is needed regarding paragraph 16 of the moot prop. what actually does ' Continuously look for something or somebody' means?
Ans. - The expression defines the nature of ‘search & seizure’ which was carried out Pursuant to covert operation.

4. “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'.” (Para 10)

Query-

Whether the injury is a separate incident then rape, and if yes the whether the death of the girl child was the result of injury or rape. Because there is no medical evidence as to rape.

Ans. - Read moot problem carefully. The factual aspect has been narrated with all clarity.

5. “The lawyer of Mr. 'X' filed a Writ Petition (Criminal) No. 980 of 2013 under Article 32 of the Constitution of India 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.(Para 15)

And

“He peculiarly asserted that his DNA sample collected and stored by the law enforcement agency be used to determine the paternity.” (Para 21)

Query-

In para no 15 he is saying that the matching of DNA sample is illegal and in para no 22 he is allowing the authority to collect and match his DNA sample.

Ans. - Read moot problem carefully. The factual aspect has been narrated with all clarity.

6. “The alleged minor biological son i.e. 'Master Z' of Mr. 'X' through his *next friend* also approached the Hon'ble Supreme Court of India 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.”(Para 22)

Query-

In this para, it is not clear, whether Master Z is talking about the non-release of DNA Sample or non- release of DNA profile.

Ans. - It depends upon the facts of each petition and which side one is arguing.

7. “One of his specific prayers is to dismiss the application of Mr. 'X' in pending W.P. (Cr.) No.980 of 2013.”

Query-

If we dismiss writ no 980, then the DNA matching will be allowed and in such a case the petition of Master Z will itself be quashed.

Ans. - The three different petition raises specific issues relating to ‘DNA & Technology’ thereto and their interactions with various set of basic rights. The Issues, arguments and prayer has to be framed very carefully.

8. As per Para 15 Mr. X via his writ petition 980/13 wants to quash the proceedings and evidences collected during the covert operation and wants to declare the covert operation as void. Whereas in Para 21 Mr. X wants his DNA Sample to be used for the purpose of determining the parenthood of Master Z.

Query: Whether there is any other specific relief sought via writ petition (cr.) 980/2013?

Ans. - Read moot problem carefully.

9. As per Para 22, Master Z wants that the DNA sample collected erstwhile not to be used by any law enforcement agency . Mr. X via writ Petition (cr.) 980/2013 seeks the similar relief. Now as per last line of Para 22, Master Z wants writ Petition (cr.) 980/2013 to be dismissed.

Query: what exact remedy is sought by Mr.X and Master Z here?

Ans. – Read Para 22 carefully.

10. Whether the DNA sample collected by the Law enforcement agencies, as said in Para 21 was the DNA sample collected during the covert operation or the during the investigation of the rape of the 8 year old?

Ans. - Read moot problem carefully. The factual aspect has been narrated with all clarity.

11. Whether trial was conducted for the arrest of Mr. X?

Ans. – Query is irrelevant.

12. In what names all the cases have been filed and clubbed before the Constitutional Bench?

Ans. - Read Moot Problem carefully.

13. Whether the 'Covert Operation Policy' was formulated as an executive action or a legislative action.

Ans. - The covert operation policy was not backed by any kind of legislative enactment. Read Moot Problem carefully.

14. Whether Mr X has been arrested for illegal drug trafficking or internal insurgency/militancy?

Ans. - Read moot problem carefully. The factual aspect has been narrated with all clarity.

15. Whether the last line of para 20 "However, the hazards associated with such technology on core civil liberties, fundamental values as well as rights are inconceivable." is the contention of the PIL or just a statement?

Ans. – Read Moot Problem carefully.

16. In the first petition, there has been a collection of DNA sample of Mr.X (Para- 11) and his arrest has been done on the basis of matching of DNA sample (Para-15). And also in Para-21, he claimed to use his DNA sample for the paternity test. So why Master Z his contending not to use DNA profiling of Mr.X since nowhere in moot proposition it is written that DNA profiling of Mr.X has been done?

Ans. – Read Moot Problem Carefully. The factual aspect has been narrated with all clarity.

17. In the 1st round of Clarifications, in answer to the 2nd question it is said to use IPC,1860 instead of RANBIR Code for the sake of brevity and clarity so can we imply that we have to use only central laws and not the local laws of the state of J&K except the constitution?

Ans. –Yes.

18. What can be the appropriate case title in all the three petitions, as there are various procedural problems and conflicts between the contents of same parties in the moot proposition?

Ans. – In all the three petition, there is a common respondent i.e. Union of Indica.

19. In para 15, Mr. X's arrest has been talked about. But on what grounds was Mr.X arrested? Also, what is the status of the trial being conducted against him?

Ans. – Query relating to the status of trial is irrelevant for the purpose of competition.

20. Para 19 of the moot proposition suggests that various draft Bills were floated by several agencies and instrumentalities of the State for consideration before the appropriate authority in Republic of Indica. Can we assume that Human DNA Profiling Bill which has been recently passed in 2018 by the Lok Sabha is also one of them? Will the subsequent legislations of India also be parimateria to that of Indica?

Ans. – Read Moot problem carefully specially. Read para 19 of the Moot problem. Yes, the subsequent legislation of India are also pari materia to that of Indica.

21. In the moot proposition Para 20 last line, “ However the hazards associated with such technology on core civil liberties, fundamental values as well as rights are inconceivable.” Does this mean that when use of technology is made during such hazards, then the question of infringement of fundamental rights should not be looked at?

Ans. – Read Moot problem carefully.

22. What is the ground for the application filed by Mr.X in which he is claiming to be the father of Master Z?

Ans. – The application has been moved by the lawyer of Mr. X in pending W.P. (Crl.) No. 980 of 2013. There is no requirement of treating application separately.

23. In Para 21 which DNA sample of Mr.X are they referring to, the one which was collected during the covert operation or the one that was collected during the investigation of the rape case?

Ans. – The query need not be answered.

24. Referring to Para 22 Master Z in his petition seeks a direction for not releasing DNA sample of X for the paternity test but later on he goes on to contend that even if the paternity test is carried out and Mr.X is found out to be his biological father, his familial affinity should not be disclosed. This raises a discrepancy with regard to his prayer. Please clarify as to what is Master Z trying to seek through his petition.

Ans. – Query need not be answered on the assumptions of each participating team. Read Moot problem carefully. The factual aspect has been narrated with all clarity.

25. As per Para 10 there was no substantial proof to suggest that the rape was committed as the medical report denied the same. Then on what basis did the CID go ahead with the collection of DNA samples in the vicinity with respect to the rape case as there was no reasonable ground to do so?

Ans. – Read Moot problem carefully. The factual aspect has been narrated with all clarity.

26. Master Z has approached the honourable court through a next friend. As per the legal definition a next friend is appointed by the Court however the same is not mentioned in the problem. Do we assume the same, Please clarify.

Ans. – Read moot problem carefully. Read the judgments as when a writ petition through ‘Next friend’ could be entertained.

27. How did the case get transferred to the CBI without the consent of the Government of India as it is not mentioned in the moot proposition?

Ans. – Read Moot problem carefully.

28. In the given case the application filed by Mr.X contending the usage of his DNA sample for the paternity test is a plea taken in contravention to the plea he is taking in his Writ Petition?

Thus we require a clarification regarding who will then take the stand of being a petitioner and respondent in the given case.

Ans. - Read moot problem carefully. The W.P. (Crl.) 980 of 2013 raises different constitutional issues whereas the application has been moved by Mr. X in the W.P. (Crl.) 980 of 2013 is with a specific objective i.e. to claim and establish paternity.

29. Whether the DNA samples of Master Z has been collected, if yes, at which instance was the samples collected and by which agency was the same collected (law enforcement or other agency)?

Ans. – Read Moot Problem carefully. The factual aspect has been narrated with all clarity.

30. Which law enforcement agency is referred to in para. 22? If it's the CBI or the state police of A&P.

Ans. – Read Moot Problem carefully. Read para 8, 22 of the Moot Proposition.

31. Please clarify the discrepancy between Para 15 which says 'suspected matching' whilst Para 14 hints at a definite DNA Match.

Ans. – There is no discrepancy. Read Moot problem carefully.

32. Whether the confessional statements of agents/mules as mentioned in Para. 15 of the moot proposition were made before, or after they were arrested?

Ans. – The Confessional Statements were made in ordinary course of covert operations.

33. In case the legal system of the state of A and P (in *Indica*) is parimateria to that of India concomitant to Article 370, do we assume that the laws like Cr. P.C, Constitution, etc. are understandably the same as in the case of Jammu and Kashmir—hence different from India. Or in other words, how do we reconcile the practical paradox of applying Article 370 in the instant case without appreciating the exclusivity of the laws of the Jammu and Kashmir given the fact that the state has its own set of laws.

Ans. -. For the sake of brevity and clarity, use Indian Penal Code, 1860 instead of RANBIR CODE, Cr.P.C. 1973 as applicable whole of Indica. To what extent and how the Constitution of A&P would help Mr. X, is left open for the teams to frame the argument and research thereto.

34. Are we supposed to club all issues of paternity, DNA relevance and validity, rape etc. drug trafficking because these issues are of varied nature and hence cannot be feasibly pleaded in one single petition before the Supreme Court. Or do we just assume that there are only three writs in fact that have been clubbed together and thus proceed to frame the issues?

Ans. – the three petitions namely (a) W.P. (Crl.) 980 of 2013 alongwith subsequent application (B) W.P. by Master Z through his next friend & (c) Public Interest Petition by NGO TAJ has been clubbed together and set for hearing before Constitution Bench on 27-28 October 2018. Teams are required to frame the issue accordingly.

35. The opening line of Part IV, on page 4, refers to year 2017 in which the issue of Master Z crops up. However, the writ petition No. 980 of 2013 is the actual petition by which Mr. X seeks the declaration of “search and seizure” as unconstitutional. But in the end the facts disclose that Mr. X, by way of an application in the aforesaid writ, wants to establish the issue of his paternity. Are we supposed to deal the issue of paternity in the same writ as in No. 22, it is said that Master Z approaches the Supreme Court by way of petition (line 4)? Please clarify as to the number and nature of writs.

Ans. - Read moot problem carefully. The W.P. (Crl.) 980 of 2013 raises different constitutional issues whereas the application has been moved by Mr. X in the W.P. (Crl.) 980 of 2013 is with a specific objective i.e. to claim and establish paternity.

36. Was Master Z’s DNA collected with or without his consent? and who was responsible for collection of his DNA?

Ans. Read Moot Problem carefully. The factual aspect has been narrated with all clarity.

37. As specified in one of the Clarifications IPC is applicable to the State of A&P on the same lines is Criminal Procedure Code,1973 & Indian Evidence Act,1872 applicable to the State of A&P?

Ans. – Yes.

38. On what grounds was Mr. X arrested was it solely on the basis of DNA or other evidences were also into play?

Ans. –Read Moot Problem carefully. The factual aspect has been narrated with all clarity.

39. Did Master Z and Mr. X share certain type of relation or they were complete strangers except of the fact that Mr. X was his alleged Father?

Ans. - Read Moot Problem carefully. The factual aspect has been narrated with all clarity.

40. What sort of application was moved by the lawyer of Mr. X pertaining to the parentage of Master Z and does the application moved comprise one of three petitions slated for hearing?

Ans. - Read moot problem carefully. The Application as mentioned in para 21 is integral part of W.P. (Crl.) No. 980 of 2013.

41. The chain of events are a bit vague kindly give some necessary elucidations?

Ans. - An accurate query with regard to the vagueness in chain of events could have been answered.

42. Whether the direction sought by the *next friend* of 'Master Z' in para. 22 is a counter-affidavit to the application made by the lawyer of Mr. X in para 21?

Ans. – Read moot Problem carefully.

43. Whether the direction sought by the *next friend* in para. 22 is the respondents brief?

Ans. - Read moot Problem carefully.

44. Who are the parties to the suit i.e. who will be the petitioner(s) and the respondent(s)?

Ans. – There is no suit filed in the Present Moot Problem.

45. Is it allowed if one party (arguing from the Petitioner/Respondent side) to the suit can represent from the petitioner's side in one petition and then from the respondent's side in the second petition simultaneously? Please clarify.

Ans. – In all the three petitions the respondent is common i.e. Union of Indica.

46. In para 23, the court has directed to frame issues related to jurisdiction, however, in para 24, it has referred the case to Constitutional bench. Please clarify whether the 3 petitions along with the application were initially held maintainable or not by the Division bench of Supreme Court?

Ans. – Read Moot Problem carefully. Read relevant Supreme Court Rules and Practice thereto.

47. Whether the laws of state of A & P are paramateria to that of State of Jammu and Kashmir?

Ans. – Read Moot problem and clarifications carefully.

48. Is there exist some specific laws that are applicable in Indica but not in State of A & P?

Ans. – The law applicable in Indica are applicable. Read Moot problem and clarifications carefully.

49. With reference to the answer of the 2nd Query in the Moot Clarifications -1 : mentioned that "for the sake of brevity and clarity, use Indian Penal Code, 1860 instead of RANBHIR PENAL CODE as applicable to state of A&P due to special status". Does this same principle apply to other applicable and relevant acts to the case in the same manner i.e. applicable to the whole of the nation as opposed to the requisite act applicable to the special status of State A&P and the usage of the same instead of the statute, act exclusive to the State of A&P?

Ans. – Yes.

50. Is there any linkup between Mr X and Master Z.

Ans. – Read moot problem carefully. The factual aspect has been narrated with all clarity.

51. Is there any recommendation on the basis of which undercover operation was abandoned.

Ans. - Read moot problem carefully. The factual aspect has been narrated with all clarity.

52. Whether the 'covert operation policy' mentioned in paragraph 4 is a legislative enacted act or just a government's (execute) policy?

Ans. – The covert operation policy was not backed by any kind of legislative enactment. Read Moot Problem carefully.

53. One of Master Z's specific prayers is that the application pending in W.P. (CrI.) No. 980 of 2013 ("criminal petition") be dismissed, but no application has been filed by Mr. X in the criminal petition. Is it to be rationally concluded that the application made for declaring X to be the biological father of Z (reference to p. 21) forms a part of the criminal petition and that application being part of the criminal petition is being specifically prayed to be dismissed by Master Z for the factsheet does not mention any other application barring the one stated above

Ans. – Read para 21 of the Moot problem and other clarifications with regard to Application vis-a – vis W.P. (CrI.) No. 980 of 2013.

53. Should the DNA Technology(Use and Application)Regulation Bill,2018 introduced in the Parliament on August 3,2018 be taken into consideration for the purpose of the PIL in p.20 of the problem.

Ans. Read the moot problem carefully.

54. From the moot problem it is inferred that the petitions are to be heard independently and not clubbed; in light of the same are we to make three parts in the same memorial or are we to proceed in some other way?

Ans. - The three petitions have been clubbed and will be heard together. The common issues could be framed accordingly and arguments can be advanced on each side. Cause title could be mentioned on cover page accordingly. As in all the petition the 'State of Indica' will be the respondent.

55. In 22 para, Why next friend asking to dismiss the application of Mr.X in pending W.P(Crl.) No.980 of 2013. Why is next friend of Master Z concerned with MR.X case?

Ans. Read the Moot proposition carefully.

56. Here it is mentioned three petitions in Para 24.Do we need to make two memorials (petitioner, Respondent) for each petition?

Ans. The three petitions have been clubbed and will be heard together. The common issues could be framed accordingly and arguments can be advanced on each side. Cause title could be mentioned on cover page accordingly. As in all the petition the 'State of Indica' will be the respondent.

57. Can we use other countries case laws and UN Conventions?

Ans. Depends upon the extent and ability of research of respective teams.

58. If we are making a memorial from petitioner side then do we have to make three memorials for the three petitions mentioned in the problem or we have to make one memorial for these petitions?

Ans. The three petitions have been clubbed and will be heard together. The common issues could be framed accordingly and arguments can be advanced on each side. Cause title could be mentioned on cover page accordingly. As in all the petition the 'State of Indica' will be the respondent.

59. Is the application attached to the memorials or separately?

Ans. Read para 21 of the Moot problem and other clarifications with regard to Application vis-a – vis W.P. (Crl.) No. 980 of 2013.