



**LAW COLLEGE DEHRADUN  
FACULTY OF UTTARANCHAL UNIVERSITY**

# **NATIONAL MOOT COURT COMPETITION**

**6-8 October 2017**

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## MOOT PROPOSITION

1. The Constitution of Indistan establishes Indistan as ‘Union of States’ of which ‘Federalism’ is one of the basic features. The Constitution of Indistan is considered and described as one of the most progressive Constitutions based on the principles of ‘liberal democratic’ governance. Its Constitution guarantees several fundamental rights, broadly corresponding to those recognized in International Human Rights instruments. The Constitution further guarantees direct access to its Supreme Court for enforcement of those rights. The Constitutional, legal and policy framework of Republic of Indistan are in pari materia to the Republic of India.
2. The Anga Pradesh (A.P.) shares an international boundary with ‘Republic of Rising Sun’ and is in the north-eastern part of Indistan. Anga Pradesh (A.P.) is inhabited by 13 major tribes, which constitutes the 97 percent population of State. Each tribe in the State of Anga Pradesh is unique in character with its own distinct customs, language and dress. One third of Anga Pradesh (A.P.) is covered by tropical and sub-tropical evergreen forests.
3. Under the Constitutional scheme of Indistan, Anga Pradesh (A.P.) has been granted a great degree of state autonomy, as well as special powers and autonomy for tribes to conduct their own affairs. Each tribe has a hierarchy of councils at the village, range, and tribal levels dealing with local disputes. The autonomy of Anga Pradesh is ensured by Article 371A of the Constitution of Indistan.
4. The Constitution of Indistan also provides a kind of autonomy for the administration of such areas through the Tribal Advisory Council and provides special protection to the ‘land’ and ‘area’ inhabited by them. The Constitution of Indistan specifically forbids the transfer of such tribal land to ‘non-tribals’. Special provisions for administration of justice in these areas are guaranteed.
5. Anga Pradesh is also known as ‘Land of Happiness’. The diversity of people and tribes, each with their own culture and heritage, creates a year-long atmosphere of celebrations. As the literacy rate is exceptionally high in the Anga Pradesh i.e. around

95 % - the typical gender discrimination in the social & economic realm is almost absent and perhaps remains a classic example for the rest of Indistan which has high rate of illiteracy, gender based violence and crimes at alarming rate.

## I.

6. In January 2017, there was a general election in the State of Anga Pradesh. The political party led by Mr. Yohanan stormed to power winning 57 seats out of a 70 member legislative assembly. Mr. Yohanan as well as the election manifesto of his political party promised the implementation of provisions of part IXA of the Constitution of Indistan including the reservation in favour of women by bringing suitable 'law' within a period of six months. After the landslide victory, Mr. Yohanan was sworn-in as Chief Minister of the Anga Pradesh.
7. The cabinet as chaired by Mr. Yohanan approved an ordinance to be promulgated by the Governor of Anga Pradesh seeking immediate implementation of the women reservation to the tune of 33% in the Municipalities. As the news spread among all the majority tribal groups about the proposed Ordinance as approved by the Cabinet of Anga Pradesh (A.P.) – the tribal leaders (male) under the banner of Joint Action Committee (JAC) from all the thirteen major tribes made a representation to the Governor of Anga Pradesh asking to refrain from giving his assent to the proposed Ordinance. The very next day JAC called for bandhs and complete blockade of the road-connectivity from the rest of Indistan. The tribal leaders saw this attempt by the present Govt. led by Mr. Yohanan as a serious interference with the tribal customary law and procedure. It also reminded the Special Status of Anga Pradesh in terms of Article 371-A of the Constitution of Indistan stating that the Constitution (Seventy Fourth Amendment) Act, 1992 being an Act of Parliament of Indistan, it has no application to the (a) religious or social practices of tribes (b) Tribal Customary law and Procedure.
8. The protests and blockade continued for several weeks which had serious impact on 'law & order' in the state of Anga Pradesh, supply of essential commodities to the State jeopardizing the human life and dignity in worst manner. However, the call for

bandhs and blockade was largely peaceful and no women were harmed in any manner in entire state. However, it resulted in the death of seven protesters in a fortnight period due to various reasons.

9. However, the Governor of the State i.e. Anga Pradesh (A.P.) citing his special responsibility under the Article 371A with respect to 'law and order' in the State is not giving his assent to the Ordinance as approved by the Cabinet of Mr. Yohanana.
10. An NGO named as PEW -Participation & Emancipation of Women is working for the socio, economic and political justice to the tribal women in Anga Pradesh. The awakened and literate tribal women belonging to almost all 13 tribes have their association seeking a fair share in political sphere also. All these 13 Tribes Association are affiliate members of PEW as well. The NGO i.e. PEW preferred a Writ Petition against Governor of Anga Pradesh in a Supreme Court of Indistan under Article 32 of the Constitution of Indistan seeking a direction for enforcement of provision of Article 243T of the Constitution of India which would ensure fair –representation of womanhood in the political life of local governance as envisioned in the Constitution (Seventy Fourth Amendment) Act, 1992. It further argues that Governor is bound to give his assent to the proposed Ordinance as approved by the Cabinet under the constitutional scheme of the Indistan and as settled by the apex Court in a catena of decision.

## II.

11. Mr. Hobart is a veteran legislator, who has distinction of having been elected consecutively for the 6th time to the State Assembly of Anga Pradesh (A.P.). He made a passionate speech on the floor of the House pitching for much needed reform on “women’s participation, representation in tune with the constitutional objectives and at the same time need for balancing the same with long traditions, values, customs, and societal convention of the local population for a peaceful co-existence.
12. While Mr. Hobart was making speech on the floor of the House, his Smartphone (which has touch-screen feature) got activated and the speech became ‘Live’ through

his social media page of Facebook using the internet services (Wi-fi) of the Legislative Assembly itself.

13. The Hon'ble Speaker of the Legislative Assembly received another complaint from the Leader of Opposition against Mr. Hobart for breach of ethics and rules of procedure of the House. The Speaker also got this incident examined by the Ethics Committee of the House. On recommendation of the Ethics Committee of the House, the Hon'ble Speaker suspended Mr. Hobart for six weeks to which he replied that he was not aware about activation of his social- media page in his mobile phone as it was a new era Smartphone (which had the feature of Touch-Screen). He further submitted that he also got to know about his 'speech getting Live' incident from the news channel when he reached his home back after the business of the House got finished for that particular day. He further stated that accidental, unintentional act of his i.e. 'making speech live' through Facebook page on the floor of the house enhances the 'open and responsive democracy', 'freedom of speech & expression', 'promotes the right of citizenry to know' as constitutionally inscribed values and objectives in liberal democratic governance. He further, sought a review of the decision i.e. 'suspension of Six weeks from Assembly' of the Hon'ble Speaker. The Hon'ble Speaker disposed of the review petition and retained his previous decision in case of Mr. Hobart.

14. Mr. Hobart challenged the decision of Hon'ble Speaker as violative of Fundamental Rights and constitutional norms in the modern governance in a Writ Petition before the Supreme Court of Indistan and also sought the writ declaring the rules as unconstitutional which prohibits the 'Live Telecast' of proceedings of the business of House as violative of basic feature of the Constitution i.e. Democracy. The Hon'ble Supreme Court of Indistan has issued a notice in the writ petition of Mr. Hobart.

### III.

15. Two ministers were allegedly caught on Television Camera watching porn on the mobile phone during assembly proceedings. It was the mobile phone of Mr. Savadi, which has the porn page opened and another Minister Mr. Ozan peeping into the

phone of Mr. Savadi. It was playing the clip of child pornography. As the news of this incident was flashed by the major News Channel of the country, Mr. Savadi asserted that:- “Yes, I watched it (clipping). But I have not committed any crime. It is not on my mobile. Just watching it is not a crime.”

16. The Speaker of the Legislative Assembly, Andhra Pradesh (A.P.) received a memorandum of complaint from the Leader of Opposition against two ministers seeking an investigation into the alleged ‘Porn Gate Scandal’ and demanded an FIR to be registered against the two ministers for playing child pornographic movie. It further stated that the Hon’ble Supreme Court of India recently banned all the websites containing child pornographic movies.
17. Next day, the Speaker suspended the membership of two ministers and referred the matter to the Ethics Committee of the Assembly to enquire into the alleged ‘Porn Gate’ incident. The Ethics Committee viewed this issue very seriously and recommended the expulsion of Mr. Savadi to the Speaker. In case of Mr. Ozan, it took a lenient view and recommended suspension of six weeks from the legislative assembly giving benefit of doubt and indirect involvement in browsing porn website on Mr. Savadi mobile phone.
18. The Hon’ble Speaker accepted the recommendations of the Ethics Committee in case of two Ministers i.e. Mr. Savadi & Mr. Ozan. The Hon’ble Speaker, Legislative Assembly of A.P. directed the Secretary General of the Legislative Assembly to get an FIR registered in the incident against Mr. Savadi as it was his mobile phone which has the porn website on.
19. Pursuant to First Information Report (FIR), the police initiated an investigation and sought the access of mobile phone of Mr. Savadi to which he denied claiming the protection guaranteed under Fundamental Rights against the illegal search and seizure in absence of proper warrant and jurisdiction. He further claimed that the alleged incident happened inside the Assembly when the session was going on and he further claimed the absolute privilege and immunity from such seizure and investigation of

the incident which happened inside the legislative assembly when the session was going on.

20. The Superintendent of Police, in whose jurisdiction the premises of Legislative Assembly was situated, sought the permission from Hon'ble Speaker to inspect, search the offices of Mr. Savadi & Mr. Ozan, access to their computers and other internet based services as provided in the premises of Legislative Assembly.
21. The Speaker categorically authorized the police to conduct the physical search and seizure of the two offices, respective official computers of both the ministers in presence of Secretary General of the Assembly.
22. On search and seizure, the police could not recover any incriminating material related to 'Porn Gate Scandal' from the computers and internet based services of Mr. Savadi. However, it found that the official computer of Mr. Ozan has been used to access various website containing child pornographic clips and store the same through an Internet file-sharing program.
23. Mr. Ozan contends that there is a big political conspiracy to scandalize him as he pushed forward the Bill seeking reform in the Urban Local Bodies providing reservation to the women. It has annoyed the powerful local tribal community who wants to impose the old, archaic system in the name of social customary practice which kept women out of political life. He further alleged that the police obtained information from the Internet Service provider (ISP) first prior to the alleged incident of 'Porn Gate scandal', without prior judicial authorization and the subscriber information associated with that IP Address. He further stated that the permission obtained from the Hon'ble Speaker with regard to search of office premises, computers etc. of him and Mr. Savadi is pre-planned and an attempt to legitimize the illegal activities of Police (i.e. Conducting an unconstitutional search by obtaining subscriber information matching the IP address from the ISP).
24. Mr. Ozan claimed that the evidence obtained as a result should be excluded and it violates the constitutional protection afforded to the members of House in form of 'Legislative Privileges' besides the safeguards in part III of the Constitution of India.

25. Mr. Ozan challenged the entire proceedings of ‘search & seizure’ in a Writ Petition under Article 226 of the Constitution, as conducted by Police in the premises of Legislative Assembly as unconstitutional, violative of Fundamental rights, infringing right to privacy and search unauthorized by law. The High Court dismissed the writ petition terming that the Police had sought due permission from Speaker of the Legislative Assembly, obtaining information from the ISP does not constitute a ‘search’ and the seizure is not protected by the scheme of ‘legislative privileges’ as afforded to the members of Legislative assembly.

26. Mr. Ozan has preferred a Special Leave Petition to the Supreme Court of Indistan against the order and judgment of High Court of Anga Pradesh (A.P.) raising the ‘substantial question of law’ as to the interpretation of Constitution of Indistan.

#### IV.

27. The Supreme Court of Indistan has clubbed the three petition (Firstly the Writ Petition by Mr. Hobart, secondly the appeal by Mr. Ozan & thirdly the PIL by NGO PEW seeking enforcement of Article 243 of the Constitution of Indistan and posted for hearing on 7th - 8th October 2017. It has framed the following issues for consideration:-

- I. Whether the rules which prohibits the ‘Live Telecast’ of proceedings of the business of House is against the basic feature of Constitution and the impugned activities i.e. ‘Live telecast of Speech’ is a part of Article 19 of the Constitution of India or not?
- II. Whether the ‘search & seizure’ as conducted by Police is within the permissible limits of the Constitution of Indistan and procedure prescribed by the law or not?
  - (i) Whether the information obtained by police from the Internet Service Provider constitute a ‘search’ prescribed by law or not?

(ii) If so, whether the ‘search’ and subsequent ‘seizure’ is excluded due to legislative privileges as afforded to members of legislature or not?

III. Whether this court can pass an appropriate writ to the ‘State’ in the petition and issues raised by NGO – PEW (Participation & Emancipation of Women) seeking enforcement of Article 243T to the extent of reserving 1/3rd of total number of seats to be filled by direct election in every municipality for women or not?

**NOTE:**

Parties may construct their own additional issues based only on the facts contemplated in the Moot Proposition and present arguments for the same.

**DISCLAIMER:**

Any resemblance or representation of any institution or person(s) in the moot proposition are work of fiction and are employed only for academic purposes, and bear no validity in facts.

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We have also set-up a “Frequently Asked Questions” section on our website which may answer general queries regarding the competition, the same can be accessed at <http://lcdmcs.com/faq>.

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