

5TH ANAND SWAROOP GUPTA MEMORIAL NATIONAL MOOT COURT COMPETITION, 2020

MOOT PROBLEM

1. Dr. Simpara, a renowned neuro-psychologist placed at Genia in democratic republic of Silvia, has good clients not only in Silvia but across the world. His clients include persons of international repute like Diplomats, Ministers, and CEOs of multinational companies. Apart from these, few notorious hardcore criminals & suspicious personalities are in the list. On September 29, 2019 few State installations in Genia were attacked by a group of terrorists causing loss of life and property. The matter was handed over to the Federal Investigation Bureau of Silvia (FIBS), which was required to submit the time bound report to the central government. During the investigation, FIBS found some material indicating some foreign connections but not sufficient to indict anyone. 'Silvia Express', one of the reputed and oldest known English daily owned by 'Media House Pvt. Ltd.', in order to unearth truth started its own investigation by its network of journalists across nation and the globe.
2. During the investigation it found that two suspects has visited his clinic in Lymia before 29 September 2019. Also, it found that Dr. Simpara has paid visits to the foreign countries of the suspects several times during February to May 2019. In this connection two reporters of Silvia Express attempted to quiz Dr. Simpara but he declined to comment and talk to them. The reporters' duo, then, planned to conduct a sting operation on Dr. Simpara and during the operation they found no substantiate evidence establishing connection between the suspects of the attack who had visited him in 2019. They could only find some papers in coded terms and the map of the cities, unconnected with medical practice.
3. It was also found during sting operation that Dr. Simpara was residing in Silvia on dubious means. After this sting operation the two reporters produced the entire report of the operation to the Editor-in-chief Mr. Petro, who authorized them to publish the report and he wrote an editorial reprehending tilted as "Unholy Connection of Intellectuals with Unholy Elements".
4. On October 1, 2019, a News Channel 'Truth Only', after the editorial peace was published in 'Silvia Express' on the basis of a survey on the recent trends of unholy connections primarily tried to establish that such connections do exist by referring to many cases from all over the

world. As a part of this exercise, the said channel has gathered, published and broadcasted the views expressed by several individuals from different segments of the society. The anchor of the said channel during a live streaming of news sought from the different panelists their final submissions on the issue. In their final arguments two panelists Ms. Glory and Dr. Corlho emphasized that “unholy connection of intellectuals with unholy elements cannot be denied to exist” and “the maps of the cities which are unconnected to the medical practice are enough to prove it”. A rough translation of what the panelist said in mother tongue is reproduced below:

5. “Silvia is the most terror affected country which has paid huge costs for it. There is a clear connection between these intellectuals and terror operating groups and that is because they belong to a particular ethnic group. The connection is clear, but we are unable to see it. It is time to respond.”
6. These remarks were published and broadcasted alongside a survey that was open during a live streaming of the news. The audiences were asked to respond to the questions posted live to reach some logical end and the relevant extracts of which are stated below:
 - Are there unholy connections of intellectuals with unholy elements?
Yes 89% No 11%
 - Is this unholy connection because of particular ethnic similarities?
Yes 75% No 25%
 - Whether time has arrived to respond?
Yes 78% No 22%
7. Subsequently, many leading daily newspapers and news channels carried a news item on the same subject matter in a much-distorted manner with low quality news disseminating intentionally false information. Also, as a result of this Dr. Simpara was trolled, abused and even threatened on social media. Violent conict broke out, after this news was broadcasted at national news channels along with the online survey, between two social groups. Security troops were dispatched to different parts of the State to maintain law and order.
8. Taking into account these serious developments and violent protest & uproar amongst the masses, the concerned Union Minister made an announcement in an election rally that central government will bring a law to exclude certain specic categories of illegal immigrants and will implement the same throughout the country. Due to the increasingly violent and volatile situation in the state, the government on 4th October, 2019 established a Truth and

Reconciliation Commission which was required to submit the time bound report and recommendations to the government.

9. The Commission was to be headed by Justice Kahn, Judge of the Supreme Court and two High Court judges, as members of the Commission. The Commission after thorough investigation led a report indicating that: There is a strong protection of press freedom in the constitutional philosophy... free press is a key element of democracy. It seeks to inform, to ignite, to inspire and to spark debate to raise the arguments for truth, democracy, individual autonomy and self-expression.
10. Only through free expression can one ensure that there will be competing ideas or views which human beings can adopt or reject for themselves... however it has also simultaneously created a potential threat, if the press is not used as means of disseminating truth but propagating hatred and divide... it must be transparent, responsible and accountable or otherwise the casualty can be irrevocable... the Commission is of the firm belief, while taking into consideration the relevant facts, that had the media not been irresponsible and aggressive in its reporting, as in the present case the situation would have been altogether different.
11. The press should have exercised self-restraint on its power of freedom and awaited for the judicial course to reach its logical conclusion... The Commission also referred to the 200th Report of the Law Commission of India on "Trial by Media: Free Speech and Fair Trial under Criminal Procedure Code" of August 2006 which read as follows: With the coming into being of the television and cable channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions. Innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. There appears to be very little restraint in the media in so far as the administration of criminal justice is concerned.
12. **The Commission recommended that** - journalists need to be trained in certain aspects of law relating to freedom of speech in Article 9(1)(a) and the restrictions which are permissible under Art. 19(2) of the Constitution, human rights, law of defamation and contempt. Aggrieved thereby, the Media Association of India led Writ Petition No. 100 of 2019 before the Hon'ble Supreme Court contending that any such action will be ultra-vires the Constitution as it plainly a flagrant violation of the freedom of speech & expression, the freedom of press & the freedom of profession as guaranteed under the Constitution. During this time based upon the reports in

the news channels the Police and FIBS started keeping track of the movements of Dr. Simpara round the clock as well as tapped his mobile conversations.

13. The FIBS relied on section 69 of the Information Technology Act which authorizes the government to issue direction for interception or monitoring or decryption of any information if it is expedient to do so in the interest of sovereignty or integrity of India. Dr. Simpara was also terminated from his services at Global Medical Institute of India, where he was the head and dean in the neuropsychology department. Realizing this and infuriated by the report and the editorial he approached Supreme Court of India seeking redress for the violation of his privacy against the Editor-in-chief Mr. Petro, the 'Media House Pvt. Ltd. ' and news channel 'Only Truth' against trial by media as it has not only distorted his reputation but also infringed his right to privacy as contemplated in the Constitution. In a separate petition by Mr. Caviar, a social activist the Supreme Court was dealing with a similar question.
14. In this petition Mr. Caviar contended that the Constitution of India does not employ the term "Freedom of Press" unlike the one in the American Constitution. Freedom of speech and expression of the citizen does not confer an absolute right, it is limited and it is absolutely limited for press because the guarantee is only to the natural person and to the artificial person. It is argued that the guarantee of Article 19(1) (a) of the Constitution only affirms what already exists in the natural persons with the rider that the state can make reasonable restrictions in the exercise of the rights which is right to freedoms listed under Article 19 (1). It cannot take into its ambit what did not exist naturally.
15. Artificial persons are out of the reach of Article 19 of the Constitution. It further argues that though it is true that citizens can form associations or unions but in so far as the guarantee is for citizens only, the exercise will have to be by individuals; A legal person created by or under law cannot exercise the freedoms under Article 19(1) (a) in that artificial personality.
16. Even the principle *qui facit per alium, facit per se* will take in only natural persons for Article 19 purposes. The petition also challenges the constitutional validity of section 69 of the Information technology Act broadly on the ground that the said provision does not satisfy the test of proportionality vis-a-vis right to privacy.

- Whether Dr. Simpara is entitled to enjoy the right to privacy.
- Whether the guarantee under article 19(1)(a) of the Constitution extends to artificial persons.
- Whether section 69 of the Information Technology Act is constitutional.

Note: The Laws, reports and recommendations of Silvia are to be presumed *pari-materia* to the laws of India.



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