

# MOOT PROBLEM



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# DISCLAIMER

The facts stated in the present case are fictitious and have been drafted solely for the purpose of the competition. The Facts, names, locations and dates bear no resemblance to any person, event or happening whether dead or alive. Any resemblance, if any found is purely co-incidental.

- The real names used in the problem are specifically for the purpose of the moot. No real incidents can be attached to them.
- This problem does not intend to hurt the feelings of any section of society or to offend any person.

# MOOT PROPOSITION

The Republic of Westrostan is an independent 'Union of States'. It consists of six states namely Uttaravale, a mountainous region in North, Punjabfell in the west, Biharirock in the east, Assamhall in the North east and Kannadgarden in the south along with Madrasdome. Biharirock is also the capital of Westrostan. Although overwhelming majority of population follows Wesdu Religion, diversity in cultural aspects like language, traditions etc. is truly a remarkable feature. The country has a long history of various dynastic kingdoms which ruled different parts of the country. Not once in the entire run of its history, Westrostan was one geographical and political entity. These kingdoms waged numerous battles to establish their superiority over each other. In 1700's Britishers invaded Westrostan and gradually established their paramountcy over all the kingdoms. Westrostan got independence from British Rule in 1947.

Taking inspiration from the Constitutions of the major democracies of the world, the Constitution of Westrostan was wisely drafted by the members of its Constituent Assembly. Democracy and Secularism are the essence of the Constitution. It encompasses the values of Human Dignity and Equality. It guarantees to its citizens certain fundamental rights-the scope of which is considerably enlarged by the dynamic judgments of the Supreme Court of Westrostan. Moreover, Westrostan is a member of the United Nations and has vowed to abide by and implement the mandate of all International Human Rights instruments. Among the members of United Nations, the image of Westrostan is that of a 'Welfare State'. However, its citizens immensely cherish the fact that now there are no more despotic dynastic monarchies, cadre based democratic political parties come to power through fiercely contested free and fair elections. The Constitutional, legal and policy framework of the Republic of Westrostan is in *pari materia* to the Republic of India.

In last couple of decades, country has witnessed a paradigm shift in the political landscape. There has been a marked rise of the dynasty politics. Majority of the political parties are now controlled by particular families where they appoint their heir as the head of those parties. Most prominent of the lot is 'Everything Family Party'. The shift has also been seen on ideological front. Some new parties have arrived on the scenes which unapologetically use religion as a tool of politics, most prominent is 'Everything Ban

Party'. At present, Everything Ban Party is in power in Union and 3 states. All this is accompanied with stagnated economic growth, rapidly rising financial inequality, unemployment, rampant corruption, caste and religion based riots. The non-democratic activities i.e. rise of dynastic parties as well as parties promoting religious propaganda has been criticised by many civil society activists and public spirited persons.

Therefore, being a leading legal Activist Ashant Roshan has filed a PIL (Public Interest Litigation) in the Supreme Court of Westrostan arguing that such non-democratic practices are essentially against the spirit of our Constitution. He argues that *"The founding fathers of our Constitution never envisioned such political scenario in our Country. Dynastic politics is taking us back to the days of despotic monarchies. It violates the Republican & Secular nature of our nation. No major progressive democracy among member states of U.N.(United Nations) with a sole exception of Republic of India has such large scale and deep rooted presence of dynasts in politics."* He also contended with help of leading data that how corruption, nepotism, administrative inefficiency and criminalisation in politics have steeply increased with the dynastic politics in India. He has also questioned the presence of Communal Parties. Rabble rousing, pitting communities against each other and selective persecution of minorities & activists are their modus operandi. Again taking example of India, he has contended that how major riots have facilitated rise of such parties there. It has come to such stage that people of minority community are being killed in the name of protection of sacred animal. If not checked, Westrostan is on the path of becoming other India. He has asked the Supreme Court to lay down guidelines for Election Commission of Westrostan to de-recognize such parties or suggest some reforms to curb prevailing corrupt practices. The union government in its response has summarily rejected all his arguments citing Constitutional provisions and challenging the presented data regarding India as exaggerated and misinterpretation of facts.

Totally disillusioned with such political and administrative structure, some people from the lowermost economic hierarchy of the country have taken up arms against this system. They have organized themselves into a group called "Red Walkers" having Ideology.....

- They believe that Westrostan is a sham democracy, sham republic and sham secular state.

- They contend that there has been a very convenient transfer of power from Britishers to their rich beneficiaries.
- Over the years, they have feeded the masses with false propaganda that there was a non-violent revolution. In fact there has never been a true revolution in Westrostan.
- These dynasts are despotic monarchs masquerading as politicians.
- These communal parties are serious threat to our society.
- This political system and Constitution is designed to serve the rich only.
- To save the country, a true revolution is required..." *SARDIYAN<sup>1</sup> IS COMING*"

Over the last decade, they have established their bases in remote areas of all the states called 'Red Pockets'. Union as well as state governments are using their might to suppress them. The clashes between 'Red Walkers' and security agencies have resulted into death of innocent civilians, causing collateral damage to the state.

Some members of the 'Red Walkers' got disenchanted with violence and therefore decided to give up arms and abjure violence. In 2012, they joined the mainstream politics forming a political group called 'Everything Free Party' to further their agenda. They got immense support from sections of intelligentsia including scholars, lawyers, journalists, social workers etc. Therefore, Everything Free Party is getting remarkable rise in its popularity nationwide. In January 2017, the Everything Free Party significantly trounced all the opponent parties in the Uttaravale State Elections and formed the government. Also leading surveys showed that Everything Free Party is in pole position for General Elections, 2019.

To take on Everything Free Party in coming general elections 2019, all other parties have decided to keep their age old rivalries aside and join hands therefore; launched a massive campaign all over Westrostan. Such parties are of the firm opinion that they are nothing but 'Red Walkers' pretending to be politicians and trying to enter the system with a sole objective of sabotaging the system from inside. They are over ground workers of Red Walkers providing moral and intellectual support to them. They pointed out to the people that they never criticize the killings of armed personnel by walkers during encounters. They started calling them "Urban Red Walkers".

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<sup>1</sup> "SARDIYAN" in one of the local tribal language means Revolution.

Also in December 2017, Union Government sanctioned the ‘Operation Broom’ to wipe out the Reds from all Red Pockets in the country. Initially, central forces had little success and many of its officers and soldiers got ambushed and slaughtered in these Red Pockets. But slowly forces started gaining ground. News of civilian casualties, excessive use of force, and extra judicial killings by central forces surfaced from many parts. Subsequently many human rights activists including renowned activists Mr. Snow and Ms Liza from Everything Free Party got arrested by the Biharirock Police on the ground of sedition i.e. for criticizing government and armed forces and holding public gatherings to sensitize people on this issue. Also, such activists are charged for working with Redwalkers and discreetly encouraging young men and women to join them. Negating all the charges and allegations, they have contended that it is outright violation of their Fundamental Rights and selective political persecution of the members of Everything Free Party. Together they have approached the Supreme Court to constitute (Special Investigation Team) SIT to look into the arrest of the Activists.

Following its operation Broom, central forces alleged that Uttaravale Government has failed to cooperate in wiping off red pockets existing in its territory. In fact one intelligence report showed that many senior leaders of Red Walkers have taken refuge in the state of Uttaravale. To make things worse two leaders from the Everything Ban Party were shot dead in the broad daylight allegedly by Red Walkers; the State Government assured that guilty will be punished. Resultantly, Central Government significantly increased the number of central forces and virtually took over the whole law and order in Uttaravale.

Invoking the original jurisdiction of the Supreme Court, State of Uttaravale argued that Union, using its power to deploy its armed forces, has in way been encroaching in the State fields of ‘Public Order’ and ‘Police’. Also even if Constitution allows...does it allow to such extent that central forces take over completely the role of State Police forces. Last, whether the situation prevailing in Uttaravale warranted such extreme measures.

Further, in September 2018, the Union Government invoked Article-356 and imposed President’s Rule on the charge that State Government is constantly interfering in operation against Red Walkers. Also in last 17 months, State Govt. has turned Uttaravale into a breeding ground for anarchists and the Red Walkers. It has become a Safe heaven

for many Red Walkers. However, Uttaravale state Govt lamented and challenged such actions as the murder of democracy and Constitutional federal structure before the High Court of Uttaravale. However, the High Court upheld the President's proclamation. The state of Uttaravale has challenged the same in the Supreme Court.

***The Supreme Court of Westrostan has clubbed<sup>2</sup> all the issues.***

1. Whether dynastic and communal political parties violate the democratic and secular principle of Westrostan's Constitution. Whether the Supreme Court should lay down guidelines regarding it.
2. Whether provisions of 42<sup>nd</sup> Amendment, 1976 which added entry 2A in Union List and also amended entries 1 and 2 of State List violates the basic structure of the Constitution. Also whether these provisions in their present form allows the central forces to completely take over law and order in the State? Whether the situation prevailing in Uttaravale warranted such extreme measures.
3. Whether the proclamation of President Rule in State of Uttaravale is Constitutionally valid or not?
4. Whether SIT should be constituted for investigation into arrest of activists.

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<sup>2</sup>The Constitution of Westrostan empowers the Supreme Court to club different kind of issues.