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Moot Proposition*

1. The *Aaptheekhain Republic* is an ever developing South Asian country with the 2nd highest population in the world. The founders of Aaptheekhain envisaged it to be a secular, sovereign, democratic and socialist nation which is reflected in the *Constitution of Aaptheekhain, 1950* (hereinafter, '*Aaptheekhain Constitution*'). Aaptheekhain has a federal form of government which comprises of 29 States and 7 Union Territories (UT). The vast coastline of Aaptheekhain peninsula which is almost 8,000 kilometres long covers many of these States and UTs.

2. The coastal zone of Aaptheekhain is dynamic in nature, since it is a scenic region where its land space, ocean and atmosphere amalgamate with each other. Being a transition area between marine waters and territorial landscape, it contains a wide variety of natural ecosystems such as shores, mangrove forests, salt marshes, wetlands, tidal flats, etc. and it acts as a home to several *sui generis* species of corals, fishes, reptiles and other marine creatures. In addition, the coastal zone also singlehandedly supports the livelihood needs of many fishing hamlets bordering the sea lines of Aaptheekhain.

3. Since the last decade of the 20th century, several reputed environmental organisations have commented that apart from high population density issues, the Aaptheekhain coastal zones are also vulnerable and sensitive to the impacts of possible sea level rising, rise in cyclones and storms etc. which are directly influenced by climate change. Very recently, the 2019 '*Global Assessment Report (GAR)*' of the *United Nations Office for Disaster Risk Reduction (UNDRR)* noted that Aaptheekhain is one among the countries which is likely to face economic losses to the tune of 4% of their *Gross Domestic Product (GDP)*

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annually, if it fails to adequately invest in building natural ecosystems and prevent environmental degradations. Similarly, the 2018 *World Bank Report* on ‘*South Asia’s Hotspots: Impacts of Temperature and Precipitation Changes on Living Standards*’ warned that around 600 million Aaptheekhain inhabitants will be moderately or severely affected by drastic changes in temperature and rainfall in the near future.

4. Unlike many other nations around the world, the beauty of Aaptheekhain is its diverse populace, who despite belonging to distinct social, cultural and economic background have mostly peacefully coexisted together. As Aaptheekhain is known for its multi-ethnicism and cultural diversity, usually factors such as religion, caste and language plays a vital role in both Parliamentary and State Assembly elections. However, in the run up to the 2019 Parliamentary elections which was held to constitute the 17th Lok Sabha, perhaps for the first ever time, climate change became a significant political issue. This election also broke the common perception that environmental concerns are an election issue only for the urban electorate, as the 2019 elections witnessed a ‘*no water, no votes*’ campaign in two rural constituencies of Aaptheekhain.

5. In fact, the issues concerning the effects of climate change occupied significant portions in the election manifestos of both the *Nationalist Liberal Party (NLP)* and the *Bhakat People Organisation (BPO)*, the two most popular parties in Aaptheekhain. With the demand for infrastructure and construction projects increasing day by day especially in the urban areas and climate change consistently impacting vulnerable regions across the nation, BPO which comfortably won a consecutive term in 2019 elections made environment protection as a top priority and vowed to bring in a host of policy and legislative changes regarding the same.

6. In the late 1980s and the early 90s, the need to strike a balance between conflicting issues of preservation of fragile ecosystems and development activities in ecologically sensitive areas became a matter of policy concern. To address the same, the then *Ministry of Environment and Forests (MoEF)* to the Government of Aaptheekhain issued the *Coastal Regulation Zone Notification, 1991* (hereinafter, 'CRZ 1991') under the relevant provisions of the *Environment Protection Act, 1986* (hereinafter, 'EPA 1986') and *Environment Protection Rules, 1986* (hereinafter, 'EPR 1986'). According to this notification, the coastal areas of seas, rivers, estuaries, creeks, bays and backwaters which are influenced by tidal action in the landward side up to 500 meters from the *High Tide Line (HTL)* and the land between the *Low Tide Line (LTL)* and HTL have been defined as areas falling under the *Coastal Regulation Zone (CRZ)*.

7. The 1991 notification classified the CRZ into four zones: *CRZ – I, CRZ – II, CRZ – III* and *CRZ – IV*. Each of these categories are regulated by a different set of directives. Within the CRZ, construction and other forms of industrial activities are either completely prohibited or restricted by the relevant authorities based on a zone to zone basis. Since 1991, this notification has undergone multiple changes, mainly due to improper interpretation of HTL, conflicting laws of various State & Central governments and confusions regarding multiple regulatory authorities overseeing the coastal zone. Even though, various amendments were brought to curb unreasonable exploitation of coastal zone resources from time to time, yet many shrewd industrialists with the active connivance of bureaucrats and politicians continued to find loopholes to exploit the law.

8. Fast forward to 2011, consolidating all the earlier instructions, a new notification called the *Coastal Regulation Zone Notification, 2011* (hereinafter, 'CRZ 2011') was issued based on the recommendations given in the 2005 Report of the *Committee to Review Coastal Regulation Zone Notification, 1991*. This notification continues to enable the concerned *Coastal Zone Management Authorities (CZMAs)*, *District Level Coastal Committees (DLCCs)*, and the *Ministry of Environment, Forests and Climate Change (MoEFCC)* to protect and conserve coastal stretches. CRZ 2011 which was issued in suppression of CRZ 1991 aimed at triple objectives of ensuring livelihood security for the fisher folk as well as other local communities who inhabit the coastal areas, conserving & protecting coastal ecology and promoting economic activities in a sustainable manner based on scientific principles. It also mandated every State government to prepare a unique *Coastal Zone Management Plan (CZMP)* to suit its own needs.
9. *Chera Nadu* is one of the picturesque States located in the southern side of Aaptheekhain. After the first decade of the 21st century, climate change and global warming aggravated the threat to the socio-economic stability and population health of Chera Nadu and the neighbouring states that border it. Almost all the southern states of Aaptheekhain have recently experienced frequent and severe natural calamities of varying types. Researchers in the field of environmental economics agreed that erratic monsoons and torrential floods have become consistent occurrences in the region with varying degrees of socio-economic impact, ranging from the moderate effects of lowered water quality and increased vector-borne disease to extreme impacts, such as the destruction of rural areas, agricultural lands, roads, bridges, human lives and property.

10. *Panaiyur* is a small village in Chera Nadu known for its cuisine, beaches and tourism. It is accessible through both road and water ways. The pictorial West Coast Road National Highway which is built along the coastline of Chera Nadu passes through it. *Madarasapatnam*, the capital city of Chera Nadu is only 25 kilometres away from Panaiyur. Overall, this area is under the radar of investors for quite some time, because of its locational attributes and close proximity to Madarasapatnam.
11. In December 2009, Panaiyur Panchayat authorities accorded permission for the construction for three waterfront multi-storied apartments overlooking the scenic canals of Panaiyur backwaters to three prominent real estate developers namely *Pleaser Builders*, *Ganvi Promoters* and *Shankar Constructions*. Each builder planned to build 150 flats each in their respective block covering a total area of 70,000 square meters targeting the upper middle class buyers and NRI customers. Within the next few months, around 25% construction work was already completed and the builders even entered into sale agreements with few prospective buyers. However, within 13 months of granting permission, Panaiyur authorities issued a show cause notice to the three builders following a directive by the *Chera Nadu Coastal Zone Management Authority (CNCZMA)* under Section 16 of the *Chera Nadu Municipality Building Rules, 1999* (hereinafter, '*CNMB Rules, 1999*').
12. As per the notice, CNCZMA was of the considered opinion that the site chosen for construction falls within the ambit of '*no development zone*' of CRZ – III where no construction is allowed within 200 metres from the HTL. Any form of construction contravening this rule will amount to violation of the relevant CRZ laws which are in force. Further, CNCZMA makes it mandatory for all municipal regulatory bodies to

obtain its prior permission before approving any projects in CRZ areas. But Panaiyur authorities failed to follow this procedure and therefore the permit they granted for erecting the three waterfront apartments have to be revoked.

13. After receiving the said notice, *Gavri Promoters* decided not to proceed further with the construction and scrapped the project. However, the other two builders, instead of responding to the notice approached the *High Court of Chera Nadu* with a prayer to quash the notice. The Respondents contended that the High Court should not entertain the petition filed by the builders, since it is a premature case. They also argued that the *National Green Tribunal (NGT)* which is the primary judicial organ for all disputes under the CRZ laws is the appropriate authority to decide the grievances of builders. However, the High Court admitted the petitions and initially granted an interim injunction staying the notice in 2011 with the liberty to the Respondents to issue stop memo notice, if required, in accordance with law.

14. Armed with the injunction order, the Petitioners quickly proceeded to finish the construction as planned earlier. The concerned authorities did not issue any stop memo notice when the construction was ongoing. The two builders successfully completed the project in 2013 erecting 300 flats. Subsequently, they sold the flats to many unsuspecting buyers who in turn re-sold the flats to successive buyers and the cycle continued. Meanwhile in 2010, Panaiyur was upgraded to the level of Municipality from a Panchayat and the same was also reflected in the new *Coastal Zone Management Plan (CZMP)* of Chera Nadu prepared under CRZ 2011. As a result, the builders argued before the High Court that their project has been erroneously classified as falling within *CRZ – III*.

15. The Court delivered its judgement in 2016 in favour of the Petitioners by setting aside the show cause notice. It held that the Panaiyur Municipality has not applied its mind properly while granting the building permit. It has passed the notice merely under the dictation of CNCZMA and therefore the whole proceedings are completely untenable. The Court also held that the case has reached the stage of *'fait accompli'* and therefore the bonafide buyers who are currently in occupation of the flats should not suffer because of the procedural lapses committed by the Respondent authorities. However, curiously the Court did not make any comments regarding the applicable CRZ notification governing the case and whether the building project falls within *CRZ – III*.
16. CNCZMA preferred an appeal before the Division Bench of the High Court and the same was dismissed in 2018. Appealing against this order before the *Apptheekbain Supreme Court*, CNCZMA argued that the erected constructions are squarely in violation of the CRZ laws and the same cannot be saved because of the defective procedure followed by the Panaiyur Municipality authorities. It further argued that the High Court had failed to decide the case on merits. Admitting the Appeal, the Apex Court appointed a three-member *Expert Committee (EC)* consisting of a bureaucrat each from CNCZMA & Panaiyur Municipality and another higher official from the Chera Nadu government. The Court held that considering the peculiarity and significance of the case at hand, the EC will hear all the necessary and affected parties concerned and will submit a report within a period of six weeks.
17. During the proceedings before the Committee, many existing flat owners who came into the ongoing litigation picture for the first ever time could not be heard properly due to

paucity of time. The EC submitted its report within the prescribed deadline whose findings were in favour of CNCZMA. The summary of the EC findings are as follows:

- “Panaiyur Panchayat should have forwarded the application of the builders for construction of water front apartments to CNCZMA as per *CNMB Rules, 1999*;
- By issuing construction permit without the concurrence of CNCZMA, Panaiyur Panchayat have violated both the CNMB Rules and the CRZ laws;
- Panaiyur will still be considered as a rural panchayat, even though its status was upgraded to a municipality in 2010 for the purposes of the current proceedings;
- Accordingly, the relevant CRZ notification applicable to the facts of the present case is CRZ 1991 and not CRZ 2011.
- As per CRZ 1991, the site of construction falls within CRZ – III and therefore the said construction is illegal and liable to be demolished.”

18. Based on the above findings, on 20th September 2019, the Supreme Court declared that the construction permit granted by the Panaiyur authorities in Dec 2009 as void and ordered the demolition of the two apartment complexes within a period of two months from the date of the order. The Court reasoned that at the relevant time when the construction process began, Panaiyur area was considered as falling within CRZ – III and not any other zone. Being prominent players in the real estate market, the builders should have exercised better due diligence before commencing the construction process.

19. With respect to the existing flat owners, the Court invoked the principle of ‘*caveat emptor*’ and held that it is the responsibility of the buyers to verify the antecedents of the property. If the builders have misled the buyers, then the buyers are free to proceed against them both under criminal and civil law to recover compensation and damages. The Court opined that CRZ violations should not be treated lightly in view of the natural disasters happening in different parts of the country. It rejected the argument of the

builders that “*it is now legal, even though it may have been illegal*” by holding that environmental laws should be strictly implemented.

20. The Court further held that the said buildings are constructed on the shores of Panaiyur backwaters which supports a large amount of biological diversity. These illegal constructions are capable of restricting the natural of flow of the water body. The Court reminded that Chera Nadu is already not able to withstand the danger of floods and heavy rains due to the cascading effects of illegal constructions. With this order, the Court hoped that environmental law violations would be detected and stopped before the commencement of the project itself.
21. Pursuant to the Supreme Court order, Panaiyur Municipality served eviction notices on all the residents of the two apartments mandating them to vacate the premises within two weeks from the date of the SC order. Since they did not vacate the premises within the prescribed deadline, the Government officials disconnected the power supply and other essential amenities such as drinking water, sewage connection etc. However, the residents refused to leave the flats and started a peaceful protest against the human rights violations caused by the actions of the Supreme Court order and the Panaiyur Municipality.
22. They even started two organisations namely, *Plearder Builders Innocent Residents Association (PBIRS)* and *Shankar Constructions Gullible Owners Sangam (SCGOS)* to pursue their claims both legally and politically. They contended that instead of penalising the authorities for lapse in procedure, the SC has penalised them without even hearing their concerns. The protest got a major thrust, when almost all major political parties, non-political

organisations and NGO's of Chera Nadu participated in a demonstration in front of the apartment blocks expressing their support for the residents.

23. Eventually, they decided to contest the 20th Seporder of the Supreme Court and the concomitant eviction notice served by the Municipality. While the two builders and SCGOS filed a review petition against the SC order, PBIRS opted to file a Writ Petition before the Apex Court questioning the validity of the eviction notice. Some of the grounds raised in these petitions are as follows:

- a. That the affected parties, i.e., the residents were not even given a direct opportunity to be heard before the Supreme Court or any other judicial body.
- b. That the composition of the Expert Committee which consisted of officials from CNCZMA and Panaiyur Municipality violates the test of bias and therefore the entire proceedings of the EC stand vitiated.
- c. That the EC did not issue call for notices to all the current residents and it served notices only on the builders.
- d. That the EC formed by the Apex Court had not given the affected parties, i.e., all the residents a fair, adequate and proper hearing and therefore the Committee did not follow due procedure and violated the principles of natural justice.
- e. That the Apex Court has usurped the powers of the executive authorities by passing the order to raze the two apartment complexes. The questions of whether the constructions are legal or illegal and if illegal, should they be regularised or demolished, are issues falling within the domain of the executive and not the judiciary.
- f. That for any violation of CRZ laws, the relevant statutory remedy is available before the National Green Tribunal and the Apex Court has appropriated the powers of the NGT while passing the demolition order.
- g. That CNCZMA or Panaiyur Municipality never issued a notice to the builders or directed them to stop construction.

- h. That the demolition order and the eviction notice that followed are in violation of the Petitioners right to housing which is part of the fundamental right to shelter guaranteed under Article 21 of the Aaptheekhain Constitution.
- i. That the Court failed to note that they were second or third hand buyers and they unaware of the problems surrounding the approval permit.
- j. That the CRZ delineation of the Apartment complexes are erroneous, since the authorities have applied the wrong category of CRZ as well as the outdated CRZ notification. If the building is demolished now and if a new building with identical features is constructed in the very same area, the new construction will be deemed as legal, as it will be within the permissible CRZ category.

24. The Supreme Court has issued notices in both the Review and Writ Petitions. While the petitions were pending, Panaiyur Municipality invited expression of interest for controlled implosion of the two apartment blocks. *Ruchy Residents Welfare Association (RRWA)* is an association of flat owners who are living in an apartment block which is situated near the soon to be demolished blocks. They have approached the National Green Tribunal praying that if the entire structure is demolished at one go without proper planning and study, it will result in a larger ecological disaster, seriously affecting the environment and inhabitants of nearby places. The NGT declined to intervene and therefore *RRWA* has approached the Supreme Court. The Supreme Court decided to hear *RRWA* case along with the earlier two cases.

Note:

- i. The Moot Proposition is purely fictional. Resemblance of any kind to any person (living or dead), name, company, property, political party, union, association or organisation etc. is purely co-incidental.

- ii. The proposition is a fictitious factual account prepared for the purposes of the present moot court competition only, and as such it does not attempt to influence or predict the outcome of any matter whatsoever.
- iii. The problem is set in the fictional *Aaptheekhain Republic* whose Constitution and other laws are in *pari materia* with that of the *Republic of India*.
- iv. The *Aaptheekhain Supreme Court* is the Apex Constitutional and Appellate Court of the *Aaptheekhain Republic* and is equivalent to the *Supreme Court of India*.
- v. The *High Court of Chera Nadu* can be equated to any one of the Chartered High Courts in India.
- vi. The *Aaptheekhain National Green Tribunal (NGT)* is equivalent to the NGT of India formed under the *National Green Tribunal Act, 2010*.
- vii. The *Chera Nadu Municipality Building Rules, 1999* are similar to the *Kerala Municipality Building Rules, 1999*.
- viii. The judicial decisions of India have a binding value in the Courts and Administrative Tribunals in Aaptheekhain and any other decisions from other jurisdictions merely have a persuasive value alone.
- ix. The Participants are at liberty to frame the issues and address any argument given in the Moot Proposition, which they reckon might be relevant and necessary for the satisfactory adjudication of the dispute.
- x. This Moot Proposition is not available for publication or for usage in any other competition without the permission of the author.