

IV Justice Murtaza Husain Memorial Moot Court Competition-2017

6-8th October, 2017

Organised by: Unity Law & Degree College, Lucknow

MOOT PROPOSITION

Disclaimer: All the names used and events described in this proposition are fictitious. Resemblance of any kind and magnitude to any name, person, organization or event whatsoever is purely co-incidental. This is a fictitious problem/case with the under-given fact matrix. The counsels are expected to operate within the four walls of the facts and issues raised herein.

Facts of the case are as follows:

The Republic of Mandia got independence from Britica on 15th September, 1946. Mandia was a colony for about 150 years. On getting independence, it enacted its Constitution which provided for a democratic parliamentary form of governance with a federal structure based on the principles of free and fair elections, equality, liberty, fraternity, transparency and accountability of the state and freedom of religion as its core values. Republic of Mandia has its independent and autonomous election commission. Judiciary of Mandia is also autonomous and independent in its own sphere and its independence is held to be the basic structure of the Mandian Constitution. The higher judiciary is made the guardian and interpreter of the Mandian Constitution and hence the power of judicial review of the laws and actions of the government is given to the higher judiciary. The State of Mandia is a union of states and is a secular state.

The following developments took place in the Republic of Mandia, which resulted into a Special Leave Petition in the Supreme Court of Mandia:

1. That the government of Mandia formulated a policy named '*Pehchaan*' for profiling of its citizens and to provide them a card called Pehchaan. The Pehchaan was meant to identify citizens for various benefits given by the government. It was also meant to save duplicity of identities. One of the objectives of Pehchaan was to identify illegal immigrants in the country and to deport them to their respective countries. The main aim of this policy was to check the leakage in government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the government. Basically, the philosophy behind this policy is '**Zero Tolerance for Corruption**'.

2. That the duplicity of election cards will also be checked through Pehchaan Cards- which are based on latest cyber technology. Tax collection of the government will also increase with the linking of Pehchaan cards with PAN and bank accounts. These would be the future initiatives of the government. The policy document of the government clearly indicated all the above stated objectives.
3. That as per government notification issued on 12th October, 2009, Pehchaan policy is also aimed at eliminating all forms of terrorism by finishing off sleeping modules and local support base of terrorists in the country. Terror finance will be curbed through Pehchaan and Hawala transactions and foreign contributions to suspect NGOs can be checked by making payments, salaries and other financial transactions online and linking them with Pehchaan system.
4. That Pehchaan cards will be provided free of cost to the citizens and a network of cyber cells will be established throughout the country to facilitate the people to apply for the Pehchaan cards.
5. That the government of Mandia constituted **National Unique Identification Authority** under the Chairmanship of Mr. Rajeev Khanna, IT specialist on 30th November, 2009. This Authority started its work of making Pehchaan cards and assigned this task to private entities having expertise in this field. These private entities further outsourced this work to private vendors in every district and block of Mandia to provide Pehchaan cards to the citizens by taking their basic details like finger prints of both the hands, scanning of iris of the eyes, blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on the citizen.
6. That the Petitioner, Mr. Satish Dhankar, challenged this policy of mandatory Pehchaan cards in the High Court of Nelhi, one of the states of the Republic of Mandia on 22nd January, 2010 through a Public Interest Litigation (PIL) contending that the Pehchaan policy violates right to life including the right to privacy and right to speech and expression- especially the right to remain silent and not to part with basic information about oneself.
7. That the Petitioner contended that the information sought under Pehchaan scheme is very intimate and integral to one's personality and hence making it mandatory to provide basic and intimate information is unconstitutional and violative of his fundamental rights.

8. That the Petitioner also challenged the policy as there is no law/statutory support for backing the mandatory making of Pehchaan cards by the government.
9. That the government of Mandia on 24th July, 2014 during the pendency of this PIL made Pehchaan card compulsory for seeking benefits under different social welfare schemes of the government.
10. That while hearing the case by the High Court of Nelhi, the petitioner contended that during the pendency of the case government cannot make Pehchaan cards mandatory for seeking benefits under government's social welfare schemes. On this High Court on 27th July, 2014 passed an interim order directing the government not to make Pehchaan cards mandatory.
11. That the government of Mandia the next day i. e. 28th July, 2014 filed an application for the clarification of the interim order and to make a plea that Pehchaan cards be allowed to be made mandatory for non-benefit schemes or programmes of the government like making of PAN Cards, Mobile connections, applying for gas connection and opening of bank accounts. The High Court allowed government's plea permitting it to make Pehchaan cards mandatory for non-benefit schemes, programmes and initiatives of the government.
12. In the monsoon session of the Parliament of Mandia on 11th August, 2014, the government of Mandia enacted a law called the Pehchaan Act, 2014 making mandatory the Pehchaan cards for all schemes (benefit and non-benefit both). This law also provided a statutory basis to the National Unique Identification Authority. The Act of 2014 also has a whole chapter on data protection and penalties and punishments for data leakage.
13. That the Petitioner filed a fresh application in the High Court to amend his petition for including the challenge to the Pehchaan Act, 2014. The High Court allowed his plea to challenge the Pehchaan Act, 2014 along with his original prayers for quashing the whole Pehchaan project of the government of Mandia.
14. That on 13th January, 2015, the government of Mandia issued a notification making Pehchaan mandatory for every scheme and programme. The notification said that Pehchaan card is mandatory for issuing PAN card, Driving Licence, Passports, opening bank account and existing bank accounts would be linked with Pehchaan Cards.

15. That the government of Mandia fixed March, 2016 as the deadline for linking Pehchaan cards with bank accounts and PAN cards and asked every citizen to comply with it and in the absence of compliance penal actions are to be initiated.
16. That the Petitioner prayed for the stay on above notification of the government till the final disposal of the PIL but High Court refused to stay the notification but agreed for day to day hearing of the case keeping in view the urgency of the matter.
17. That the Petitioner claimed Pehchaan Act, 2014 as violative of right to privacy guaranteed by the Constitution of Mandia. He contended that data collected by government is not safe and it can be leaked to private entities very easily threatening the life and liberty of the citizens.
18. That the Petitioner also contended that 13 crore data of citizens was leaked from Pehchaan database and now this data is in the hands of the private companies, which can use this data for telemarketing, making the life of the consumers/citizens hell by selling all sorts of products to them.
19. That the Petitioner also claimed that recently an IIT passed graduate hacked into Pehchaan database to use its data for his online payment App.
20. That the Petitioner also contended that this data can be used by majoritarian governments for communal profiling of communities and hence depriving them of basic rights and amenities provided by the government. This can result into massacre, if some dictator assumes power in the Republic of Mandia.
21. That the Petitioner claimed that most intimate information/data demanded under Pehchaan scheme is integral to personality and hence violation of right to life under Article 21 of the Mandian Constitution.
22. That the Respondent argued in the High Court that there is no right to privacy provided in any provision of the Constitution of Mandia.
23. That the Respondent also promised during the proceedings that it will soon bring a substantive law for the protection of data.
24. That after hearing the matter in detail and going through the materials and documents submitted by Petitioner and the Respondent, the High Court of Nelhi rejected the PIL and held that

Pehchaan Act, 2014 is constitutional and government can make mandatory the making of Pehchaan cards. It further held that right to privacy is a common law right and right to deny information to the government cannot be held to be fundamental right in the light of the necessity to protect the state from terrorism and other security related problems. Since the state of Mandia is surrounded by hostile neighbours it becomes incumbent on the part of the government to provide Pehchaan cards to all its citizens.

25. That the High Court of Nelhi also held that making Pehchaan mandatory is essential for the benefits of schemes to reach to citizens as it will eradicate the problem of duplicity of identities. It will further help in making elections free and fair by eliminating double election cards and voting rights at two or more than two places.
26. That the High Court of Nelhi also justified the collection of data by private entities for the Pehchaan as government of Mandia is not having adequate resources and staff for this purpose and hence its outsourcing of data collection exercise is justified because of the reasons of lack of resources, expertise and staff with the government.
27. That the Petitioner went to the Supreme Court of Mandia assailing the decision of the Hon'ble High Court of Nelhi.
28. That the Petitioner came to the Supreme Court of Mandia through a Special Leave Petition under the provision of the Constitution of Mandia. He prayed for quashing the judgment of the Hon'ble High Court of Nelhi and to declare the Pehchaan Act, 2014 and previous policy of providing Pehchaan cards as violative of various provisions of the Constitution.

Note: The Constitution and other laws of Union of Mandia are same as those of Union of India. Taking into account various aspects of the case matrix, arguments are to be put forward from the side of both the Petitioner and the Respondent. The arguments can be made on creative lines. Pleas in addition to those set out above will be appreciated.