

TC - 18

**LAW COLLEGE DEHRADUN, FACULTY OF UTTARANCHAL UNIVERSITY
NATIONAL MOOT COURT COMPETITION - 2017**

BEFORE THE HON'BLE SUPREME COURT OF INDISTAN

W.P. No. ____/2017

Mr. Hobart (PETITIONER)

v.

Hon'ble Speaker of the Legislative Assembly, Anga Pradesh (RESPONDENT)

WITH

SLP No. ____/2017

Mr. Ozan (PETITIONER)

v.

State of Anga Pradesh (RESPONDENT)

AND

W.P. No. ____/2017

PEW (PETITIONER)

v.

Governor of Anga Pradesh (RESPONDENT)

**PETITION INVOKED UNDER ARTs. 32 & 136 OF
THE CONSTITUTION OF INDISTAN**

UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS LORDSHIP'S
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDISTAN

TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....4

INDEX OF AUTHORITIES.....6

STATEMENT OF JURISDICTION.....9

STATEMENT OF FACTS10

STATEMENT OF ISSUES12

SUMMARY OF ARGUMENTS.....13

ARGUMENTS ADVANCED15

 I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDISTAN OR NOT?15

 1. THAT THE WRIT PETITION SUBMITTED BY MR. HOBART IS MAINATINABLE.....15

 2. THAT THE SPECIAL LEAVE PETITION BY MR. OZAN IS MAINTAINABLE. 15

 3. THAT THE PIL FILED BY NGO PEW IS MAINTAINABLE.....16

 II. WHETHER THE RULES WHICH PROHIBIT 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 CONSTITUTION OF INDISTAN OR NOT?17

 1. THAT THE IMPUGNED RULES ARE VIOLATIVE OF BASIC FEATURE OF CONSTITUTION.....17

 (1) THAT THE RULE IS VIOLATIVE OF DEMOCRATIC FEATURE OF CONSTITUTION.....17

 (2) THAT THE RULE IS VIOLATIVE OF PRINCIPLE OF SELF-GOVERNANCE.....18

 2. THAT THE IMPUGNED ACTIVITY, i.e., LIVE TELECAST OF SPEECH IS PART OF ART. 19 OF THE CONSTITUTION.....18

(1) THAT THE RULES SHOULD FACE AN INJUNCTION UNDER ART. 13(2) AS IT IS VIOLATIVE OF FUNDAMENTAL RIGHTS..... 18

 i. THAT THE RULES ARE FRAMED BY THE STATE..... 18

 ii. THAT THE RULES FALLS UNDER THE AMBIT OF LAW..... 19

 iii. THAT THE RULE IS IN CONTRAVENTION TO THE FREEDOM OF SPEECH AND EXPRESSION..... 19

(2) THAT RULE IS AGAINST RIGHT TO KNOW OF CITIZEN..... 20

3. THAT THE SUSPENSION WAS UNJUSTIFIED..... 20

 (1) THAT THE DECISION OF SUSPENSION WAS ARBITRARY IN NATURE. 20

 (2) THAT THE DECISION OF SUSPENSION WAS VIOLATIVE OF ARTICLE 19(1)(a). 21

III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT? 21

 1. THAT THE INFORMATION OBTAINED BY POLICE FROM ISP DOES NOT CONSTITUTE A ‘SEARCH’ PRESCRIBED BY LAW..... 21

 (1) THAT THE SEARCH AND SEIZURE IS VIOLATIVE OF FUNDAMENTAL RIGHT. 22

 (2) THAT THERE WAS NO F.I.R AGAINST MR. OZAN WHICH SIGNIFIES ABSENCE OF LOCUS STANDI FOR SEARCH AND SEIZURE..... 22

 i. ACT OF SPEAKER CONFLICTS THE RULE OF LAW. 22

 (3) THAT THE INFORMATION FROM THE ISP IS PRIOR TO THE ALLEGED ACCIDENT. 23

 2. THAT THE SEARCH AND SEIZURE IS EXCLUDED DUE TO LEGISLATIVE PRIVILEGES..... 23

 (1) THAT THE ALLEGED ACCIDENT HAPPENED DURING THE ASSEMBLY PROCEEDINGS AND THUS ORDINARY LAW OF THE LAND CANNOT BE APPLIED. 23

(2) THAT THE PRIVILEGES SHOULD BE ACCORDED TO THE PETITIONER.....24

IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?.....25

1. THAT RESERVATION OF SEAT FOR WOMEN IN THE MUNICIPALITY IS THEIR FUNDAMENTAL RIGHT.....25

2. THAT FAIR POLITICAL REPRESENTATION OF WOMAN IN LOCAL GOVERNANCE AS PROVIDED UNDER ARTICLE 243T FALL UNDER THE AMBIT OF ARTICLE 371-A(1)(a).26

(1) THAT THE RESERVATION DOES NOT VIOLATE TRIBAL CUSTOMARY LAWS AND PROCEDURES.....26

i. THAT THE MUNICIPALITY DOES NOT FALL UNDER THE PURVIEW OF TRIBAL CUSTOMS.....27

(2) THAT IMPOSITION OF ARTICLE 243T ENSURES FAIR POLITICAL REPRESENTATION OF WOMEN.....27

3. THAT THERE MUST BE OVERALL HARMONIOUS CONSTRUCTION OF THE PROVISIONS OF THE CONSTITUTION.....28

4. THAT THE GOVERNOR IS BOUND TO GIVE HIS ASSENT TO THE PROPOSED ORDINANCE.....28

(1) THAT THE GOVERNOR SHOULD HAVE TAKEN THE AID AND ADVICE OF THE COUNCIL OF MINISTERS.....28

(2) THAT THE CONSTITUTION AUTHORISES THE GOVERNOR TO WITHDRAW NOT TO REJECT THE ORDINANCE.....29

(3) THAT THE GOVERNOR SHOULD HAVE CONSIDERED ALTERNATIVE REMEDY OTHER THAN DENIAL OF ASSENT TO THE PROPOSED ORDINANCE.....29

PRAYER.....30

LIST OF ABBREVIATIONS

&	And
¶	Paragraph
AIHC	All India High Court Cases
AIR	All India Reporter
AP	Andhra Pradesh
Art.	Article
Co.	Company
EHRR	European Human Rights Reports
ER	English Reports
FIR	First Information Report
Govt.	Government
Hon'ble	Honorable
ICJ	International Court of Justice
ISP	Internet Service Provider
Ltd.	Limited
M.P.	Madhya Pradesh
NGO	Non-Governmental Organization
No.	Number

Ors.	Others
PEW	Participation & Emancipation of Woman
PIL	Public Interest Litigation
Raj	Rajasthan
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SLP	Special Leave Petition
Supp	Supplementary
U.P.	Uttar Pradesh
UOI	Union of India
v.	Versus

INDEX OF AUTHORITIES

The Constitution of India, 1950.

Table of Cases

1. All India Bank Employees Association v. National Industrial Tribunal, AIR 1962 SC 171.....	21
2. Amarinder Singh v. Special Committee, Punjab Vidhan Sabha and Ors., (2010) 6 SCC 163.....	24
3. Andhra Pradesh v. Nalla Raja Reddy, AIR 1967 SC 1458.....	25
4. Anglo Norwegian fisheries case, [1951] ICJ 3	26
5. Asha Sharma v. Chandigarh Admn., (2011) 10 SCC 86.	21
6. Bihar Legal Support Society v. Chief Justice of India, AIR 1987 SC 38.....	16
7. Bihari Lal Rada v. Anil Jain (Tinu) & Ors., (2009) 4 SCC 1.....	27
8. Brij Mohan Lal v. Union of India, (2012) 6 SCC 571.....	15
9. Central Ware Housing Corpom. Sri Ganganagar v. State of Rajasthan, AIR 1995 Raj 180.	19
10. D.A.V. College v. State of Punjab, (1971) 2 SCC 261.....	16
11. Daryao v. State of Uttar Pradesh. AIR 1957 SC 1457.....	15, 16
12. Dattaraj Nathuji Thaware v. State of Maharashtra, AIR 2005 SC 540.....	16
13. Dudgeon v. U.K , (1981) 4 EHRR 149.....	22
14. Durga Shankar v. Raghu Raj, AIR 1954 SC 520.....	16
15. Dwarka Prasad v. State of U.P AIR 1954 SC 224(227).	20
16. Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344.	16
17. Golaknath v. State of Punjab, AIR 1967 SC 1643.....	17
18. Hamdard Dawakhana v. Union of India (1960) 2 SCR 671.....	20
19. His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., AIR 1973 SC 1461.....	17
20. Investigating Directorate: Serious Offences v. Hundai Motor Distributors Ltd., 2001 (1) SA 545 (CC).	22
21. Jagannath Prasad v. State of UP, 1962 (1) SCR 151.	25
22. Janta Dal v. H. S. Chowdhary, AIR 1993 SC 892.....	16
23. Justice K S Puttuswamy and Anr v. Union of India and ors., Writ petition no. 494 of 2012 (Supreme Court, 24/08/2017).	22

24. Kasambhai F.Ghanchi v. Chandubhai D. Rajput, AIR 1998 C815: (1998) 1SCC 285.....	27
25. Kochhuni v. State of Maharashtra, AIR 1959 SC 725.....	16
26. Kuldip Nayar v. Union of India, AIR 2006 SC 3127.	18
27. M/s Kalyani Industries v. G.M District Industries Centre, 1998 AIHC 3036(AP).	19
28. Mathai v. George, (2010) 3 SCR 533.	16
29. Md. Hanif Qureshi v. State of Bihar, AIR 1958 SC 731.	28
30. Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1.	28
31. Narpat Singh v. Jaipur Development Authority, (2002) 4 SCC 666.....	15
32. National legal services authority v. UOI, (2014) 5 SCC 438.	23
33. Prem Chand Garg v. Excise Commissioner, AIR 1963 SC 996.....	16
34. R v. Spencer, (2014) SCC 43.....	22
35. R.C. Poudyal v. Union of India, AIR 1993 SC 1804.....	17
36. R.P Ltd v. Indian Express, AIR 1986 SC 515.	20
37. Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184.	23, 24
38. Ram Krishen Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279.....	25
39. Ramesh Thappar v. State of Madras, AIR 1950 SC 124: 1950 SCR 594.....	19
40. Ramkrishnan v. Tendolkar , AIR 1958 SC 538(1959) SCR 279.....	19
41. S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.....	21
42. S.P Gupta v. Union of India 1981 (Supp) SCC 87.	19
43. S.R. Bommai v. Union of India, (1994) 3 SCC 1.	18
44. Sakal Paper's Ltd v. Union of India, AIR1962 SC 305.....	19
45. Special Reference No. 1 of 1964, AIR 1965 SC 745.....	24
46. State of Assam v. Barga Dewani, (1970) 3 SCC 236.	16
47. State of Maharashtra v. Jalgaon Municipal Council, AIR 2003 SC 1659.	27
48. State of Rajasthan v. Mohan, (1971) 1SCWR 207 (209).	19
49. Supreme Court Advocates-on-Record-Association and Ors. v. Union of India (UOI), (2016) 5 SCC 1.	17
50. <i>Tanistry</i> case	26
51. Union of India v. Kishorilal Gupta & Bros., AIR 1959 SC 1362.....	16
52. Union of India v. Motion Picture Association, AIR 1999 SC 2334.....	21
53. Unni Krishnan v. State of AP, (1993) 1 SCC 645.	28
54. Western UP, Electric Power v. State of UP, 1969 (1) SCC 817.....	25

Books

1. *Durga Das Basu, Commentary on the Constitution of India, Volume 2*, (Hon'ble Mr. Justice Y.V. Chandrachud, Justice S.S. Subramani, Justice B.P. Banerjee, V.R. Manohar, 8th ed., 2007).
2. *Halsbury's Laws of England Vol. 34*, (4th ed., 1997).

STATEMENT OF JURISDICTION

I. W.P. No. ____/2017

The petitioner has approached this Hon'ble Court under Art. 32 of the Constitution of Indistan.

II. S.L.P. No. ____/2017

The petitioner has approached this Hon'ble Court under Art. 136 of the Constitution of Indistan.

III. W.P. No. ____/2017

The petitioner has approached this Hon'ble Court under Art. 32 of the Constitution of Indistan.

STATEMENT OF FACTS

CONSTITUTION OF INDISTAN AND SPECIAL STATUS TO ANGA PRADESH.

The Constitution of Indistan establishes Indistan as 'Union of States' and is based on the principle of 'liberal democratic' governance. The legal and policy framework of Indistan is *pari materia* to the Republic of India. Anga Pradesh is in the North-Eastern part of Indistan and has its own distinct customs and language and is also inhabited by 13 major tribes. Under the constitutional scheme of Indistan, Anga Pradesh has been granted state autonomy which is ensured by Art. 371-A of the Constitution of Indistan. It also provides Tribal Advisory Council and provides special protection to the land and area inhabited by them and also prohibits transfer of such tribal land to 'non-tribal'.

PETITION FOR REPRESENTATION OF WOMAN IN MUNICIPALITIES.

Mr. Yohanan, who was elected as Chief Minister of Anga Pradesh promised during elections the implementation of provisions of Part IX A of the Constitution of Indistan including the reservation in favour of women. The cabinet of Mr. Yohanan approved ordinance to be promulgated by the Governor seeking immediate implementation of women reservation of 33% in the municipalities. The tribal leaders through bandhs and blockades under the JAC (Joint Action Committee) asked the Governor to refrain from giving assent to the ordinance claiming it to be against the tribal customary laws and procedures as provided under Art. 371-A. The protest jeopardized the human life and dignity in worst manner. Governor, citing his special responsibility under Art 371-A denied his assent to the ordinance. PEW was an NGO which worked for the socio, economic and political justice to tribal women. It went to Supreme Court of Indistan under a Writ for enforcement of Art. 243 T of the Constitution and also claimed that the governor was bound to give his assent to the proposed ordinance.

LIVE TELECAST OF PROCEEDINGS IS A PART OF RESPONSIVE DEMOCRACY.

Mr. Hobart was elected as the legislator for the 6th time in the State Assembly of Anga Pradesh. He made a passionate speech on the floor of the House for the reform of woman and the constitutional objectives for the same. During his speech, the Wi-fi of his smartphone got activated and his speech became live. The Speaker of the House received complaint for breach of ethics and Rules of procedure from the leader of opposition and the Hon'ble Speaker got this incident examined by the Ethics Committee of the House. On

recommendation, Mr. Hobart was suspended for six weeks. He claimed that he was not aware of the activation of his social media page in his mobile. He also said that the accidental act of making speech live enhances open and responsive democracy, freedom of speech and expression and promotes the citizenry to know the constitutionally inscribed values of liberal democratic governance. He also challenged the suspension order by Speaker claiming it to be violative of Fundamental Rights and Constitutional Norms and thus, went under a Writ petition to Supreme Court claiming that the Rules which prohibits live telecast of proceedings is violative of the basic feature of the Constitution, i.e., Democracy.

PETITION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS AND LEGISLATIVE PRIVILEGES AGAINST ILLEGAL SEARCH AND SEIZURE.

Mr. Ozan was caught peeping into the mobile phone of Mr. Savadi who has porn page opened on his phone and playing child pornography. The Speaker of the House received complaint from leader of opposition seeking investigation of the alleged 'porn gate scandal' and demanded FIR to be registered against the two ministers claiming that child pornography was banned by the Supreme court of Indistan. Mr. Speaker asked Ethics Committee to inquire into the matter and finally accepted the recommendation of Ethics Committee regarding expulsion of Mr. Savadi and suspension of Mr. Ozan for six weeks giving him benefit of doubt and indirect involvement. FIR was also registered against Mr. Savadi but not against Mr. Ozan. When police initiated investigation, Mr. Savadi denied claiming it to be an illegal search and seizure because of the protection given by Fundamental rights and also the legislative privileges because the incident occurred in the House. The Speaker gave permission to the Superintendent of Police for search of offices of Mr. Savadi as well as Mr. Ozan. Physical search and seizure was also conducted. Police claimed that some incriminationg material was found on Mr. Ozan's computer but it was the information prior to the alleged incident. Mr. Ozan contended that there was a political conspiracy to scandalize him because he was in favor of reservation to women. Mr. Ozan also claimed protection under Fundamental Rights and legislative privileges and challenged it in the High Court but High Court dismissed the petition. Thus, Mr. Ozan preferred SLP to Supreme Court of Indistan raising the 'substantial question of law' to interpret the Constitution of Indistan.

STATEMENT OF ISSUES

- I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDISTAN OR NOT?

- II. WHETHER THE RULES WHICH PROHIBIT 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 CONSTITUTION OF INDISTAN OR NOT?

- III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT?

- IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?

SUMMARY OF ARGUMENTS

I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDISTAN OR NOT?

The Counsel on the behalf of the petitioners most humbly submits that the instant petitions are maintainable before the Hon'ble Court as:

1. The Writ Petition has been filed before this Hon'ble Court as the Rules of procedure of the House is in contravention with the Fundamental Rights guaranteed to the Petitioner. Moreover, the petitioner has also exhausted other remedies before approaching this Hon'ble Court.
2. The SLP has been filed before this Hon'ble Court as the search and seizure conducted by police is violative of right to privacy, which is a fundamental right. In addition to this, the Hon'ble High Court has also erred in giving its judgment while dismissing the petition.
3. The PIL has been filed before this Hon'ble Court as the Fundamental Rights of the women of the Anga Pradesh is violated due to non-implementation of Art. 243T of the Constitution.

II. WHETHER THE RULES WHICH PROHIBIT 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 CONSTITUTION OF INDISTAN OR NOT?

The Counsel on behalf of the petitioner most humbly submits that the Rules of live telecast of proceedings of the business of House are unconstitutional because they violate the basic feature of Democracy. Democracy demands maximum governance by maximum people and these Rules go against the policy of self-governance. 'Live telecast of speech' is also a part of Art. 19 of the Constitution as the impugned Rules prohibiting live telecast is clearly against the freedom of circulation and right to publish one's ideas. The disclosure of functioning of the government is the *Grund norm* and these Rules are against the right to know of the citizens. The suspension order was equally unjustified because it was arbitrary in nature and violative of Art. 19(1)(a) of the Constitution.

III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT?

The Counsel on behalf of the petitioner most humbly submits that the police conducted an illegal search and seizure violating the fundamental right of right to privacy which seeks protection against illegal search and seizure. There was no FIR registered against Mr. Ozan and yet the Speaker ordered for the search and seizure of the office of Mr. Ozan without having any *locus standi*. Thus, the act of Speaker goes against the rule of law because of the arbitrariness exercised by him. Also, the search and seizure can be set aside because of the presence of legislative privileges to Mr. Ozan. The presence of privileges means absence of application of ordinary laws. The search and seizure hinders the smooth performance of parliament and thus is definitely not according to the procedure prescribed by law.

IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?

The counsel on behalf of the petitioner most humbly submits that` the Court should direct the state to reserve seats for women in every municipality because it is a part of their fundamental right as reservation falls within the purview of ‘reasonable classification’ because of intelligible differentia. The fair political representation of women is not restricted by Art. 371-A because it is in nowhere contravention with the tribal customary laws and procedures. The representation of woman in politics is the need of the hour and thus it falls within the purview of Art. 243T. Hence, in cases of ambiguity between two provisions, there must be harmonious construction between them and the Governor is bound to give assent to the ordinance.

ARGUMENT ADVANCED

I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDIA OR NOT?

It is humbly submitted before the Court that the instant case is maintainable. As the Hon'ble Court has already clubbed the three petitions together and listed them for arguments, the issue of sustainability and maintainability should not ordinarily arise. However, the petitioners respectfully submit the following to reaffirm the maintainability of the cases before the Court.

1. THAT THE WRIT PETITION SUBMITTED BY MR. HOBART IS MAINTAINABLE.

It is submitted before the Hon'ble Court that the Writ petition challenging the Constitutional validity of the Rules of procedure of the House is maintainable before the Court.

The petitioner has approached the Supreme Court under Art. 32 read with Art. 13(2) of the Constitution of India. Art. 13(2) declares that the 'State shall not make any law' which takes away or abridges the Fundamental Rights. Thus, the power of the legislature is limited by Fundamental Rights of the citizens.¹

Moreover, the petitioner need not establish either that he has no other adequate remedy or that he has exhausted all other remedies provided by law, as Art. 32 is a Fundamental Right in itself and therefore existence of an alternate remedy is no bar to the Supreme Court entertaining a petition under it.²

Therefore, Articles 32 and 13(2) read together, along with the fact that the said Rules are violative of Fundamental Rights under Art. 19(1)(a) and basic feature of the Constitution make the case maintainable.

2. THAT THE SPECIAL LEAVE PETITION BY MR. OZAN IS MAINTAINABLE.

Art. 136 confers a discretionary power of widest amplitude on the Court to be exercised for satisfying the demands of justice.³ It is also well settled that the

¹ Brij Mohan Lal v. Union of India, (2012) 6 SCC 571.

² Daryao v. State of Uttar Pradesh, 1962 SCR (1) 574.

³ Narpal Singh v. Jaipur Development Authority, (2002) 4 SCC 666, at 674.

Constitution does not fetter or circumscribe the powers exercisable under this Article in any way.⁴

Besides, the self-imposed restriction that the aggrieved party must exhaust any remedy which may be available under the law before the lower appellate authority has been satisfied⁵ as the applicants had already approached the High Court to declare the 'search & seizure' violative of Art. 21. The High Court erred in dismissing the petition *in limine* as in lieu of search and seizure, information from ISP prior to the alleged incident was also obtained. It is now settled proposition that Supreme Court will intervene in cases where High Court's decision is in flagrant violation of the law.⁶

In addition to this, the instant case raises important questions of law; and laying down law for the nation is one of the key functions of the Hon'ble Supreme Court,⁷ thus the petition that raises a question of law is held to be maintainable.⁸

3. THAT THE PIL FILED BY NGO PEW IS MAINTAINABLE.

The right to approach this Hon'ble Court in case of violation or threat to Fundamental Rights is itself a Fundamental Right enshrined in Art. 32⁹ and is not merely a discretionary power of the Court.¹⁰ It is an absolute right.¹¹ Public Interest Litigation is part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps¹² and it is not necessary for the petitioner to wait till the actual threat has taken place.¹³ A person acting *bona fide* and having sufficient interest in maintaining action for judicial redress for public injury to put the judicial machinery in motion¹⁴ and such a person will have *locus standi*.¹⁵ In

⁴ Durga Shankar v. Raghu Raj, AIR 1954 SC 520.

⁵ Union of India v. Kishorilal Gupta & Bros., AIR 1959 SC 1362.

⁶ State of Assam v. Barga Dewani, (1970) 3 SCC 236.

⁷ Bihar Legal Support Society v. Chief Justice of India, AIR 1987 SC 38.

⁸ Mathai v. George, (2010) 3 SCR 533.

⁹ Kochhuni v. State of Maharashtra, AIR 1959 SC 725.

¹⁰ Supra 2.

¹¹ Prem Chand Garg v. Excise Commissioner, AIR 1963 SC 996.

¹² Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344.

¹³ D.A.V. College v. State of Punjab, (1971) 2 SCC 261.

¹⁴ Janta Dal v. H. S. Chowdhary, AIR 1993 SC 892.

¹⁵ Dattaraj Nathuji Thaware v. State of Maharashtra, AIR 2005 SC 540.

the instant case, NGO acted in *pro bono publico* and thus, the PIL is maintainable.

II. WHETHER THE RULES WHICH PROHIBIT 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 CONSTITUTION OF INDISTAN OR NOT?

It is humbly pleaded before the Court of Law that the Rules of procedure are unconstitutional and against the basic feature of the Constitution. In addition to this, live telecast of the speech must be considered part of Art. 19 of the Constitution.

1. THAT THE IMPUGNED RULES ARE VIOLATIVE OF BASIC FEATURE OF CONSTITUTION.

It is humbly pleaded before this Court that the Rules which prohibit the ‘live telecast’ of the business proceedings must be held unconstitutional as it clearly violates the basic structure of the Constitution.

(1) THAT THE RULE IS VIOLATIVE OF DEMOCRATIC FEATURE OF CONSTITUTION.

The democratic way of life is the basic feature of the Constitution¹⁶ and is mentioned in the Preamble which is the source of the Constitution.¹⁷ The word ‘democratic republic’ in the preamble refers to the political participation of the people in running the administration of the Govt.¹⁸ It embodies the right of entire population to ‘equal participation in the polity’.¹⁹ Art. 208 also empowers the House of State legislature to make Rules regarding the House but they are *subjected to the provisions of Constitution* and the current rule being violative of Democratic structure of Constitution cannot be enforced in the House. It has been said that the heart and core of a democracy lies in the judicial process²⁰ and thus the judiciary must interpret the Laws in favor of Democracy. Thus, the Rules which prohibit the ‘live

¹⁶ His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., AIR 1973 SC 1461.

¹⁷ Golaknath v. State of Punjab, AIR 1967 SC 1643.

¹⁸ R.C. Poudyal v. Union of India, AIR 1993 SC 1804.

¹⁹ Ibid.

²⁰ Supreme Court Advocates-on-Record-Association and Ors. v. Union of India (UOI), (2016) 5 SCC 1.

telecast' of proceedings of business of House is against the basic feature of Constitution and must be held unconstitutional.

(2) **THAT THE RULE IS VIOLATIVE OF PRINCIPLE OF SELF-GOVERNANCE.**

The system of self-governance is the foundational feature of democracy.²¹ The participation of the people in the governance is a *sine qua non* of democracy.²² If it is true to say that in democracy, people are sovereign and all power belongs primarily to the people, the retention of such power by the people and the anxiety to exercise them is legitimate.²³ From the above argument, it can be deduced that live telecast of the proceeding of the House becomes inalienable right of participation in governance for its citizens. Hence, self-governance being an inalienable part of democracy must be adhered with and anything that goes against the self-governance goes against democracy and thereby destroying the basic structure of the Constitution.

2. THAT THE IMPUGNED ACTIVITY, i.e., LIVE TELECAST OF SPEECH IS PART OF ART. 19 OF THE CONSTITUTION.

It is humbly pleaded before the Court of Law that the Rules of procedure of the House are in violation of the Fundamental Rights and breach of these rights in any of the law may result into invalidation.

(1) **THAT THE RULES SHOULD FACE AN INJUNCTION UNDER ART. 13(2) AS IT IS VIOLATIVE OF FUNDAMENTAL RIGHTS.**

It is humbly pleaded before the Court of Law that there was violation of 'freedom of speech and expression.'

i. **THAT THE RULES ARE FRAMED BY THE STATE.**

It is humbly pleaded before the Court of Law that the application of Art. 13(2) can only be there when the State, i.e., Govt. and the Parliament of India, and the Govt. and the State Legislature of each of the State, etc.²⁴ frames the laws. The

²¹ Kuldip Nayar v. Union of India, AIR 2006 SC 3127.

²² S.R. Bommai v. Union of India, (1994) 3 SCC 1.

²³ Ibid.

²⁴ Art. 12, the Constitution of India.

instrumentalities or agencies of the State are subject to all Fundamental Rights.²⁵ Therefore, legislature being a State cannot make such rule which contravenes with the Fundamental Rights and hence, it should be held invalid.

ii. THAT THE RULES FALLS UNDER THE AMBIT OF LAW.

It is humbly pleaded before the Court of Law that the Rules of procedure of the House comes under the definition of law present under Art. 13(3)(a). It reads as:

*“..Law includes any Ordinance, order, bye law, rule, regulation, laws in force include laws **passed or made by Legislature or other...**”*

A rule order and notification issued under a statute may be held invalid for contravention of a Fundamental Right.²⁶ A rule of law which is repugnant to the rule of law is not a rule of law.²⁷ A grant by a ruler which is inconsistent with the Fundamental Right shall be void.²⁸ Thus, the Rules of procedure shall fall under the ambit of “law”, and hence held to be invalid.

iii. THAT THE RULE IS IN CONTRAVENTION TO THE FREEDOM OF SPEECH AND EXPRESSION.

It is humbly pleaded before the Court of Law that the Rules of procedure of the House are in violation of Fundamental Rights. The freedom of speech and expression includes freedom of propagation of ideas which is ensured by freedom of circulation.²⁹ Right to freedom of speech and expression includes right to publish and circulate one’s idea.³⁰ The disclosure of the Govt. regarding the functioning shall be the rule.³¹ Moreover, the legislature which arbitrarily and excessively invades the right cannot be said to contain the

²⁵ Central Ware Housing Corporn. Sri Ganganagar v. State of Rajasthan, AIR 1995 Raj 180.

²⁶ Ramkrishnan v. Tendolkar , AIR 1958 SC 538.

²⁷ M/s Kalyani Industries v. G.M District Industries Centre, 1998 AIHC 3036 (AP).

²⁸ State of Rajasthan v. Mohan, (1971) 1 SCWR 207 (209).

²⁹ Ramesh Thappar v. State of Madras, AIR 1950 SC 124: 1950 SCR 594.

³⁰ Sakal Paper’s Ltd v. Union of India, AIR1962 SC 305.

³¹ S.P Gupta v. Union of India, 1981 (Supp) SCC 87.

quality of reasonableness.³² Thus, the Rules of procedure of the House that prohibits making of speech live violates the Fundamental Right to freedom of speech and expression.

(2) **THAT RULE IS AGAINST RIGHT TO KNOW OF CITIZEN.**

It is humbly pleaded before the Court of Law that right to receive and impart information is the corollary from freedom of speech and expression.³³ Mr. Hobart has imparted the information, though unintentionally, by making his speech live,³⁴ would fall under the extended form of freedom of speech and expression. Moreover, it has also been held that the right to know falls under the ambit of Art. 21 where right to live should be given broader prospective.³⁵ Right to know puts greater responsibility on those who take upon themselves the responsibility to inform.³⁶ The right of the citizens to obtain information from the Govt. in regard to the functioning of the Govt. has to come in forefront in all democratic countries.³⁷ This right to know guaranteed under the Constitution is held to be basic rights of the citizens of India.³⁸ Thus, right to know has become a recognized right in an explicit form and the Court should invalidate such a rule that violates the Fundamental Right.

3. THAT THE SUSPENSION WAS UNJUSTIFIED.

It is submitted before the Hon'ble Court that the suspension of six weeks from the Assembly was unjustified as the decision given by the Ethics Committee was arbitrary in nature as well as violative of Art. 19(1)(a) of the Constitution.

(1) **THAT THE DECISION OF SUSPENSION WAS ARBITRARY IN NATURE.**

It is humbly pleaded before the Court that the decision of suspension on the recommendation of Ethics Committee was unreasonable and

³² Dwarka Prasad v. State of U.P AIR 1954 SC 224(227).

³³ Hamdard Dawakhana v. Union of India (1960) 2 SCR 671.

³⁴ Moot Proposition, ¶12.

³⁵ R.P Ltd v. Indian Express, AIR 1986 SC 515.

³⁶ Ibid.

³⁷ *Durga Das Basu, Commentary on the Constitution of India Volume 2*, 2396 (Hon'ble Mr. Justice Y.V. Chandrachud, Justice S.S. Subramani, Justice B.P. Banerjee, V.R. Manohar, 8th ed., 2007).

³⁸ Supra 35.

arbitrary in nature as the Ethics Committee did not take into consideration that the act of making speech live through Facebook was an unintentional act; whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as “arbitrary”,³⁹ and hence void.

(2) **THAT THE DECISION OF SUSPENSION WAS VIOLATIVE OF ART. 19(1)(a).**

The democratic form of Govt. demands its citizen an active participation in the affairs of the community and it can neither work nor prosper unless people go out to share their views.⁴⁰ In the instant case, Mr. Hobart was only making speech regarding women’s participation in the local governance. This dissemination of information, knowledge or airing of differing viewpoint form part of the right to freedom of speech and expression,⁴¹ and hence, includes conveying of one’s ideas to others.⁴² Hence, decision of suspension would be violative of Art. 19(1)(a).

III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT?

It is humbly pleaded before the Court of Law that the search and subsequent seizure as conducted by the police is not within the permissible limit of the Constitution of Indistan and procedure prescribed by the law. In addition to this, search and seizure is also excluded due to the legislative privileges guaranteed by the Court of Law.

1. THAT THE INFORMATION OBTAINED BY POLICE FROM ISP DOES NOT CONSTITUTE A ‘SEARCH’ PRESCRIBED BY LAW.

It is humbly pleaded before the Court of Law that the act of search and seizure was illegal according to the procedure prescribed by the law. It resulted into the breach of Fundamental Right to Privacy and moreover, there was no reasonable

³⁹ Asha Sharma v. Chandigarh Admn., (2011) 10 SCC 86.

⁴⁰ S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

⁴¹ Union of India v. Motion Picture Association, AIR 1999 SC 2334.

⁴² All India Bank Employees Assosiation v. National Industrial Tribunal, AIR 1962 SC 171.

ground of search and seizure against Mr. Ozan, as no F.I.R was filed against him and neither Ethics Committee recommended so. Further, the act of the Speaker was against the rule of law when he ordered the search and seizure of the office of Mr. Ozan.

(1) THAT THE SEARCH AND SEIZURE IS VIOLATIVE OF FUNDAMENTAL RIGHT.

It is humbly pleaded that there is a serious violation of Fundamental Right to privacy which is guaranteed by law.⁴³ Right to privacy has been defined as a circle around every individual being which no Govt. is ought to be permitted to overstep and some space in human existence then entrusted around and scared from authoritative intrusion.⁴⁴ The foundation of privacy engages constitutional protection against unreasonable search and seizure.⁴⁵ It was held by the apex Court that State officials are not entitled without good cause to invade the premises of persons for the purposes of searching and seizing property.⁴⁶ In the instant case also, Mr. Ozan was merely peeping into the phone of Mr. Savadi and thus the search and seizure of the property of Mr. Ozan was definitely not in good cause and thus it violated the right to privacy of the petitioner.

(2) THAT THERE WAS NO FIR AGAINST MR. OZAN WHICH SIGNIFIES ABSENCE OF LOCUS STANDI FOR SEARCH AND SEIZURE.

It is submitted before the Hon'ble Court that the direction given by Hon'ble Speaker to the Secretary General of the Legislative Assembly to register an FIR against Mr. Savadi was correct in fact and in law but Ethics Committee did not recommend filing of an F.I.R against Mr. Ozan which signifies the absence of any substantial ground against him. Search and seizure must be preceded by and in pursuance of FIR. Thus, the search and seizure of Mr. Ozan was bad in the eyes of law.

⁴³ Justice K S Puttuswamy and Anr v. Union of India and ors., Writ petition no. 494 of 2012 (Supreme Court, 24/08/2017).

⁴⁴ Dudgeon v. U.K., (1981) 4 EHRR 149.

⁴⁵ R v. Spencer, (2014) SCC 43.

⁴⁶ Investigating Directorate: Serious Offences v. Hundai Motor Distributors Ltd., 2001 (1) SA 545 (CC).

i. ACT OF SPEAKER CONFLICTS THE RULE OF LAW.

It is humbly submitted before this Court that the act of Speaker to allow the search and seizure of Mr. Ozan was against the rule of law and it is a pertinent fact that the Parliament/State Legislature is not exception to the rule of law.⁴⁷ Rule of law is a social justice based on political order⁴⁸. In the given case, no FIR was registered against Mr. Ozan and it was not his mobile phone on which child pornography was being played but still search and seizure was done in his office, which is violative of rule of law.

(3) THAT THE INFORMATION FROM THE ISP IS PRIOR TO THE ALLEGED ACCIDENT.

It is submitted before this Court that the police obtained information from the ISP prior to the alleged incident of 'Porn Gate scandal' and the subscriber information associated with that IP Address, without prior judicial authorization⁴⁹ which is a clear hindrance of right to privacy. Hence, the Court should take action against the illegal search which was not prescribed by the Court of Law.

2. THAT THE SEARCH AND SEIZURE IS EXCLUDED DUE TO LEGISLATIVE PRIVILEGES.

It is pleaded before this Court that the search and seizure is excluded due to legislative privileges granted to the members of the House. The term "privilege in law" is defined as immunity or an exemption from some duty, burden, attendance or liability conferred by special grant in derogation of common right.⁵⁰ Since, the alleged incident happened when the House was in session, the privileges should be granted so that House may freely perform its function.

(1) THAT THE ALLEGED ACCIDENT HAPPENED DURING THE ASSEMBLY PROCEEDINGS AND THUS, ORDINARY LAW OF THE LAND CANNOT BE APPLIED.

⁴⁷ Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184.

⁴⁸ National legal services authority v. UOI, (2014) 5 SCC 438.

⁴⁹ Moot Proposition, ¶ 23.

⁵⁰ Supra 47.

It is humbly pleaded before this Court that the search of the ISP of the computer of Mr. Ozan's office results into the breach of privileges granted to him by the virtue of Art. 194(3).

May, in his *Parliamentary Practice*, has defined parliamentary privilege as: "*the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies of individuals*".⁵¹ Thus, privilege, though not part of the law of the land, is to a certain extent an exemption from the ordinary law. They are rights which a sovereign legislature must possess for the due execution of its powers.⁵² Moreover, the Court should decide in favor of the privilege which must be granted to Mr. Ozan as it is the respected Court which will have the ultimate power to decide whether the House did in fact possess the privilege.⁵³

(2) THAT THE PRIVILEGES SHOULD BE ACCORDED TO THE PETITIONER.

Parliamentary privileges are the rights which the Houses of Parliament and Members possess so as to enable them to carry out their functions effectively and efficiently. Some of the parliamentary privileges thus preceded Parliament itself.⁵⁴ The House of Lords and the House of Commons claim for their Members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions and which exceed those possessed by other bodies and individuals.⁵⁵ Thus, it is humbly pleaded before the Court of Law that Mr. Ozan's privileges have been violated in the Court of Law and the Court should award the judgment in favor of justice and equity.

⁵¹ Supra 47.

⁵² *Amarinder Singh v. Special Committee, Punjab Vidhan Sabha and Ors.*, (2010) 6 SCC 163.

⁵³ Special Reference No. 1 of 1964, AIR 1965 SC 745.

⁵⁴ Supra 52.

⁵⁵ *Halsbury's Laws of England Vol. 34*, 553 (4th ed., 1997).

IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?.

It is humbly submitted before this Hon'ble Court that an appropriate Writ should be passed regarding the issue of Woman reservation in the municipality area of the Anga Pradesh as raised by the petitioner which has been guaranteed under Art. 243T, which is also not violative of Art. 371-A.

1. THAT RESERVATION OF SEAT FOR WOMEN IN THE MUNICIPALITY IS THEIR FUNDAMENTAL RIGHT.

It is humbly pleaded before the Court of Law that in the present case there is a violation of Fundamental Right as reservation of woman has been denied by the State. Art. 14 of the Constitution talks about equality before law and equal protection of law. It is a well settled principle that Art. 14 will be violated not only when the equals are treated unequally but also when unequal are treated equally.⁵⁶ Equal protection of law does not mean that every law must have universal application.⁵⁷ Art. 14 does not operate against rational classification.⁵⁸ In the instant case, where there is presence of gender discrimination in the political realm of Anga Pradesh as sought by the women of the 13 tribes itself,⁵⁹ there must be reservation of woman in the municipalities. The classification must be founded on *intelligible differentia* which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have reasonable nexus to the object sought by the state.⁶⁰ Hence, the instant case falls within the ambit of *intelligible differentia* and thus women must be given 33% representation in the municipality. Art. 15 (3) of the Constitution also states that nothing in this Article shall prevent the State from making any special provision for women and children. Thus, there is violation of Fundamental Right of Art. 14 and Art.

⁵⁶ Andhra Pradesh v. Nalla Raja Reddy, AIR 1967 SC 1458.

⁵⁷ Jagannath Prasad v. State of UP, 1962 (1) SCR 151.

⁵⁸ Western UP, Electric Power v. State of UP, 1969 (1) SCC 817.

⁵⁹ Moot proposition, ¶ 10.

⁶⁰ Ram Krishen Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279.

15(3) and also the constitutional right guaranteed under Art. 243T. Thereby, it is humbly pleaded that when the Constitution permits the State to make special provision for women, the wisdom of legislature would ensure participation of women more effectively.

2. THAT FAIR POLITICAL REPRESENTATION OF WOMAN IN LOCAL GOVERNANCE AS PROVIDED UNDER ART. 243T FALL UNDER THE AMBIT OF ART. 371-A(1)(a).

It is pleaded before this Court that Art. 243T does not violate Art 371-A as reservation in the municipality does not come under the purview of tribal customary laws and procedures.

(1) THAT THE RESERVATION DOES NOT VIOLATE TRIBAL CUSTOMARY LAWS AND PROCEDURES.

It is humbly pleaded before the Hon'ble Court that the reservation is not violative of customary laws and procedures. In *Tanistry*⁶¹ case, Privy Council has defined custom as *jus non scriptum* and made by the people in respect of the place where the custom obtains; for where the people find any act to be good and beneficial and *agreeable to their nature and disposition*, i.e., customs can be defined as the voluntary behavior of the mass of the people which is being followed since time immemorial. Thus, when one section of the society which comprises of women does not concede to this notion of custom and hence, it *prima facie* invalidates the ground of violating of any custom.

In this case, the awakened and literate tribal women belonging to almost 13 tribes have their association seeking a fair sphere in the political sphere,⁶² and thus, the element of voluntariness fails the moment tribal woman themselves start to plead against the claimed customary laws and procedures by demanding a fair sphere in political sphere. Also, some degree of uniformity amongst state practices were essential before a custom could come into existence.⁶³ Here, when the subjects of customs themselves start pleading against custom, custom

⁶¹ 30 ER 516.

⁶² Moot Proposition, ¶ 10.

⁶³ Anglo Norwegian fisheries case, [1951] ICJ 3.

loses its uniformity. Thus, it is humbly pleaded that Art. 243T is not violating the tribal customary laws and procedures.

i. THAT THE MUNICIPALITY DOES NOT FALL UNDER THE PURVIEW OF TRIBAL CUSTOMS.

Even if there would have been a valid custom, it is humbly submitted that when the modern system of governance did not exist in traditional structure, the idea of customary laws and procedures shall also not be extending to the municipality and urban bodies. Municipality being a novice concept cannot be covered under the concept of tribal customs. (Arguendo)

(2) THAT IMPOSITION OF ART. 243T ENSURES FAIR POLITICAL REPRESENTATION OF WOMEN.

It is humbly pleaded before the Court of Law that Art. 243T ensures the representation of the women in local governance. The reservation ensures that the specified minimum number of persons belonging to that category become member of municipality.⁶⁴ The objective of this provision is to see the minimum number of seats as provided to be filled by the vulnerable section of the society.⁶⁵ Moreover, it has been held by the apex Court that one of the reason noticed as to why these grass root institutions were unable to perform effectively as vibrant democratic units of self-government was on account of inadequate representation of weaker section such as SC/ST/Women.⁶⁶ Furthermore, it was also contented by the apex Court that economic development and implementation of schemes may not be possible without providing adequate representation to those who were hitherto precluded from participating in the local self-government institutions for various historical reasons due to which the Constitutional objective of securing social justice remained unfulfilled.⁶⁷ Thus, the Court should take into the consideration the object and the intention with

⁶⁴ Kasambhai F.Ghanchi v. Chandubhai D. Rajput, AIR 1998 C815: (1998) 1 SCC 285.

⁶⁵ Bihari Lal Rada v. Anil Jain (Tinu) & Ors., (2009) 4 SCC 1.

⁶⁶ State of Maharashtra v. Jalgaon Municipal Council, AIR 2003 SC 1659.

⁶⁷ Supra 65.

which such provision was incorporated under the Constitution. The fair political representation is the spirit of the democratic nations and such spirit is ensured by means of Art. 243T of the Constitution. The Hon'ble Court should take appropriate step and issue a Writ to the state seeking enforcement of Art. 243T.

3. THAT THERE MUST BE OVERALL HARMONIOUS CONSTRUCTION OF THE PROVISIONS OF THE CONSTITUTION.

Art. 243T and Art. 371-A of the Constitution must be harmoniously constructed and there should not be arbitrary exercise of power by the Governor. For instance, Harmonious construction was interpreted as, 'Fundamental rights are the means to achieve the goal indicated in Part IV.'⁶⁸ Thus, Harmonious construction must be placed upon the constitution.⁶⁹ In the instant case also, neither Art. 243T nor Art. 371-A shall prevail over one another as the Court must harmoniously construct them and carve out the basic intent of legislature out of it.

4. THAT THE GOVERNOR IS BOUND TO GIVE HIS ASSENT TO THE PROPOSED ORDINANCE.

It is most humbly submitted before the Court that the Governor should have given his assent to the Ordinance approved by the Cabinet. Moreover, for the matters relating to law and order, he should have taken any alternate remedy.

(1) THAT THE GOVERNOR SHOULD HAVE TAKEN THE AID AND ADVICE OF THE COUNCIL OF MINISTERS

The Governor has the power to promulgate ordinances under Art. 213. But, even this power cannot be exercised by the Governor on his own. Ordinances can be issued by the Governor only on the aid and advice of the Council of Ministers and the Governor is limited with extremely limited legislative function.⁷⁰ In *Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly*,⁷¹ it was held that accepting of position that "*the decision of the Governor in his*

⁶⁸ Unni Krishnan v. State of AP, (1993) 1 SCC 645.

⁶⁹ Md. Hanif Qureshi v. State of Bihar, AIR 1958 SC 731.

⁷⁰ Ibid.

⁷¹ (2016) 8 SCC 1.

discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion", will convert the Governor into an all-pervading super-Constitutional authority. This position is not acceptable because an examination of the executive and legislative functions of the Governor, from the surrounding provisions of the Constitution clearly brings out that the Governor has not been assigned any significant role either in the executive or the legislative functioning of the State. Here, despite of approval of ordinance by the Cabinet, the Governor did not give his assent for its promulgation.

- (2) THAT THE CONSTITUTION AUTHORISES THE GOVERNOR TO WITHDRAW NOT TO REJECT THE ORDINANCE.

Constitution does not empower Governor to act in a pre-promulgation stage, rather it only empowers the Governor to withdraw an ordinance after its promulgation by the Governor itself.⁷² In the given case, ordinance has not been promulgated yet and thus, Governor had no power to negate the promulgation of ordinance.

- (3) THAT THE GOVERNOR SHOULD HAVE CONSIDERED ALTERNATIVE REMEDY OTHER THAN DENIAL OF ASSENT TO THE PROPOSED ORDINANCE.

Art. 371-A(b) places a special responsibility on Governor with respect to law and order, but the rejection of assent to the Ordinance by the Governor is not the appropriate remedy in case of situation relating to law and order rather he should have considered alternative remedy. In the given case, the Governor would have deployed personnel and manpower for the maintenance of law and order as he is also empowered by Art. 166 (3) to make Rules for the '*more convenient transaction of business of the Govt. of the State.*'

⁷² Art. 213(2), the Constitution of India.

PRAYER

Wherefore, in the light of the legal precedents and principles cited; and in light of the provisions of the Constitution applied and arguments advanced; it is most humbly pleaded before the Hon'ble Court that this Court adjudges and declare that:

- ❖ The Rules prohibiting 'live telecasts' of Proceedings of House should be held unconstitutional.
- ❖ The suspension order against Mr. Hobart by the Speaker should be held invalid.
- ❖ The search and seizure conducted by should be declared illegal and beyond procedure prescribed by law.
- ❖ An appropriate Writ must be passed to the State for the enforcement of Art. 243T.

And pass any other order, direction, or relief that it may deem fit in the best interests of justice, fairness, equity and good conscience.

ALL OF WHICH IS MOST RESPECTFULLY SUBMITTED.

COUNSEL FOR THE PETITIONER