

**TC- 027**

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

**BEFORE THE HON'BLE SUPREME COURT OF INDIA**

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*Mr. Hobart*

v.

*State of Anga-Pradesh*

ALONG WITH

*Mr. Ozan*

v.

*State of Anga-Pradesh*

AND

*Participation & Emancipation of Women (PEW)*

v.

*State of Anga-Pradesh*

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**PETITION INVOKED UNDER ART. 32 & 136 OF  
THE CONSTITUTION OF INDIA**

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

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### LIST OF ABBREVIATIONS

Sr. No.	Abbreviation	Full form
1.	&	And
2.	¶	Paragraph
3.	AIR	All India Reporter
4.	Anr.	Another
5.	AP	Anga-Pradesh
6.	Art.	Article
7.	Cr. P.C.	Code of Criminal Procedure
8.	Cri Lj	Criminal Law Journal
9.	Cvl.	Civil
10.	Del	Delhi high Court
11.	FIR	First Information Report
12.	Govt.	Government
13.	Hon'ble	Honourable
14.	ISP	Internet Service Provider
15.	IT Act	Information Technology Act, 2000
16.	Ker	Kerala High Court
17.	i.e.	That Is
18.	Mad.	Madras High Court
19.	Ors.	Others
20.	PLR	Punjab Law Reporters
21.	SC	Supreme Court

22.	SCC	Supreme Court Cases
23.	MLA	Member of Legislative Assembly
24.	S.	Section
25.	U.O.I	Union of India
26.	UDHR	Universal Declaration of Human Rights
27.	v.	Versus
28.	W.P	Writ Petition

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### **Statutes Referred**

1. Constitution of India, 1950.
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### **Books Referred**

1. Durga Das Basu, *Shorter Constitution of India, Fourteenth Edition, 2011.*
2. Mulla, *Commentary on the Code of Criminal procedure, 1973, Twentieth Edition, 2015.*
3. B.B. Mitra, *Code of Criminal Procedure, Twenty-First Edition, 2011.*
4. H. M. Seervai, *Constitutional Law of India, Ninth Edition, 2013.*
5. Subhash C. Kashyap, *Parliamentary Procedure, Second edition, 2006.*
6. M. P Jain, *Indian Constitutional Law, Eighth Edition, 2012.*

## STATEMENT OF JURISDICTION

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***I. Writ Petition No. \_\_ of 2017- Mr. Hobart v. State of Anga-Pradesh.***

The Petitioner has filed a Writ Petition before the Hon'ble Supreme Court of Indistan in the matter of Mr. Hobart v. State of Anga-Pradesh under Article 32 of the Constitution of Indistan against the decision of the Hon'ble Speaker of the Legislative Assembly of Anga-Pradesh.

***II. Special Leave Petition No. \_\_ of 2017- Mr. Ozan v. State of Anga-Pradesh.***

The Petitioner has filed a Special Leave Petition before the Hon'ble Supreme Court of Indistan in the matter of Mr. Ozan v. State of Anga-Pradesh under Article 136 of the Constitution of Indistan against the judgement and Order of the Hon'ble High Court at Anga-Pradesh.

***III. Writ Petition No. \_\_ of 2017- Participation & Emancipation of Women v. State of Anga-Pradesh.***

The Petitioner has filed a Writ Petition before the Hon'ble Supreme Court of Indistan in the matter of Participation & Emancipation of Women v. State of Anga-Pradesh under Article 32 of the Constitution of Indistan against the decision of the Governor of Anga-Pradesh.

**STATEMENT OF FACTS**

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The Constitution of Indistan is based on the principles of liberal democratic governance. Anga-Pradesh has been granted a great degree of state autonomy, as well as special powers for tribes to conduct their own affairs.

***I***

1. The cabinet of the State of AP approved an ordinance seeking immediate implementation of women reservation in the Municipalities as per the provisions of part IXA of the Constitution.
2. The tribal leaders (male) under the banner Joint Action Committee (JAC) in the State of AP made a representation to the Governor asking to refrain from giving his assent to the proposed ordinance as it was seen as an attempt to interfere with the tribal customary law and procedure guaranteed to the State of AP under Art. 371A of the Constitution. The JAC called for 'bandhs' and 'complete blockade' which had serious impact on 'law & order' in the State of AP. Even though the call for 'bandhs' and 'blockades' was largely peaceful it resulted in the death of seven protesters.
3. The Governor citing his responsibility under Art 371A did not give his assent to the ordinance approved by the cabinet.
4. An NGO named PEW (Participation & Emancipation of Women) working for socio, economic and political justice to the women in AP has preferred a writ petition against the Governor under Art. 32 of the Constitution seeking enforcement of Art. 243T.

***II***

5. Mr. Hobart is a veteran legislator, his Smartphone got activated while he was making a speech on the floor of the house and his speech became live through his social media page of Facebook.
6. The Speaker of the legislative assembly received a complaint against Mr. Hobart. The Speaker got the incident examined by the ethics committee which recommended suspension of Mr. Hobart for six weeks and the Speaker acted accordingly.
7. Mr. Hobart challenged the decision of the Speaker as violative of fundamental rights and constitutional norms in the modern governance in a writ petition and also sought a writ declaring the rules as unconstitutional which prohibits 'Live Telecast' of proceedings of the business.

***III***

8. Two ministers, Mr. Savadi and Mr. Ozan were allegedly caught on Television Camera watching child pornographic clips. It was the mobile phone of Mr. Savadi while Mr. Ozan was peeping into the phone.
9. The Speaker of the assembly received a complaint against the two ministers, contending that the Hon'ble SC of Indistan had banned all websites containing child Pornographic movies and the Speaker referred the matter to the ethics committee of the assembly. The ethics committee recommended expulsion of Mr. Savadi and suspension from the legislative assembly of six weeks in the case of Mr. Ozan. The Speaker accepted the recommendations of the committee and directed the Secretary General of the legislative assembly to get an FIR registered against Mr. Savadi.
10. The superintendent of Police sought the permission of the Speaker to inspect, search the offices of Mr. Savadi and Mr. Ozan. The Speaker authorized the police to conduct the physical search and seizure of the two offices.
11. On search & seizure no incriminating material was found against Mr. Savadi. However, it was found that the computer of Mr. Ozan was used to access and store child pornographic clips. Mr. Ozan contended that there was a political conspiracy to scandalize him and claimed that the evidence obtained should be excluded as it violates his 'Legislative Privileges' besides safeguards in the Part III of the Constitution.
12. Mr. Ozan challenged the entire proceedings of search & seizure in a writ petition under Art. 226. However, the High Court dismissed the writ petition. Thereafter Mr. Ozan preferred a Special leave petition to the Supreme Court of Indistan against the order and the judgment of the High Court.

**STATEMENT OF ISSUES**

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THE PETITIONER SUBMITS THE FOLLOWING QUESTIONS OF LAW TO THIS HON'BLE COURT:

- I.** WHETHER THE RULES PROHIBITING 'LIVE TELECAST' OF BUSINESS OF THE HOUSE ARE AGAINST THE BASIC FEATURE OF THE CONSTITUTION?
- II.** WHETHER THE 'SEARCH & SEIZURE' CONDUCTED BY THE POLICE IS AS PER THE CONSTITUTIONAL PROVISIONS AND PROCEDURE ESTABLISHED BY LAW?
- III.** WHETHER THE STATE CAN PASS AN APROPRIATE WRIT FOR THE ENFORCEMENT OF ARTICLE 243T?

## SUMMARY OF ARGUMENTS

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### **I. THE IMPUGNED RULES PROHIBITING THE ‘LIVE TELECAST’ OF PROCEEDINGS ARE IN VIOLATION OF THE PROVISIONS OF THE CONSTITUTION.**

The impugned rules prohibiting the ‘live telecast’ of proceedings of the house are violative of the basic feature of the Constitution on grounds of being against the principles of liberal democracy which provides for everyone to have fair share in the political sphere. Further, the people of a country have a right to know everything that is done by the public functionaries in a public way which has been decided by the Supreme Court of India in a catena of decisions. Moreover, the right of a citizen to know is derived from the Right to Speech and Expression under Article 19(1). Further, the rules are violative of Article 21 as it has been held by the Supreme Court of India that there exists an abridgement between Article 21 and the right to know of the citizens. Lastly, the decision of the Speaker to suspend Mr. Hobart is ultra-vires of the constitution.

### **II. THE ‘SEARCH & SEIZURE’ AS CONDUCTED BY THE POLICE IS NOT WITHIN THE PERMISSIBLE LIMITS OF THE CONSTITUTION.**

The search and seizure conducted by the Police in the instant case is violative of the provisions of the Criminal Procedure Code as no FIR had been filed against Mr. Ozan and that no search warrant had been executed to search the office of Mr. Ozan which is a legal obligation that needs to be fulfilled under Section 93 of the Criminal Procedure Code.

Furthermore, the information gained from the Internet Service Provider did not have proper judicial authorization which needs to be fulfilled as per the norms of the Information Technology Act, 2000 causing serious prejudice against the accused and the same is inadmissible.

Moreover, the search of Mr. Ozan’s office was uncalled for as the ethics committee had already taken a lenient view and he had been suspended for a period of six weeks for the same. The search undertaken thereafter violates his right to privacy which is a guaranteed fundamental right. Further, the petitioner herein is protected by the legislative privileges offered to members of the legislature, the permission granted by the Speaker to search the office of Mr. Ozan and

the same carried out by the Police violates the legislative privileges accorded to him by the Constitution *inter alia* under articles 194 and 105 of the Constitution.

**III. THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE ‘STATE’ SEEKING ENFORCEMENT OF ARTICLE 243T.**

The impugned ordinance approved by the cabinet is a constitutional obligation under the 74<sup>th</sup> Amendment which every state is bound to perform. Moreover, it is supported by Article 15(3) which provides for *the state to make special provisions for women*; Article 16(4) which provides *equal opportunities in the matters of public employment*; and Article 243T which provides for *reservation of seats for women in the municipalities*. The decision of the Governor to withhold his assent to the impugned ordinance is violative of Article 14, which provides for *equality within the society* and Article 38(1), which provides for *political justice*. Further, the impugned ordinance approved by the cabinet is in consonance with Article 25 which provides for *freedom to profess, practice and propagate religion* and the same can be restricted which has been decided by the Supreme Court of India in a catena of decisions.

Furthermore, the Governor is bound to act on the ‘aid and advice’ of his ministers in accordance to Article 163(1) of the Constitution and the discretionary power of the Governor is not absolute. The same has been adjudicated by the Supreme Court of India as well.

**ARGUMENTS ADVANCED****I. THE IMPUGNED RULES PROHIBITING THE ‘LIVE TELECAST’ OF PROCEEDINGS ARE IN VIOLATION OF THE PROVISIONS OF THE CONSTITUTION.**

The rules prohibiting the live telecast of proceedings of the house are (1) against the basic feature of the Constitution; and (2) The decision of the Speaker of the Legislative Assembly of Anga Pradesh to suspend is also ultra- vires of the Constitution.

**1. THE IMPUGNED RULES ARE AGAINST THE BASIC FEATURE OF THE CONSTITUTION.**

The Constitution of Indistan is based on the principles of ‘liberal democratic’ governance<sup>1</sup>. The right to participate in the affairs of a country is meaningless unless its citizens are well informed on all sides of the issues<sup>2</sup>. The impugned rule seeks to prohibit the live telecast of the proceedings. Moreover, the legislature is the only body amongst all the three organs through which the people can express their will. Further, the people of the country have a right to know everything that is done in a public way by their public functionaries<sup>3</sup>. In the instant case, the impugned rules are likely to affect the degree of transparency in the system which effectively violates the citizens’ right to know about the affairs of the government as it is the government who is responsible for formulating policies aimed at the welfare of the citizens<sup>4</sup>. Moreover, if the house makes any rule under Art 208, they will be subject to the Fundamental Rights of the citizens<sup>5</sup>. The SC of India has held that whenever there is a conflict between a rule of the house and a part of the fundamental rights enshrined in Part III of the Constitution, the said conflict should be solved by means of harmonious construction.<sup>6</sup> Hence the impugned rules, which are against the basic feature of the Constitution, must be subject to judicial review and are liable to be struck down.

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<sup>1</sup> Moot Proposition, ¶ 1.

<sup>2</sup> Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Anr., AIR 1995 SC 1236.

<sup>3</sup> State of U.P. v. Raj Narain & Ors., AIR 1975 SC 865.

<sup>4</sup> Dinesh Trivedi v. Union of India, (1997) 4 SCC 306.

<sup>5</sup> Keshav Singh v. The Speaker, Legislative Assembly, AIR 1965 SC 745.

<sup>6</sup> Ibid.



**(1) THE SAID RULES VIOLATE ARTICLE 19 OF THE CONSTITUTION.**

The impugned rules prohibiting the 'live telecast' of the proceedings of the House, are violative of Art 19 which provides the freedom to express one's convictions and opinions freely, by word of mouth, writing, printing, picture, or electronic media<sup>7</sup> and freedom of expression includes the freedom of propagation of ideas, their publication and circulation<sup>8</sup>. It is a settled proposition that the Right to Freedom and Expression enshrined under Art 19(1)(a) of the Constitution encompasses the right to impart and receive information.<sup>9</sup> Its repository is the constitutional right guaranteed under Art 19(1)(a).<sup>10</sup> The Right to know of a citizen is derived from the concept of freedom of speech<sup>11</sup> and the right to information forms an integral part of Art 19(1)(a)<sup>12</sup>, which is a basic feature of the Constitution<sup>13</sup>. Hence, it is the duty of the Court to strike down any law which imposes a restriction upon the freedom of speech and expression<sup>14</sup>.

In any event a restriction can be placed upon the freedom of speech and expression only under Art 19(2) of the Constitution which specifies the exhaustive list<sup>15</sup> under which a restriction may be placed, however the instant restriction does not fall under any of those cases and hence the said rules violate the right to speech and expression under Art 19(1).

**(2) THE SAID RULES VIOLATE ARTICLE 21 OF THE CONSTITUTION.**

The Hon'ble SC of India has maintained a strong link between Art 21 and the right to know particularly where the government's decisions may affect health, life and livelihood of the people<sup>16</sup>. The public, in general, has a right to know the circumstances under which their elected representatives make decisions<sup>17</sup>. The speech delivered by the veteran legislator, Mr. Hobart, was on a pressing issue of women's participation and representation which had the potential to

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<sup>7</sup> LIC v. Manubhai D. Shah, Prof., AIR 1993 SC 171;

People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568.

<sup>8</sup> Ramesh Thappar v. State of Madras, AIR 1950 SC 124.

<sup>9</sup> Namit Sharma v. Union of India, (1993) 4 SCC 119.

<sup>10</sup> Secretary General, Supreme Court of India v. Subhash Chandra Agarwal, AIR 2010 DEL 159.

<sup>11</sup> Supra 4.

<sup>12</sup> People's Union of Civil Liberties v. Union of India & Anr, AIR 2003 SC 2636.

<sup>13</sup> Keshavnanda Bharti v. State of Kerala, AIR 1973 SC 1461, 1480.

<sup>14</sup> Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166, 1172.

<sup>15</sup> Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305, 315.

<sup>16</sup> Essar Oil Ltd. v. Halar Utkarsh Samiti, AIR 2004 SC 1834.

<sup>17</sup> Onkar Lal Bajaj v. Union of India, AIR 2003 SC 2562.

change the lives of the people of Anga-Pradesh, especially women. Hence, the rules prohibiting proceedings of the Legislative Assembly violate the rights under Art 21 of the Constitution.

## **2. THE SAID RULES ARE VIOLATIVE OF INTERNATIONAL CONVENTIONS.**

The rules violate Art 19 of UDHR which states that “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”.

It is important to note that any International Convention consistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof. This is implicit from Art 51 and by the virtue of Art 253(c) of the Constitution.<sup>18</sup>

## **3. THE DECISION OF THE SPEAKER TO SUSPEND MR. HOBART IS ULTRA VIRES OF THE CONSTITUTION.**

The speech delivered by Mr. Hobart was in exercise of his right under Art 19(1) of the Constitution and the Speaker’s decision to suspend Mr. Hobart should be set aside. Moreover, the speech delivered by him does not fall under any of the restrictions imposed under Art 19(2) of the Constitution and the Hon’ble SC of India<sup>19</sup> has held that Art 212 and 194 do not foreclose judicial review in case of “gross illegality or violation of constitutional provisions”. Further, the immunity envisaged under Art 212 (1) of the Constitution is only for the irregularity of the proceedings and if the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law.<sup>20</sup>

Moreover, the Parliamentary Proceedings (Protection of Publication) Act, 1977 enacts that no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice<sup>21</sup>. This Act shall apply in relation to reports or matters broadcast by means of wireless telegraphy<sup>22</sup>. In the instant case,

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<sup>18</sup> Vishaka & Ors.v. State of Rajasthan & Ors., AIR 1997 SC 3011.

<sup>19</sup> Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha, (2007) 3 SCC 184.

<sup>20</sup> State of Kerala v. R. Sudarsan Babu & Ors, AIR 1984 Ker 1.

<sup>21</sup> S. 3(1) of the Parliamentary Proceedings (Protection of Publication) Act, 1977.

<sup>22</sup> S. 4 of the Parliamentary Proceedings (Protection of Publication) Act, 1977.

since the speech got live accidentally and unintentionally, malicious intent cannot be established and hence the decision of the Speaker to suspend Mr. Hobart should be set aside.

#### **4. THE ACTS OF LEGISLATIVE ASSEMBLY COME UNDER THE PURVIEW OF JUDICIAL REVIEW.**

The Hon'ble SC of India has time and again interfered with the proceedings of legislative assemblies in the past when there has been gross disorder or violation of Fundamental Rights of citizens because of the decision of the Assembly. The Hon'ble Court, in a case concerning Jharkhand Legislative Assembly<sup>23</sup>, passed an interim order containing directions about fixing of agenda of the House, maintenance of order in the House, and video recording of the proceedings of the Houses etc., which relate to matters decision on which, under the rules and by convention fall within the exclusive domain of the Presiding Officer of the House or the House itself. In another case, the court not only prohibited the arrest of a publisher, who wrote an article on Tamil Nadu Assembly in his weekly issue which the House found to be violative of its privilege, but also granted him protection when a warrant was issued against him name by the Speaker of the House<sup>24</sup>. Moreover, the immunity granted to MLAs for publishing any proceedings of the House is only 'by or under' the authority of a House of such a legislature. Hence, in the instant case as well, the decision of the Speaker being in violation of fundamental rights and against the basic feature of the Constitution should be struck down.

#### **II. THE 'SEARCH & SEIZURE' AS CONDUCTED BY THE POLICE IS NOT WITHIN THE PERMISSIBLE LIMITS OF THE CONSTITUTION.**

The 'Search & Seizure' as conducted by the Police in the instant case is (1) Violative of the provisions of Cr.P.C.; (2) Ultra- vires of constitutional provisions; (3) Violative of International Obligations; (4) Inadmissible as the Police have exceeded their powers in obtaining information from Internet Service providers and; (5) that the search violates legislative privileges of Mr. Ozan.

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<sup>23</sup> Arjun Munda v. Governor of Jharkhand & Ors, W. P. (Cv1.) No. 123/2005.

<sup>24</sup> A three-member Bench of the Supreme Court referred the issue of privilege to the Constitution Bench. The Constitution Bench referred the issue in 1997 to Speaker P.T.R. Palanivel Rajan, who dropped the proceedings against the Petitioner.

**1. THE 'SERACH & SEIZURE' AS CONDUCTED BY THE POLICE IS ULTRA-VIRES OF CR.P.C AND LEGALLY IMPERMISSIBLE.**

There was no legal justification for the search conducted at Mr. Ozan's office because (i) no FIR registered against his name; (ii) no warrant has been issued by the magistrate for conduct of search and seizure of Mr. Ozan's property; and (iii) hence, any investigation carried out against him is impermissible. In the present case, even the Ethics Committee had adopted a lenient view by giving benefit of doubt to Mr. Ozan. Further, on accepting the recommendations of the Committee, the Hon'ble Speaker directed the secretary general to get an FIR registered against Mr. Savadi<sup>25</sup> only and hence, the Superintendent of Police erred in seeking permission from the Hon'ble Speaker to search the office of Mr. Ozan as well. Moreover, the Hon'ble Speaker overstepped his legislative powers by authorizing the Police to conduct the search at the office of Mr. Ozan.

**(1) THE 'SEARCH & SEIZURE' IS NOT AS PER THE PROCEDURE PRESCRIBED BY LAW.**

The police, while searching the office of Mr. Ozan, had not followed the procedure laid down by law as it did not get a search warrant to search the premises of Mr. Ozan. Section 93 of Cr.P.C provides for the general procedure of search and it allows for only a magistrate to issue a warrant for the search of any 'document or thing'<sup>26</sup>, which in the present case was not issued. Section 100 provides that persons in charge of a closed place, only on execution of a search warrant by the officer, may allow free ingress<sup>27</sup> to the property and in the instant case, even the permission of the person in charge of the property i.e. Mr. Ozan was not sought. Moreover, the Police can only conduct a search without a warrant in accordance with the strict guidelines laid down in Section 165 of the Cr P.C. The Hon'ble SC of India has repeatedly held that the power of Police to investigate is not unlimited and such power should be exercised within limits as prescribed by the code.<sup>28</sup>

Further, when there is no registration of any FIR, the visit of the Police officer to the premises cannot be described as having been made in the course of an investigation<sup>29</sup>. Moreover, the factsheet is silent about whether any reasons were recorded in writing for carrying out the

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<sup>25</sup> Moot Proposition, ¶ 18.

<sup>26</sup> S 93, The Code of Criminal Procedure, 1973.

<sup>27</sup> S. 100, The Code of Criminal Procedure, 1973.

<sup>28</sup> Chandran Ratnaswami v. K.C. Palanisamy, (2013) 6 SCC 740.

<sup>29</sup> Sharda Singh v. State of U.P., (2009) 11 SCC 683.

search by the officer and therefore, the same cannot be assumed to be complied with. Accordingly, the search was in contravention of Section 165 of the Code.<sup>30</sup> Assuming without admitting that there were written recordings submitted, the search was carried out without a search warrant being executed and the same is therefore bad in law. And if the search is illegal, anything seized during such an illegal search has to be returned<sup>31</sup>. It is thus, humbly contended that the evidence found as a part of this illegal search should be excluded in the instant case because the requirement of reasonableness can only be fulfilled when a search is conducted subsequent to obtaining a warrant from a neutral magistrate, by demonstrating probable cause to believe that evidence of any unlawful activity would be found upon such search. If the Police officer has made improper use of investigatory power or there is abuse of power, the court may intervene to protect the personal and or the property rights of a citizen.<sup>32</sup>

**(2) THE EVIDENCE COLLECTED THROUGH THE ISPs IS INADMISSIBLE.**

The Hon'ble SC of India has held that when there is violation in the procedure of 'Search & Seizure', the courts need to see if there is any prejudice against the accused<sup>33</sup>. Hence, in the instant case, despite the Ethics Committee adopting a lenient approach towards Mr. Ozan's conduct, the search at Mr. Ozan's office was not called for. Moreover, The SC of India has held that if the violation in procedure committed by the Police is of a serious nature which causes serious prejudice to the accused, such evidence should be excluded.<sup>34</sup>

**(3) THE EVIDENCE PROCURED BY THE POLICE IS NOT RELIABLE.**

The evidence collected through Internet Service Providers is not full proof and one hundred percent reliable, as in the case before the Karnataka High Court<sup>35</sup>, an innocent person was imprisoned for almost 50 days because of the 'Misleading Information' provided by the Internet Service Providers. In any event, information procured from an IP address can, at most, be construed as "Corroboratory Evidence" but it should never be the "Primary Evidence" on the basis of which a person can be convicted. Only then, the fundamental principles of the

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<sup>30</sup> The State of Rajasthan v. Rehman, AIR 1960 SC 210.

<sup>31</sup> Calcutta High Court in New Central Jute Mills Co. Ltd. v. T. N. Kaul & Ors, AIR 1966 Cal 36.

<sup>32</sup> Manohar Lal Sharma v. Principal Secretary and Ors., AIR 2014 SC 666.

<sup>33</sup> State of Punjab v. Balbir Singh 1994 (3) SCC 299.

<sup>34</sup> State of M.P. v. Paltan Mallah, 2005 (3) SCC 169.

<sup>35</sup> M/S Bharti Airtel Ltd v. Mr. K. Lakshmana Kailash, Criminal Appeal No. 4617-2009 (High Court of Karnataka, 30/08/2013).

Justice System like “Establishment of Guilt beyond Reasonable Doubt” and “Right to Fair Trial<sup>36</sup>” will get its true meaning.

## **2. THE ‘SEARCH & SEIZURE’ IS VIOLATIVE OF RIGHT TO PRIVACY OF MR. OZAN.**

In the instant case, the police, by conducting the search and seizure at the office of Mr. Ozan, without a proper judicial warrant and permission, has infringed his reasonable expectations of privacy. The Hon’ble SC of India has held that right to privacy is a part of the *right to life and personal liberty* enshrined under Art 21<sup>37</sup> and once the facts in a given case constitute a right to privacy, Art 21 is attracted<sup>38</sup>. Moreover, in a recent landmark judgment, a nine judge bench of the Hon’ble SC of India has unanimously declared the right to privacy as a “guaranteed fundamental right” under Art 21 of the Constitution<sup>39</sup>. The SC of India had also held that an investigating agency should carry out the investigations with fairness and according to the procedure established by law as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Art 21 of the Constitution<sup>40</sup>. Thus, the act of the Police in searching the office and obtaining information from the Internet Service Provider, without his permission was in direct violation of Right to Privacy of Mr. Ozan.

## **3. THE RESPONDENT’S CONDUCT IS VIOLATIVE OF INTERNATIONAL OBLIGATIONS.**

The conduct of the Hon’ble Speaker to grant permission to search and of the Police to conduct the same is violative of various international conventions to which Indistan is a signatory.

Universal Declaration of Human Rights (UDHR) (1948) refers to privacy<sup>41</sup> and it states: “*No one shall be subjected to arbitrary interference with his privacy, family, home or*

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<sup>36</sup> State of Rajasthan v. Shera Ram, Criminal Appeal No. 1502/2005 (Supreme Court, 01/12/2001).

Harpal Singh Palli v. State of Punjab & Ors., W.P. (Cvl.) 5059/2011 (HC of Punjab and Haryana, 27/05/2015).

<sup>37</sup> People’s Union of Civil Liberties v. Union of India, AIR 1991 SC 207, 211;

R.Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.

<sup>38</sup> Ibid.

<sup>39</sup> Justice K.S. Puttaswami (retd.) & Anr. v. Union of India & Ors., W.P. (Cvl.) 494/2012 (Supreme Court, 24/08/2017).

<sup>40</sup> Karan Singh v. State of Haryana & Anr., (2014) 175 PLR 816.

<sup>41</sup> Art. 12, Universal Declaration of Human Rights.

*correspondence nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks." While International Covenant of Civil and Political Rights<sup>42</sup> refers to privacy and states that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation."*

#### **4. THE POLICE HAVE EXCEEDED THEIR POWER IN OBTAINING INFORMATION FROM THE INTERNET SERVICE PROVIDER (ISPs).**

The police, in gaining information through the Internet Service Providers (ISPs), without proper judicial authorization had overstepped its powers. The ISP's in Indistan are governed by the Information Technology Act, 2000 and even though under Section 69-B of the IT act, the Central government has the power to obtain information from ISP's for various reasons. However, this power is subject to certain rules and procedures laid down by the Official Gazette Notification, 2009<sup>43</sup> and the following rules of the said notification are violated by the conduct of the Police in the instant case.

Rule No. 3 of the said notification lays down that information shall not be monitored or intercepted without the order of a competent authority, provided that in emergency situations the order shall be passed by the senior most or the second senior most head of the law enforcing authority, not below the Inspector General of Police, provided that such officer shall give to the competent authority in writing about the emergency. In the instant case, it was the Superintendent of Police making the search<sup>44</sup>. Also, Rule No. 24 prohibits interception or monitoring of information without authority, and seeks to punish any person who intentionally or knowingly intercepts or attempts to intercept any information.

A similar case came up before the Canada Supreme Court where the Petitioner used an online software to download child pornography clips onto a computer. The Police requested subscriber information associated with an IP address from the Petitioner's Internet Service Provider and on the basis of it, searched the computer used by him without a warrant. The court held that what a person sees of does on the internet is his personal choice and there exists an

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<sup>42</sup> Art. 17, International Covenant of Civil and Political Rights.

<sup>43</sup> Guidelines 780, Information Technology Act, (G.S.R 780) (E), 2009.

<sup>44</sup> Moot Proposition, ¶ 20.

expectation of privacy, holding that the search conducted by the Police by obtaining information from the ISP was unconstitutional.<sup>45</sup>

### **5. THE SEARCH CONDUCTED BY THE POLICE VIOLATES THE LEGISLATIVE PRIVILEGES AFFORDED TO MR. OZAN.**

In any event and without prejudice to the foregoing, the Petitioner herein is protected by legislative privileges offered to the MLAs. The permission granted by the Speaker to search the office of Mr. Ozan and the search carried out by the Police at his office violates the parliamentary privileges accorded to him by the Constitution under Art 194 and 105. The Hon'ble Supreme Court, in P.V. Narasimha Rao case<sup>46</sup>, even had held that the MPs who had taken bribes will be immune from criminal prosecution and will not be liable for corruption because of their legislative privileges. Hence, in the instant case as well, MLA Mr. Ozan must be excluded from judicial proceedings because the alleged conduct of the MLA was within the premises of the assembly for which he has already been granted punishment by the Speaker.

### **III. THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE 'STATE' SEEKING ENFORCEMENT OF ARTICLE 243T.**

This court is competent to pass an appropriate writ to the 'State' to seek enforcement of Art 243T. The Hon'ble SC of India has, in past as well, questioned the decision of the Governor when a writ petition was filed against the State<sup>47</sup>. Moreover under articles 32(2) and 142 empowers this court to issue any appropriate writ or order. The decision of the governor to not to give his assent to the impugned ordinance is (1) In violation of Constitutional Provisions; (2) In violation of Directive Principles of State Policy; (3) And the Governor is bound to follow the aid and advice of Council of Ministers.

### **1. THE GOVERNOR'S DECISION TO NOT TO GIVE ASSENT TO THE ORDINANCE IS IN VIOLATION OF VARIOUS CONSTITUTIONAL PROVISIONS.**

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<sup>45</sup> R. v. Spencer, [2014] SCC 43 (2014, Supreme Court of Canada).

<sup>46</sup> PV Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626.

<sup>47</sup> Chandrakant Kavlekar v. Union of India, W.P. (Cv1.) No. 8311/2017 (Supreme Court, 14/03/2017).



**(1) VIOLATIVE OF ARTICLE 14.**

The decision of the governor to not to give assent to the impugned ordinance in the instant case is violative of Right to Equality of women of the State of Anga Pradesh. Art 14 deals with *equality before law*. The principle of equality provides that different classes of people with varying needs require special treatment<sup>48</sup>. Therefore the principle of equality of law does not mean that the same law should apply to everyone but it means that a law should treat a particular group of people as one class.<sup>49</sup> In the instant case, women in the State of Anga-Pradesh have been discarded from the political realm<sup>50</sup> as a result of which the independence and representation of women in the political sphere was not alike to that of men and hence, providing women differential treatment by the way of providing them with reservations through the ordinance does not *per se* constitutes violation of Art 14<sup>51</sup> and the remedy available for such a violation is an affirmative action which was to be taken by the State. The same can be done by the means of providing opportunities<sup>52</sup> which included issuing quotas<sup>53</sup> and giving jobs<sup>54</sup> as the women have never been on an equal footing as that of men in the State of Anga Pradesh.

Hence, the impugned ordinance which seeks to promote equality in the society by giving women a fair chance of representation in the municipalities, which they had been denied and the act of governor to not to give assent to the same infringes their fundamental right enshrined under Art 14 of the Constitution.

**(2) GOVERNOR'S DECISION IS VIOLATIVE OF DIRECTIVE PRINCIPLES OF STATE POLICY.**

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<sup>48</sup> Pannalal Bansilal Pitti v. State of A.P, AIR 1996 SC 1023.

<sup>49</sup> Gauri Shankar v. UOI, AIR 1995 SC 55, 58.

<sup>50</sup> Moot Proposition, ¶ 5

<sup>51</sup> Ameeroonissa Begum v. Balsara F.N, AIR 1953 SC 91;

Gopi Chand v. Delhi Administration, AIR 1959 SC 60;

Ashoka Smokeless Coal India (P.) Ltd. v. Union of India, (2007) 2 SCC 640.

<sup>52</sup> Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Cooperative Society v. Haribhai Mevabhai, AIR 1996 SC 2578.

<sup>53</sup> Ramana Dayaram Shetty v. I.A.A.I., AIR 1979 SC 1628.

KasturiLal Lakshmi Reddy v. State of J&K, AIR 1980 SC 1992.

<sup>54</sup> Ibid.

The Governor's decision to not give assent to the ordinance violates Art 38(1) of the Constitution in which political justice means equal, free and fair opportunities to the people for participation in the political process without any discrimination. The Constitution provides for a liberal democracy in which all the people have the right and freedom to participate<sup>55</sup>. Taking into consideration the backwardness of the women in Anga-Pradesh in the political realm, the 33% reservation was approved by the cabinet to give women an opportunity to participate in the political activities and the Governor, by not approving the impugned ordinance, which aims to satisfy this very right which is awarded by the Constitution, has acted *ultra-vires*.

In the lights of Art 37 it is contended that Directive Principles which are fundamental in the governance of our country cannot be isolated from the Fundamental Rights.<sup>56</sup>

**(3) THE IMPUGNED ORDINANCE IS SUPPORTED BY ARTICLES 15(3), 16(4) AND 243T.**

The ordinance approved by the cabinet is in line with various provisions of the Constitution. Firstly, Art 15(3) provides for the State to make special provisions for women wherein reservation of seats in local bodies for women has been held to be valid in view of Art 15(3)<sup>57</sup>.

Secondly, Art 16 provides for equality of opportunities in matters of public employment and clause (4) of the same Article provides for making any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State which is true for the case of women in the instant case.

Thirdly, Art 243T under part IXA<sup>58</sup> of the Constitution provides for reservation of seats for women upto 33% and where Constitution itself makes a classification, the charge of discrimination cannot be levied against such a separate treatment<sup>59</sup>.

Further, the provision of reservation in the instant case is a constitutional obligation under the 74<sup>th</sup> Amendment of the Constitution, which the State is bound to perform and the Governor by not giving his assent to a constitutional obligation has acted *ultra-vires*. Moreover, the Hon'ble

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<sup>55</sup> Aparijita Baruah, *Preamble of the Constitution of India*, 177(1<sup>st</sup>ed, 1996).

<sup>56</sup> Mohini Jain v State of Karnataka, AIR 1992 SC 1858.

<sup>57</sup> Toguru Sudhakar Reddy v. Government of A.P, AIR 1994 SC 544.

<sup>58</sup> The Constitution (74<sup>th</sup> Amendment) Bill, 1992 (passed by Rajya Sabha, 1/6/1993).

<sup>59</sup> Sainik Motors (M/s.) v. State of Rajasthan, AIR 1961 SC 1480, 1486.

SC of India, in 2016, provided for local elections to be held with 33% reservation of women in the State of Nagaland, which also enjoys special provision under Art 371A of the Constitution.

**(4) THE IMPUGNED ORDINANCE IS NOT IN VIOLATION OF ARTICLES 25 AND 26.**

Article 25 provides for *freedom of conscience and the right to freely profess, practice and propagate religion, subject to public order, morality and health and to the other provisions of this part*. Hence the said right is not absolute in nature<sup>60</sup>.

Moreover, the fundamental right to manage the affairs of one's own religion<sup>61</sup> is only limited to those practices which are regarded by the religion as its essential integral part<sup>62</sup> and the test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will change without that part or practice i.e. without which a religion will be no religion<sup>63</sup>. In the instant case, reservation of seats for women in the political sphere of the State would not bring out the fundamental change in the belief of any religion and it is the duty of the courts to decide<sup>64</sup> whether the practice is an essential or an integral part of the religion and not merely secular or superstitious in nature<sup>65</sup>.

Moreover, in cases of encroachment of religious rights, it is legitimate to balance competing interests taking into account the Directive Principles and social welfare as a whole<sup>66</sup> which has been the settled principle followed as recently, a religious practice of triple- talaq which has been followed since decades by a community has been held to be unconstitutional<sup>67</sup> on the grounds *inter-alia* being arbitrary and violative of Art 14. Hence, this Hon'ble Court should adopt the policy of giving general public and social order priority over religious practices which infringe them.

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<sup>60</sup> A.S. Narayana Deeshitalyu v. State of Andhra Pradesh, AIR 1996 SC 1765.

<sup>61</sup> Article 26(b), The Constitution of India, 1950.

<sup>62</sup> Durgah Committee v. Hussain Ali Syed, AIR 1961 SC 1402 (1415);

Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of UP, (1997) 4 SCC 606.

<sup>63</sup> Commissioner of Police v. Acharya Jagishwarananda Avadhuta, AIR 2004 SC 2984.

<sup>64</sup> H.H. Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v. State of Tamil Nadu, AIR 1972 SC 1586.

<sup>65</sup> Commissioner, Hindu Religious Endowments v. Lakshmindra Swaminar, AIR 1954 SC 282;

Durgah Committee, Ajmer v. Syed Hussain, AIR 1961 SC 1402;

S.P. Mittal v. Union of India, AIR 1983 SC 1.

<sup>66</sup> Acharya Maharaj Narendera Prasadji Anand Prasadji Maharaj v. State of Gujarat, AIR 1974 SC 2098;

Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

<sup>67</sup> Shayara Bano & Anr v. Union of India & Ors., W.P. (Cv1.) No. 118/2016 (Supreme Court, 22/08/2017).

**2. THE GOVERNOR MUST FOLLOW THE 'AID AND ADVICE' OF THE COUNCIL OF MINISTERS AND HIS DISCRETIONARY POWER IS NOT ABSOLUTE.**

The governor is under a constitutional obligation to follow the aid and advice of the council of ministers which has been decided by the SC of India in the catena of decisions and lastly the discretionary power exercised by the governor is not absolute and has a few constitutional constraints.

**(1) GOVERNOR IS BOUND TO FOLLOW THE 'AID AND ADVICE' OF THE COUNCIL OF MINISTERS.**

The Governor was bound to give assent to the ordinance approved by the cabinet in accordance with Art 163(1) of the Constitution. The SC of India has adjudicated upon this matter and held that in discharging the powers of the Governor to promulgate an ordinance, the Governor acts on the aid and advice of Council of Ministers which owes collective responsibility to the legislature.<sup>68</sup> Similar views were resonated by The SC of India in Samsher Singh<sup>69</sup> wherein it was held that the Governor of the State should act only on the aid and advice of the council of ministers and not otherwise. Hence, the decision of the governor to go against the impugned ordinance as approved by Council of Ministers, is violative of the basic principle of democracy as governor is merely a constitutional head and is bound to accept the aid and advice of his council of ministers<sup>70</sup>.

**(2) DISCRETIONARY POWER OF THE GOVERNOR IS NOT ABSOLUTE.**

The Hon'ble SC of India, in Samsher Singh v. State of Punjab<sup>71</sup>, held that the Governor is bound to exercise the constitutional powers only in accordance with the advice of his Ministers save in a few exceptional situations namely;

- (a) Choice of Prime Minister (Chief Minister) restricted though this choice is by the paramount consideration that he should command a majority in the House;
- (b) The dismissal of the Government which has lost its majority in the House but refuses to quit office;
- (c) Dissolution of the House where an appeal to the country is necessary.

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<sup>68</sup> Krishna Kumar Singh v. The State of Bihar, (2017) 3 SCC 1.

<sup>69</sup> Samsher Singh v. State of Punjab, AIR 1974 SC 2192.

<sup>70</sup> P. Joseph John v. State of Travancore-Cochin, AIR 1955 SC 160;

Sanjeevi Naidu v. State of Madras, AIR 1970 SC 1102.

<sup>71</sup> Ibid.

However, the instant matter does not fall under any of the above stated exceptions as a result of which the decision of the governor will come under the ambit of judicial review as it being the basic feature of the Constitution.<sup>72</sup>

The matter at hand is not *res integra* as it has already been adjudicated by the Hon'ble SC of India that when an order was passed by the Governor of Arunachal Pradesh in exercise of his discretionary powers under Art 371-H the same was held to be unconstitutional as the governor was found to be acting whimsically or arbitrarily and the argument of the governor regarding his powers under Art 163(2) was accordingly dismissed<sup>73</sup>.

The SC of India has never allowed the use of discretionary powers particularly by an individual. The same pattern has been followed since 1949 when the Federal court articulated that it is not justifiable to have the governor as the sole judge of existence of an ordinance in an emergency<sup>74</sup>. Further the satisfaction of the President or the Governor to promulgate an ordinance was not immune from judicial review<sup>75</sup> as held by a constitutional bench of The Hon'ble SC of India.

It is an accepted fact that the Governor cannot be personally, as a party or otherwise, be called upon to answer a charge of bad faith with reference to his official act. The validity of his act is open to challenge in view of second provision of Art 361(1) of the Constitution<sup>76</sup>, further appropriate proceedings can be instituted by a person aggrieved by the actions of the Governor against the government of a State in view of the second provision of Art 361 of the Constitution.

### **(3) GOVERNOR'S ACT IS ARBITRARY.**

The governor of the State of Anga Pradesh refused to give his assent to the ordinance by citing his special responsibility with respect to law and order under Art 371A of the Constitution of Indistan<sup>77</sup>. It is well settled principle that in case of a hartal/bandh /strike, the law enforcing authority has to stop it with iron hands as no person has a right to cause inconvenience to others, cause threat or apprehension of any risk to life or any destruction to property in the name of strike or hartal or bandh, which have no legal sanction.<sup>78</sup> Hence, the governor's decision to give in to the demands of the protestors was arbitrary and it is the duty of this court to interfere

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<sup>72</sup> S.R Bommai v. UOI, 1994 AIR 1918.

<sup>73</sup> NabamRebia and Bamang Felix v Deputy Speaker & Ors., (2016) 8 SCC 1.

<sup>74</sup> Lakhi Narayan Das v. Province of Bihar, AIR 1950 SC 59.

<sup>75</sup> Supra 73.

<sup>76</sup> K.A. Mathialagan & Ors. v. The Governor Of Tamil Nadu & Ors., AIR 1973 Mad 198.

<sup>77</sup> Moot Proposition, ¶ 9.

<sup>78</sup> James Martin v. State of Kerala (2004) 2 SCC 203.

with such arbitrary exercise of discretionary power<sup>79</sup>. Moreover, his decision is not guided by the larger object that is sought to be achieved by the Assembly<sup>80</sup> i.e. the upliftment of women. Moreover, it has been held in plethora of cases<sup>81</sup> that an order passed by a statutory authority, particularly when by reason whereof a citizen of India would be visited with civil or evil consequences must meet the test of reasonableness.

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<sup>79</sup> Indian Express Newspapers, Bombay v. Union of India, AIR 1986 SC 515.

<sup>80</sup> Suman v. State of J. & K., AIR 1983 SC 1235.

<sup>81</sup> V.C. Banaras Hindu University v. Shrikant, AIR 2006 SC 2304;  
Viveka Nand Sethi v. Chairman, J & K Bank Ltd., (2005) 5 SCC 337.

**PRAYER**

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Wherefore in light of the issues raised, arguments advanced and the authorities cited, it is humbly prayed that this Hon'ble Court be pleased to hold, adjudge and declare:

- a. By a writ of mandamus or any other writ the Rules prohibiting the 'live telecast' of business of the House as unconstitutional and set aside the decision of the speaker to suspend Mr. Hobart.*
- I. By a writ of certiorari or any other writ set aside the order and judgment of the High Court of Anga-Pradesh and declare the 'Search and Seizure' conducted by the police as ultra-vires of the constitution and the procedure prescribed by law.*
- II. Any writ or direction directing the State of Anga-Pradesh to enforce the provisions of Art 243T of the Constitution.*

And pass any such order, writ or direction as this Hon'ble Court deems fit and proper for which the Petitioner shall duty bound forever pray.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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**COUNSEL FOR THE PETITIONER**