

TC- 027

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

BEFORE THE HON'BLE SUPREME COURT OF INDIA

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

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

**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.	BOM	Bombay High Court
8.	Cr. P.C.	Code of Criminal Procedure
9.	Cri Lj	Criminal Law Journal
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.	Mad.	Madras High Court
17.	MP	Madhya Pradesh
18.	Ors.	Others
19.	SC	Supreme Court
20.	SCC	Supreme Court Cases
21.	Sec	Section

22.	U.O.I	Union of India
23.	v.	Versus
24.	W.P	Writ Petition

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STATEMENT OF JURISDICTION

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 judgment 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

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 judgement of the High Court.

STATEMENT OF ISSUES

THE RESPONDENT 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

I. THE IMPUGNED RULES PROHIBITING THE 'LIVE TELECAST' OF THE PROCEEDINGS DO NOT VIOLATE THE BASIC FEATURE OF THE CONSTITUTION.

The Constitution empowers the legislative assemblies to formulate and protect its rules under Article 208 and 194(3) of the Constitution. In the instant case the rules of the house are not violative of the Basic Features of the Constitution. Further, if the proceedings of the house are made public the same would affect the independence of the legislature, while the impugned rules in the instant case acts as a safeguard of the principles of liberal democracy. Furthermore, the impugned rules are not violative of Articles 19 or 21, as the same is not absolute which has been held by the Supreme Court of India in a catena of decisions. Moreover, the fundamental rights enshrined under Part III of the Constitution must yield to Article 194(3) when a conflict arises and the same being a special law.

Lastly, the act of the Speaker to suspend Mr. Hobart cannot be called into question owing to the immunity granted to the Speaker by Article 212 of the Constitution.

II. THE 'SEARCH & SEIZURE' AS CONDUCTED BY THE POLICE IS WITHIN THE PERMISSIBLE LIMITS OF THE CONSTITUTION AND PROCEDURE PRESCRIBED BY LAW.

The search and seizure conducted at the office of Mr. Ozan and the information gathered by the Police through Internet Service Providers (ISPs) are within the permissible limits of the Constitution. Further, the Police have been granted wide powers under section 156 and 157 of the Criminal Procedure Code to investigate into a matter without an order of the Magistrate. Moreover, section 165 of the Criminal Procedure Code allows the Police to search a place within its jurisdiction without a warrant.

Further, the information obtained by the Police by means of Internet Service Provider is in consonance with Section 43A and 69 of the Information Technology Act.

Furthermore, assuming without admitting that the due process of law was not followed the evidence collected can yet be admitted as there is no constitutional or statutory bar relating to the same. This has been decided by the Supreme Court of India in a catena of decisions.

Lastly, the search and seizure does not violate the right to privacy of Mr. Ozan as the same is not absolute which has been decided by the Supreme Court of India in a catena of decisions and the Search & Seizure cannot be excluded due to the legislative privileges as the same is only in respect to 'anything said' or 'any vote given'. The immunity does not cover any act done by the members in their personal capacity.

III. THIS COURT CANNOT PASS A WRIT TO THE 'STATE' SEEKING ENFORCEMENT OF ARTICLE 243T.

The decision of the Governor to not give his assent to the impugned ordinance was an exercise of his discretionary power under Article 163(2) of the Constitution. Further Article 361(1) affords immunity to the Governor for the decisions made by him in exercise of his discretionary powers which is not only final but cannot be challenged in the court which has been decided by the Supreme Court of India in the catena of decisions. This power of the Governor in the instant case is further protected by Article 371A(1)(b), wherein the Governor can act on his individual judgement and the same cannot be called into question.

Moreover the impugned ordinance approved by the cabinet is violative of Article 25,26 and 29 of the Constitution as it interferes with the religious affairs and the cultural traditions of the tribes of Anga-Pradesh. Further, the State of Anga-Pradesh enjoys special status under Article 371A as a result of which no act of the Parliament would be applicable to the State of Anga-Pradesh. Furthermore, the decision of the Governor to not give assent is not violative of Articles 14, 15 or 16 of the Constitution.

Lastly, the decision of the Governor satisfies the '*WEDNESBURY PRINCIPLE*', which holds that when a statute grants discretion to an authority to take a decision, the scope of judicial review in such cases would be limited.

ARGUMENTS ADVANCED**I. THE IMPUGNED RULES PROHIBITING THE ‘LIVE TELECAST’ OF THE PROCEEDINGS ARE NOT IN VIOLATION OF THE PROVISIONS OF THE CONSTITUTION.**

The impugned rules are not ultra- vires of the constitutional provisions as (1) The house has powers to formulate its own rules; (2) The rules are not against principles of liberal democracy; and (3) The rules are not violative of Art 19 and 21 of the Constitution.

1. THE HOUSE HAS THE POWER TO FORMULATE THE IMPUGNED RULES.

The Constitution empowers a State Legislative assembly to formulate rules under Art 208(1) which reads as, “*A House of the legislature of a state may make rules for regulating subject to the provisions of this Constitution, its procedure and the conduct of its business.*”

Further, Art 194(3) provides for the *powers, privileges and the immunities of a House of the Legislature of a State shall be as such as may from time to time be defined by the Legislature by law*. It has been held by the Hon’ble SC of India in a catena of decisions that the provisions of Art 194(3) are constitutional laws and not ordinary laws made by the Parliament or the State Legislatures as a result of which, they are as supreme as the provisions of Part III of the Constitution.¹ Moreover, since the Constitution confers powers upon the House to formulate its rules, it is implicitly followed that the house also has the powers to protect such rules. Hence, the action of the Speaker to suspend Mr. Hobart is an exercise of his powers to protect the dignity and maintain decorum of the House.

2. THE ACT OF THE SPEAKER TO SUSPEND MR. HOBART CANNOT BE CALLED INTO QUESTION.

Art 212 of the Constitution provides that *the Courts cannot inquire into the proceedings of the legislature*. Firstly, clause (1) of Art 212 grants immunity to the proceedings of a Legislature in a court of law. Secondly, Clause (2) of the same Art grants immunity to an officer or a member of a Legislature of a State in respect to exercise of powers vested in him for regulating procedure and the conduct of business for maintaining order in the Legislature.² In the instant case, the rules of the Legislative Assembly of the state of Anga Pradesh prohibits unauthorized

¹ Pandit M. S. M. Sharma v. Shri Sri Krishna Sinha & Ors, AIR 1959 SC 395.

² Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors, (2007) 3 SCC 184.

telecast of assembly proceedings. As a result of which, the decision of the Speaker to suspend Mr. Hobart from the Assembly cannot be called into question and in doing so the Speaker has not acted *ultra-vires* of the Constitution.

3. THE IMPUGNED RULES ARE NOT IN VIOLATION OF THE BASIC FEATURE OF THE CONSTITUTION.

The impugned rules are not against the basic feature of the Constitution, (1) The principles of liberal democracy; (2) Fundamental rights under Art 19; (3) Fundamental rights under Art 21.

(1) THE IMPUGNED RULES ARE NOT AGAINST THE PRINCIPLES OF LIBERAL DEMOCRACY.

The Legislative Assembly on numerous occasions deal with issues which involve matters relating to the Security of the State and if this data is available openly, it may be misused by anti-national elements of the society against the state itself.

It has been held by the SC of India that if every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker which may affect his independence to make decisions. It will paralyse the entire system and bring it to a grinding halt³ and hence, the impugned rules provide for protection of sovereignty of the state rather than violating the principles of liberal democracy.

(2) THE IMPUGNED RULES ARE NOT ULTRA- VIRES OF ARTICLE 19.

Art 19 provides for the freedom of speech and expression while as Art 194(3) reads of *powers and privileges of the house of legislature and of the members and committee thereof*.

In the instant case the rules prohibiting 'Live Telecast' of the proceedings, do not infringe the fundamental rights of Mr. Hobart enshrined under Art 19 of the Constitution as the prohibition imposed by the rule does not in any manner impose a restriction on his right to make a speech on the floor of the House or even outside the assembly. It only prohibits the live telecast of the proceedings of the house which the Assembly has a right to restrict in exercise of its powers provided under Art 194(3) and Art 208. Moreover, when there arises a conflict between fundamental right of speech and expression under Art 19(1)(a) on one hand and the powers and

³ Shri Dinesh Trivedi, M.P. & Ors v. Union of India & Ors, (1997) 4 SCC 306.

privileges of the Legislative Assembly under Art 194(3) on the other hand, the “principle of harmonious construction must be adopted and so construed, the provisions of Art 19(1)(a), which are general, must yield to Art 194(3) which is a special law”.⁴

Assuming without admitting that his rights were violated, The Hon’ble SC of India has held that, if an individual is deprived of his fundamental rights as a result of the proceedings before the Ethics Committee, such deprivation would be in accordance with the procedure established by law, which has been the scenario in the instant case and hence, a complaint of breach of fundamental rights could not be made.⁵

i. RIGHT GRANTED UNDER ARTICLE 19 IS NOT ABSOLUTE.

It is pertinent to note that no freedom can be absolute or completely unrestricted so as to maintain the law and order of a State⁶. Art 19(2) allows the state to impose restrictions on Art 19(1)(a) by making any laws in the interests of sovereignty and integrity of the country, the security of the state, public order or incitement to an offence. Here, public order is synonymous with public peace, safety and tranquillity⁷ and covers a small riot, an affray and other cases where peace is disturbed by or affects, a small group or persons, public safety (or insecurity of the state), breach of peace or acts which disturbs public tranquillity⁸.

Further, Mr. Hobart’s speech was made when the ‘law and order’ situation in the State of AP⁹ was in turmoil which resulted in the death of seven protesters¹⁰ and hence, it invites restriction under ‘Security of the State’ as the Hon’ble SC of India has held that incitement of violent crimes is an offence against public order and undermine the security of the state¹¹. It has even been held by the Hon’ble SC of India that speeches or expressions on the part of an individual which incite to or encourage the commission of violent crimes, cannot but be the matters which would undermine the security of the state and come within the ambit of a law sanctioned by Art 19(2)¹². Further, an individual should keep in mind the probable effects his speech would

⁴ A.K. Bose v. The Speaker, W.P. (Cv1.) 1526/2008 (Madras High Court, 01/02/2008).

⁵ Supra 1.

⁶ Prabhu Dutt v. Union of India, AIR 1982 SC 6.

⁷ O.K. Ghosh v. E.X. Joseph, AIR 1962 SC 812, 814;

Supdt. Central Prison, Fatehgarh v. Ram Manohar, AIR 1960 SC 633.

⁸ Madhu Limaye v. Sub- Divisional Magistrate, Monghyr, AIR 1971 SC 2486.

⁹ Moot Proposition, ¶- 8.

¹⁰ Moot Proposition, ¶- 8.

¹¹ State of Bihar v. Shailabala Devi, AIR 1952 SC 329.

¹² Ibid.

have on the minds of the people.¹³ Hence, the restriction was reasonably imposed by the Speaker on the speech of Mr. Hobart.

Further, to adjudicate the reasonableness of a restriction, the courts consider the circumstances under which, and the manner in which, that imposition has been authorized. The nature of the right infringed, the underlying purpose of the restrictions imposed, the extent and the urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, all these conditions enter into judicial verdict¹⁴. And since, the prevailing conditions in the state of Anga Pradesh demanded such an action to be taken, the decision of the Hon'ble Speaker should be held to be valid and reasonable.

(3) THE IMPUGNED RULES ARE NOT IN VIOLATION OF ARTICLE 21.

Art 21 guarantees the citizens protection of life and liberty, cannot be said to be violated by the impugned rules as the said rules do not restrict his right to life and liberty. Mr. Hobart was suspended from the assembly after following the due process of law and hence the act of the Speaker should not be seen as violative of Art 21 of the Constitution¹⁵ as the act is reasonable, fair and does not suffer from the vice of arbitrariness¹⁶. In the instant matter, the decision taken by the Speaker should be seen in context of the then situation of law and order in the state of Anga-Pradesh. Hence, the suspension of Mr. Hobart from the assembly must not be seen as violative of his rights under Art 21.

Moreover, Art 21 cannot be treated against Art 194(3) for the reason that the same would amount to restricting the freedom, power and jurisdiction of the Legislature including to deal with privilege and contempt of the House effectively and that if all facets of Art 21 are pressed against Art 194 as controlling provision, then, it will result in the undoing of House itself in course of time.¹⁷

¹³ Ranjit D Udeshi v. State of Maharashtra, AIR 1965 SC 881, 885.

¹⁴ Krishnan Kakkanth v. Govt. of Kerala, AIR 1997 SC 128, 135;
Pathumma v. State of Kerala, AIR 1978 SC 771.

¹⁵ A.K Gopalan v. State of Madras, AIR 1950 SC 27.

¹⁶ Maneka Gandhi v. Union of India, AIR 1978 SC 597;
Inderjeet v. State of U.P., AIR 1979 SC 1867;

M. Nagaraj v. Union of India, (2006) 8 SCC 212.

¹⁷ Supra 1.

II. THE 'SEARCH & SEIZURE' AS CONDUCTED BY THE POLICE IS WITHIN THE PERMISSIBLE LIMITS OF THE CONSTITUTION AND PROCEDURE PRESCRIBED BY LAW.

The search and seizure conducted by the Police is within the permissible limits of the Constitution as (1) It has been done after following the procedure established by law; (2) The evidence procured by the Police is admissible; (3) It does not violate the right to privacy of the petitioner; (4) The Police have not exceeded their powers in obtaining information from Internet Service Providers; and (5) The search and seizure cannot be excluded based on the petitioner's legislative privileges.

1. THE POLICE HAVE FOLLOWED THE DUE PROCEDURE ESTABLISHED BY LAW.

The Police officials in the instant case had obtained prior permission of the Speaker to conduct the Physical Search and Seizure of the office and the official computer of Mr. Ozan.¹⁸ The Ethics Committee had recommended suspension of Mr. Ozan for six weeks from the legislative assembly, citing his indirect involvement in browsing porn website on the Phone.¹⁹

According to Section 156 of the Cr.P.C., the Police have the power to investigate a cognizable case, without the order of the magistrate, and the proceedings of the Police shall not be called in question on the ground that the said officer was not empowered to investigate.²⁰ The SC of India has held that the receipt of information is not a condition precedent for investigation and the officer can start investigation on receipt of information or otherwise.²¹ While section 157 of the Cr.P.C. authorizes the Police officer to investigate into the facts and circumstances of the cases if the Police officer has reason to suspect the commission of a cognizable offence.²² Furthermore, it has held that the omission of the Police to send the report to the magistrate immediately does not vitiate the trial.²³

Moreover, under Section 165 of the Cr.P.C., a Police officer has the power to search a place within the local limits of the Police station.²⁴ In the instant case as well, the investigation was

¹⁸ Moot Proposition, ¶ 21.

¹⁹ Moot Proposition, ¶ 17.

²⁰ S. 156, The Code of Criminal Procedure, 1973.

²¹ The State of Uttar Pradesh v. Bhagwant Kishore Joshi, AIR 1964 SC 221.

²² S. 157, The Code of Criminal Procedure, 1973.

²³ Anil Rai v. State of Bihar, (2001) 7 SCC 318.

²⁴ S. 165, The Code of Criminal Procedure, 1973.

carried out by the Superintendent of Police in whose jurisdiction the Legislative Assembly was situated²⁵. Furthermore, Section 165 also exempts the requirement of a warrant.²⁶ Search is not limited for some particular article that is stolen or believed to be stolen, but it permits the Police to make search for anything necessary for investigation.²⁷ In the present case, the Police had to act urgently in order to protect the evidence from being destroyed and hence act as an obstacle in meeting the ends of justice. Moreover, the Police on search of the office of the Petitioner had found out that his official computer was used to access porn websites containing child pornography and the same had been downloaded²⁸.

Moreover, The Hon'ble SC of India has observed in a catena of decisions that the right to investigate a cognizable offence is the prerogative of the Police officer²⁹. Investigation of the offence is the field exclusively reserved for the Police whose powers in the field are unfettered so long as the powers are legitimately exercised.³⁰

(1) THE EVIDENCE PROCURED BY THE POLICE IS ADMISSIBLE.

Assuming without admitting that the due procedure was not followed, it has been well established that non-compliance with the procedural requirements of search would not by itself vitiate the proceedings but would only amount to an irregularity³¹. Even if the search is illegal, it would not vitiate the seizure and the further investigation.³² The deviation from the procedure does not make the evidence of the seizure inadmissible.³³ Moreover, in the case of Superintendent of Police, C.B.I.³⁴, the Hon'ble SC of India set aside the order of The Hon'ble Calcutta High Court, wherein documents seized from illegal search were directed to be returned. In *Pooran Mai v. Director of Inspection*³⁵, the Hon'ble SC of India held that there was no constitutional or statutory bar in using such illegally collected evidence. Hence, even

²⁵ Moot Proposition, ¶ 20.

²⁶ State of Punjab v. Makhan Chand, (2004) 3 SCC 453.

²⁷ Emperor v. Paramsukh, AIR 1926 All 147.

²⁸ Moot Proposition, ¶ 22.

²⁹ Hem Raj v. State of Punjab, AIR 2003 SC 4259;

State of Bihar v. P.P. Sharma, AIR 1991 SC 1260.

³⁰ State of Haryana & Ors v. Ch. Bhajan Lal, AIR 1992 SC 604;

Divine Retreat Centre v. State of Kerala, AIR 2008 SC 1614.

³¹ State of Maharashtra v. Natwarlal Damodardas Soni, AIR 1980 SC 593;

Radhakrishnan v. State of UP, AIR 1963 SC 822.

³² Pratap Singh v. Director of Enforcement, AIR 1985 SC 989.

³³ The State of Rajasthan v. Rehman, AIR 1960 SC 210.

³⁴ Superintendent of Police, C.B.I. & Ors. v. Tapan Kr. Singh, AIR 2003 SC 4140.

³⁵ Pooran Mai v. Director of Inspection, AIR 1974 SC 348.

assuming arguendo that the investigation was made without collecting a warrant from the magistrate, does not make it a ground to set aside the evidence and dismiss the petition.

Moreover, under section 67-B of the Information Technology Act, 2000, *publishing or transmitting material containing children in sexually explicit act or conduct is a cognizable offence.*³⁶ Further section 80 of the IT Act, empowers a Police officer to enter any public place and search and arrest, without a warrant, any person who is reasonably suspected of having committed or about to commit any offence under the act. Hence, in the instant case, the action of the Police and the Speaker, in allowing for search at the office of Mr. Ozan, was justified and reasonable because of his previous conduct in the Assembly.

2. THE 'SEARCH & SEIZURE' IS NOT VIOLATIVE OF RIGHT TO PRIVACY OF MR. OZAN.

Art 21 which provides for the *Right to Privacy* has not been explicitly identified under the Constitution; the same in any event will necessarily have to go through a process of case-by-case development³⁷. The matter at hand is no longer *res integra*, it has been decided by the SC of India that if an adequate procedural safeguards exist, then the restriction on fundamental rights is considered valid³⁸. In the instant case the Search & Seizure as undertaken by the Police is in consonance with the provisions of Section 102 of the Code of Criminal Procedure which reads as follows: “*Any Police officer may seize any property which may be found under circumstances which create suspicion of the commission of any offence.*” Further, the search and seizure undertaken by the Police is of paramount importance in the instant case as they are inherently connected with the object of the act of Mr. Ozan.

Moreover, the Hon’ble High Court of Gujarat has held that “When an individual may be in possession of some material which may create some doubt or suspicion, and in such circumstances, the authority may have to carry out some investigation before they could proceed to pass a provisional order. It does not deprive any person of his liberty or his property. It is necessarily temporary i.e. till the adequate material is collected.”³⁹

³⁶ S. 67(b), The Information Technology Act, 2008.

³⁷ *Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148.

³⁸ *State of Maharashtra v. Bharat Shanti Lal Shah*, (2008) 13 SCC 5;
Bhavesh Jayanti Lakhani v. State of Maharashtra, AIR 2008 SC 2866.

³⁹ *Paresha G Shah v. State of Gujarat*, 2016 GLH (1) 329.

3. THE ACT OF THE PETITIONER BREACHES THE MORALITY CODE OF CONDUCT.

The Information Technology Bill, tabled in 2009, enables the law enforcement agencies to take strict action against those seeking child pornography, which even includes browsing for child pornography. In the instant matter, the Petitioner was caught browsing child pornography and that too in public while the proceedings of the Assembly were going on⁴⁰.

Hence, for a MLA to be caught in grave breach of morality law, because of his conduct of browsing porn website, and that too inside the assembly, he ought to have been scrutinised fully by the Police and the Speaker. Child pornography is a very sensitive issue and even the SC of India has strictly stated to ban the websites showing child pornography⁴¹ and has even banned such websites⁴².

4. THE POLICE HAVE NOT EXCEEDED THEIR POWER IN OBTAINING INFORMATION FROM THE INTERNET SERVICE PROVIDERS.

It is contended that obtaining the necessary information from the ISP is authorized under the Cr.P.C⁴³ which allows an organization to disclose personal information to a government institution. Further the ISPs are governed by The Information Technology Act, 2000 and in the instant case Section 69 of the IT Act needs to be taken into consideration which provides powers to issue directions for interception or monitoring of any information through any computer resource.

Moreover, Section 43A of the IT Act provides for disclosure of information by the body corporate to any third party. Consent is, however, not required, where disclosure is necessary for compliance of a legal obligation. Section 43A is subject to certain rules and procedures laid down by the Official Gazette Notification, 2011⁴⁴. Rule 6 stipulates the mandatory sharing of information without obtaining prior consent, with Government agencies mandated under the law to obtain information including sensitive personal data or information for the purpose of verification of identity, or for prevention, detection, and investigation including cyber

⁴⁰ Moot Proposition, ¶ 17.

⁴¹ Kamlesh Vaswani v. Union of India, W.P. (CvL.) 177/2013 (Supreme Court, 26/02/2016).

⁴² Moot Proposition, ¶ 16.

⁴³ S. 91, The Code of Criminal Procedure 1973.

⁴⁴ Guidelines 313, Information Technology Act, (G.S.R. 313) (E), 2011.

incidents, prosecution, and punishment of offences. The Police therefore exercised powers which are well within the framework of the statutes and have not acted *ultra-vires*.

5. THE ‘SERACH & SEIZURE’ CANNOT BE EXCLUDED DUE TO LEGISLATIVE PRIVILEGES OF THE PETITIONER.

Members have no explicit immunity as such against orders courts or tribunals or search warrants, which may be used to obtain access to documents or things held by members. Further, it is important to note that the immunity from criminal prosecution given to a member either under Art 105 or Art 194 is only in respect to ‘anything said’ or ‘any vote given’. It would be stretching the law way too far to hold that this immunity also covers acts done by the members in their personal capacity namely storing child pornographic clips on the computer, as is the situation in the present case. This is in total disharmony with the contents and the ideals of the Constitution of India. Moreover, in the instant matter, the Speaker of the Legislative Assembly in his responsibility to maintain decorum and dignity of the House, exercised his discretionary powers to grant permission to the Police to search the office of the petitioner, since his office was within the premise of Legislative Assembly⁴⁵ and the Hon’ble SC of India has refrained itself from the proceedings of legislature⁴⁶ to maintain the basic feature of the Constitution i.e. separation of powers.

III. THIS COURT CANNOT PASS A WRIT TO THE ‘STATE’ SEEKING ENFORCEMENT OF ARTICLE 243T.

This Court cannot pass a writ against in the instant case because (1) A writ against the decision taken by the governor in exercise of his discretionary powers is not maintainable; (2) The impugned ordinance approved by the cabinet is violative of fundamental rights of the tribal people of the State of Anga Pradesh; and (3) The decision of the governor stands the test of reasonableness and the Wednesbury Principle.

1. THE WRIT AGAINST THE GOVERNOR IS NOT MAINTAINABLE WITH REGARD TO ARTICLES 361 AND 371A.

⁴⁵ Moot Proposition, ¶ 20.

⁴⁶ Supra 1.

Art 361(1) affords the absolute immunity to the Governor. Further, the discretionary power of the Governor cannot be challenged by means of a writ petition.⁴⁷ As a result of which the Governor is not answerable to any Court for exercise and performance of powers and duties of his office or for any act done or purporting to be done by him in the exercise of those powers and duties⁴⁸. Moreover, a Governor cannot be made a party respondent in the case, either in his gubernatorial or personal capacity described as being the Governor of a State⁴⁹, he enjoys total immunity with regard to the action pertaining to his sole discretion⁵⁰. Hence, in the instant matter, the writ against the Governor is not maintainable as it questions the authority of the Governor's use of his discretionary powers conferred onto him by the Constitution itself.

Moreover, in context of Art 371A of the Constitution, which is a special provision, it is pointed out that according to the clause Art 371-A (1)(b)(f), the Governor has the power to act in his individual judgment, where the decision of the Governor in his 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 the exercise of his individual judgment which has even been held by the Hon'ble SC of India in the case of *Samsher Singh v. State of Punjab*.⁵¹

The provisions contained in Art 371A(1)(b) speak of the Special responsibility of the Governor of Anga-Pradesh with respect to law and order in the State and hence, he has been accorded to exercise his individual judgment as to the action to be taken in this respect.

2. THE DISCRETIOANRY POWER AFFORDED TO THE GOVERNOR UNDER ART 163(2) CANNOT BE CALLED INTO QUESTIONED.

Under Art 163(2), the discretionary power of the Governor is not only final but cannot be the subject matter of challenge in the court the matter at hand is no longer *res integra* as the same has been decided in the catena of decisions by the SC of India.⁵² As a result of which in the instant case, the Governor by not giving his assent to the impugned ordinance has not acted *ultra-vires* of the Constitution.

⁴⁷ Dr Subramanian Swami v. Deciding Authority & Ors, 1995 CriLJ 3380.

⁴⁸ Rameshwar Prasad & Ors v. Union of India & Anr, AIR 2006 SC 980.

⁴⁹ Sunderlal Patwa v. Union of India & Ors, AIR 1993 MP 214.

⁵⁰ S. Dharmalingam v. His Excellency Governor of State of Tamil Nadu, AIR 1989 MAD 48.

⁵¹ Samsher Singh v. State of Punjab & Anr: AIR 1974 SC 2192.

⁵² Shri Pratapsing Raojirao Rane & Ors v The Governor of Goa & Ors, AIR 1999 BOM 53.

Furthermore, the scope and ambit of the discretionary power of the Governor must necessarily be traced from Art 163(2). In as much as, the same cannot be called in question, even by way of judicial review, on the ground whether the Governor ought or ought not to have acted in his discretion. The decision of the Governor to not give his assent was of his own independent discretion. The same enjoys absolute constitutional immunity/protection, which placed the said order and message beyond the scope of being questioned and the actions of the Governor to not give his assent to the impugned ordinance are justified by the provisions of the Constitution.

3. THE IMPUGNED ORDINANCE APPROVED BY THE CABINET IS IN VIOLATION OF VARIOUS CONSTITUTIONAL PROVISIONS.

The impugned ordinance which was approved by the cabinet is violative of Arts 25, 26 and 29 of the Tribal people and the Governor by not giving his assent to the said ordinance has acted in the general public interest and was bound to maintain the 'Law and Order' situation in Anga-Pradesh. The said ordinance encroaches upon the religious and cultural rights of the tribes of the State of Anga Pradesh⁵³ as the provisions of the ordinance were seen as a serious interference with their tribal customary law and procedure.

(1) THE ORDINANCE IS VIOLATIVE OF ARTICLE 25 OR 26.

In the instant case the ordinance passed by the cabinet interferes with the *tribal customary law and procedure*⁵⁴. For which the Constitution has provided safeguards under Art 25 and further under Art 26.

Art 25 of the Constitution of Indistan gives freedom of conscience and free profession, practice and propagation of religion⁵⁵ while Art 26 gives right to every religious denomination or any section to manage its own affairs in matters of religion⁵⁶. The above mentioned Arts guarantee the right to practice and propagate not only matters of faith or belief, but all those rituals, ceremonies and observations which are regarded as integral part of their religion⁵⁷ and on deciding as to whether a religious practice is an integral part of a religion or no, the test will always be whether it is regarded as such by the community following the religion or not⁵⁸ and

⁵³ Moot Proposition, ¶ 7.

⁵⁴ Moot Proposition, ¶ 7.

⁵⁵ Article 25(1), The Constitution of India, 1950.

⁵⁶ Article 26(b), The Constitution of India, 1950.

⁵⁷ Orissa Mining Corporation v. Ministry of Environment and Forests, (2013) 6 SCC 476.

⁵⁸ Govindlalji Maharaj, Tilakayat Shri v. State of Rajasthan, AIR 1963 SC 1638 (1660);
Varu Digyadarshan Rajendra Ramdassji v. State of U.P., AIR 1970 SC 181.

not according to the version of the person who opposes⁵⁹. Moreover, no outside authority (e.g. legislature or the executive) has any jurisdiction to interfere with their decision in such matter⁶⁰ and the cabinet by passing an ordinance which imposes an unjustified restriction on the fundamental rights of the tribal bodies has acted *ultra-vires*.

Furthermore, customary and cultural rights of indigenous people have also been the subject matter of various international conventions for instance The International Labor Organization (ILO) Convention on Indigenous and Tribal Populations Convention, 1957 (No.107) emphasized on the necessity for the protection of social, political and cultural rights of indigenous people of which Indistan is a signatory.

The Petitioner may suggest that the religious rights of the Tribal people may be restricted in favour of a law that purports to be in public interest. However, this restriction, in the instant case, is not in pursuance of “public order, morality and health and any other fundamental right”⁶¹ and hence, impermissible.

(2) THE ORDINANCE IS VIOLATIVE OF ARTICLE 29.

The impugned ordinance also infringes upon the Cultural rights under Art 29 of the Constitution of Indistan⁶² as it provides for any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own, a right to conserve the same and the tribes are unique in character with their own customs, language and dress⁶³ and it has been held by the SC of India that Art 29(1) extends to ‘any section of citizens’ whether they belong to minority or majority community,- the only condition being that such section must have a distinct language, script⁶⁴ or culture of its own⁶⁵.

(3) VIOLATIVE OF CONSTITUTIONAL OBLIGATIONS UNDER ARTICLE 371A.

⁵⁹ Gulam Abbas v. State of U.P., AIR 1981 SC 2198.

⁶⁰ Commr. H.R.E. v. Lakshmindra Thiratha Swamiar, AIR 1954 SC 282;
Jagadishwaranand Avadhuta, Acharya v. Commr. of Police, Calcutta, AIR 1984 SC 51.

⁶¹ Article 26, The Constitution of India, 1950.

⁶² Article 29(1), The Constitution of India, 1950.

⁶³ Moot Proposition, ¶ 2.

⁶⁴ Cf. D.A.V. College, Jullundur v. State of Punjab, AIR 1971 SC 1737;

T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355.

⁶⁵ Suresh Chandra Chimanlal Shah v. Union of India, AIR 1975 DeL 168.

The State of Anga-Pradesh enjoys special status under Art 371A of the Constitution, the same has been provided because of prevalence of strong feelings regarding their customs⁶⁶ as a result of which they are treated separately and not like the rest of the country. Furthermore under the shield of Art 371A no act of parliament would be applicable to the State of Anga- Pradesh and since Art 243T is an act of the parliament it would fall under the similar ambit.

Moreover Art 243T should be read along with Art 243ZC which provides, *Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Art 244* and that the State of Anga-Pradesh being a Scheduled Area, falls under the ambit of the V schedule of the Constitution it hence, is barred from these constitutional obligations.

4. DECISION OF THE GOVERNOR DOES NOT VIOLATE THE FUNDAMENTAL RIGHTS ENSHRINED UNDER ARTICLES 15 AND 16.

The decision of the Governor to not to give assent to the said ordinance was constitutionally permitted under Art 371A as it is the duty of the Governor to maintain “law and order” in the State of Anga Pradesh for which he is granted discretionary powers. Moreover, the provisions contained in Art 15 and 16 are merely enabling provisions and no citizen of Indistan can claim reservation as a matter of right and no writ can be issued⁶⁷ accordingly in the matter. Hence the decision of the Governor is backed by reason and does not suffer from the vice of arbitrariness.

5. THE DECISION OF THE GOVERNOR SATISFIES THE WEDNESBURY PRINCIPLE.

It was held in the famous *Wednesbury case*⁶⁸ by Lord Green that that when a statute gives discretion to an administrator to take a decision, the scope of judicial review would remain limited. This view was articulated by the SC of India in *Union of India and Anr. vs. G. Ganayutham*⁶⁹ where it was held that, to judge the validity of any administrative order or statutory discretion, the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could,

⁶⁶ Moot Proposition, ¶ 3.

⁶⁷ A.P. Public Service Commission v. Balaji Badhavath, (2009) 5 SCC 1.

⁶⁸ Associated Provincial Picture Houses Ltd v Wednesbury Corp, 2 All ER 680 (1947, Court of Appeal of England and Wales).

⁶⁹ Ibid.

on the material before him and within the framework of the law arrive at. In the instant case, the decision of the Governor didn't violate any of the above conditions because the decision was made within the purview of power allocated to him by the Constitution under Art 371A to maintain law and order. Moreover, the decision was taken after taking into consideration all the relevant factors. Further any reasonable man would have arrived onto the similar conclusion so as to maintain peace in the state and to bring an end to the protests in the state⁷⁰. Since there was a rational nexus on which the decision had been taken with an object sought to be achieved⁷¹ i.e. to bring peace and put an end to the protests which had made life miserable for people, it does not suffer from the vice of being unreasonable and hence, is not violative of Art 14.

6. THE PRINCIPLE OF GENERALIA SPECIALIBUS NON DEROGANT MUST BE FULFILLED.

The Latin maxim "*Generalia Specialibus Non Derogant*" literally means that 'the provisions of a general statute must yield to those of a special one'. This maxim is a restatement of the principle "*Lex Specialis Derogat Legi Generali*"⁷² which means that 'special law repeals general law'. Art 371A is a special provision applicable to the State of Andhra Pradesh while Art 243T is a general provision applicable for whole of India and it is a settled law that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply⁷³. In the case of South India Corporation, it was held that the general provision under Art 372 of the Constitution regarding continuance of existing laws is subject to Art 277 of the Constitution, which is a special provision. Hence, in the instant case as well, this Hon'ble Court must allow for the special provision under Art 371A to have effect over Art 243T.

PRAYER

⁷⁰ Moot Proposition, ¶ 8.

⁷¹ Union of India v. M.V. Valliappan, AIR 1999 SC 2526.

⁷² Anvar P.V. v. P. K. Basheer, AIR 2015 SC 180.

⁷³ South India Corporation(P) Ltd. v. Secretary, Board of Revenue, Trivendrum, 1964 AIR 207; State of Gujarat & Anr. v. Patel Ramjibhai Dhanbhai & Ors., 1979 AIR 1098.

Wherefore in light of the issues raised, arguments advanced and the authorities cited, the state of Anga-Pradesh most respectfully prays that:

- a. *The Writ Petition filed under Article 32 of the Constitution by Mr. Hobart be dismissed and the rules prohibiting 'Live Telecast' of the business of the house be upheld.*
- b. *The Special Leave Petition filed under Article 136 of the Constitution by Mr. Ozan be dismissed and the decision of Hon'ble High Court of Anga-Pradesh be upheld.*
- c. *The writ filed under Article 32 by Participation & Emancipation of Women (PEW) be dismissed.*

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED

COUNSEL FOR THE RESPONDENT