

**LAW COLLEGE DEHRADUN, FACULTY OF UTTARANCHAL UNIVERSITY**

**NATIONAL MOOT COURT COMPETITION- 2017**

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

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**NGO PEW- Participation and Emancipation of Women..... (PETITIONER 1)**

**Mr. Hobart..... (PETITIONER 2)**

**Mr. Ozan..... (PETITIONER 3)**

**v.**

**State of Anga Pradesh..... (RESPONDENT)**

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

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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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**MEMORANDUM ON BEHALF OF THE RESPONDENT**

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**LIST OF ABBREVIATIONS**

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<b>ABBREVIATION</b>	<b>FULL FORM</b>
&	And
@	Alias
Anr.	Another
Apl.	Appeal
Art.	Article
AIR	All India Reporter
A.P.	Anga Pradesh
Cr.	Criminal
CrPC	The Code of Criminal Procedure
Co.	Company
Corp.	Corporation
FIR	First Information Report
Govt.	Government
HC	High Court
Hon'ble	Honourable
ISP	Internet Service Provider
IT Act 2008	The Information Technology Act
IT	Information Technology
JAC	Joint Action Committee
LJ	Law Journal
NGO	Non-Government Organisation
No.	Number
Ors.	Others

PEW	Participation and Emancipation of Women
PIL	Public Interest Litigation
PUCL	People's Union for Civil Liberties
PUDR	People's Union for Democratic Rights
R/W	Read with
Rs.	Indian Rupees
SC	Supreme Court
SCC	Supreme Court Cases
Sec.	Section
Sd.	Signed
SLP	Special Leave Petition
UOI	Union of India
v.	Versus

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<b>SI No.</b>	<b>STATUTES REFERRED</b>	<b>YEAR</b>
1.	The Indian Penal Code	1860
2.	The Constitution of India	1950
3.	The Code of Criminal Procedure	1973
4.	The Constitution ( Forty- Fourth Amendment ) Act	1976
5.	The Parliamentary Proceedings (Protection of Publication) Act	1977
6.	The Nagaland Village and Area Councils Act	1978
7.	The Constitution (Seventy-fourth Amendment) Act	1992
8.	The Information Technology Act	2000
9.	The Constitution (Ninety-Third Amendment) Act	2005
10.	The Nagaland Municipal (First Amendment) Act	2006
11.	The Information Technology (Amendment) Act	2008

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<b>Sl. No.</b>	<b>AUTHOR &amp; TITLE</b>	<b>EDITION &amp; YEAR</b>
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2.	P.M. Bakshi, The Constitution of India	13 <sup>th</sup> Edition, 2015
3.	Videh Upadhyay, Public Interest Litigation in India	1 <sup>st</sup> Edition, 2007
4.	Durga Das Basu, Commentary on the Constitution of India	8 <sup>th</sup> Edition, 2010
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## STATEMENT OF JURISDICTION

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The Respondent humbly submits to the jurisdiction of the Honourable Supreme Court of Indistan under Art.32 and Art.136 of the Constitution of Indistan.

**Article 32: Remedies for enforcement of rights conferred by this Part**

*(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*

*(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*

*(3) Without prejudice to the powers conferred on the Supreme Court by clause ( 1 ) and ( 2 ), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause ( 2 ).*

*(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.*

**Article 136: Special leave to appeal by the Supreme Court**

*(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.*

*(2) Nothing in clause ( 1 ) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.*

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## STATEMENT OF FACTS

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1. The Constitution of Indistan establishes Indistan as a 'Union of States' and guarantees several fundamental rights, broadly corresponding to those recognised in International Human Rights instruments. It guarantees direct access to its Supreme Court for the enforcement of those rights. The Constitutional, legal and policy framework of Republic of Indistan are in pari material to the Republic of India.
2. Under Art. 371A of the Constitution, the state of Anga Pradesh (hereinafter referred to as 'state of A.P.')

### I

1. After the victory in the general election of the State of A.P., Mr. Yohanana was sworn-in as the Chief Minister of the State of A.P. The cabinet as chaired by him approved an ordinance to be promulgated by the Governor of A.P. seeking immediate implementation of the women reservation to the tune of 33% in the Municipalities.
2. Under the banner of Joint Action Committee (JAC) the tribal leaders, from all the 13 tribes, made a representation to the Governor asking him to refrain from giving his assent to the aforementioned ordinance.
3. The JAC stated that passing the ordinance was a serious interference with the tribal customary law and procedure considering the special status of A.P. under Art. 371A. They stated that the Constitution (Seventy-fourth Amendment) Act, 1992, being an Act of the Parliament of Indistan, has no application to the (a) religious or social practices of tribes (b) Tribal Customary law and Procedure.
4. The JAC called for protests which continued for a week. The Governor, considering the 'law & order' situation, did not give his assent to the ordinance. The protests were largely peaceful & no women were harmed in any manner.

5. An NGO named Participation & Emancipation of Women (PEW), working for providing political justice to tribal women, filed a Writ Petition against the Governor of A.P. in the Supreme Court of Indistan, seeking a direction for enforcement of the Constitutional provision of Art. 243T.

## II

1. Mr. Hobart, a veteran legislator, made a speech on the floor of the House pitching for reform on women's participation and representation in tune with the constitutional objectives & the need for its balance with traditions and customs. While making the speech, his smartphone got activated and the speech became 'Live' through the social media platform Facebook.
2. Based on a complaint from the Leader of Opposition, the Hon'ble Speaker of the Legislative Assembly got this incident examined by the Ethics Committee of the House. Acting upon its recommendations, the Hon'ble Speaker suspended him for six weeks.
3. Mr. Hobart claimed that firstly, he had no knowledge of the speech getting telecast and secondly, this act of his was within the ambit of 'freedom of speech and expression' as laid down in the Constitution.
4. In the light of the aforementioned causes, Mr. Hobart sought a review of the decision of suspension. The Hon'ble Speaker disposed of the review petition and upheld his previous decision.
5. Mr. Hobart challenged the decision as violative of Fundamental Rights and Constitutional norms in a Writ Petition before the Supreme Court of Indistan and also sought the writ declaring the rules which prohibit 'Live Telecast' of proceedings of the House as unconstitutional and violative of the basic feature of the Constitution i.e., Democracy.

## III

1. Two Ministers of the Legislative Assembly, Mr. Ozan and Mr. Savadi, were caught watching a child pornographic film on the mobile phone during the assembly proceedings. The phone belonged to Mr. Savadi and Mr. Ozan was peeping into it.
2. The Hon'ble Speaker of the Legislative Assembly received a complaint from the Leader of Opposition, seeking an investigation into the aforementioned matter. It was also demanded that an FIR be registered against the two ministers. The Hon'ble Speaker suspended the membership of the two ministers.

3. The Hon'ble Speaker referred the matter to the Ethics Committee. Based on its recommendations, the Hon'ble Speaker expelled Mr. Savadi. However, Mr. Ozan was suspended for six weeks taking into consideration the indirect nature of his involvement. The Hon'ble Speaker also directed the Secretary General of the Assembly to get an FIR registered against Mr. Savadi. Pursuant to the FIR, the Police initiated an investigation.
4. The Superintendent of Police sought the permission of the Hon'ble Speaker to search the offices of Mr. Savadi as well as Mr. Ozan, access their computers and other internet based services. The Hon'ble Speaker categorically authorised the police to conduct the physical search & seizure of the two offices.
5. Upon conducting the search & seizure, the police found that the official computer of Mr. Ozan had been used to access and store child pornographic films. However, Mr. Ozan stated that the police obtained the information from the ISP prior to the incident without judicial authorisation and was therefore, unconstitutional. He challenged the entire proceedings of 'Search and Seizure' in a Writ Petition under Art. 226 of the Constitution.
6. The High Court dismissed the writ petition stating that due permission had been sought by the Police, obtaining information from the ISP does not constitute a 'search' and the seizure is not protected by the scheme of 'legislative privileges'. Mr. Ozan filed a Special Leave Petition (SLP) in the Hon'ble Supreme Court of Indistan against the judgment of the Hon'ble High Court of A.P.

#### IV

1. The Hon'ble Supreme Court of Indistan has clubbed the following three petitions and posted the same for hearing:
  - i. The PIL filed by the NGO PEW seeking enforcement of Art. 243T of the Constitution of Indistan;
  - ii. The Writ Petition filed by Mr. Hobart;
  - iii. The Special Leave Petition filed by Mr. Ozan.

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**STATEMENT OF ISSUES**

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**I**

WHETHER THE PRESENT PETITIONS ARE MAINTAINABLE IN THIS HON'BLE COURT OR NOT?

**II**

WHETHER THIS HON'BLE COURT CAN PASS AN APPROPRIATE WRIT TO THE 'STATE' SEEKING THE ENFORCEMENT OF ART.243T OR NOT?

**III**

WHETHER THE RULES WHICH PROHIBIT THE 'LIVE TELECAST' OF THE PROCEEDINGS OF THE HOUSE ARE CONSTITUTIONAL & THE IMPUGNED ACTIVITY IS A PART OF ART. 19 OF THE CONSTITUTION OR NOT?

**IV**

WHETHER THE 'SEARCH & SEIZURE' CONDUCTED BY THE POLICE IS CONSTITUTIONAL AND WITHIN THE PROCEDURE PRESCRIBED BY LAW OR NOT?

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## SUMMARY OF ARGUMENTS

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### **I. WHETHER THE PRESENT PETITIONS ARE MAINTAINABLE IN THIS HON'BLE COURT OR NOT?**

The Respondent humbly submits that the present petitions are not maintainable in this Hon'ble Court in the light of the following arguments:

- a) The PIL filed by NGO PEW seeks for the enforcement of the constitutional provision under Art.243T. There has been no violation of any fundamental right by the State as contained in Part III of the Constitution. Therefore, the PIL is not maintainable under Art.32 of the Constitution.
- b) The Writ Petition filed by Mr. Hobart is not maintainable under Art. 32 since the right guaranteed under Art. 19(1)(a) is subject to reasonable restrictions under Art.19(2). The decision of the Hon'ble Speaker was in the interest of public order.
- c) The SLP filed by Mr. Ozan is not maintainable under Art.136 since there was no departure from legal procedure and no substantial question of law or a pure point of law is raised for consideration.

### **II. WHETHER THIS HON'BLE COURT CAN PASS AN APPROPRIATE WRIT TO THE 'STATE' SEEKING THE ENFORCEMENT OF ART. 243T OR NOT?**

The Respondent humbly submits that this Hon'ble Court cannot pass an appropriate writ to the 'State' in the light of the following arguments:

- a) Art.243T is a constitutional provision the non-enforcement of which does not violate any fundamental right contained within Part-III of the Constitution.
- b) The application of the Constitution (Seventy-fourth Amendment) Act, 1992 is subject to Art. 371A. Furthermore, the decision of the Governor is valid under Art. 371A (1)(b).
- c) The Hon'ble Court cannot pass a writ to the "State" seeking the enforcement of Art.243T of the Constitution.



**III. WHETHER THE RULES WHICH PROHIBIT THE ‘LIVE TELECAST’ OF THE PROCEEDINGS OF THE HOUSE ARE CONSTITUTIONAL & THE IMPUGNED ACTIVITY IS A PART OF ART. 19 OF THE CONSTITUTION OR NOT?**

The Respondent humbly submits that the rules which prohibit the ‘live telecast’ of the proceedings are constitutional and the impugned activity is not within the ambit of Art.19 of the Constitution in the light of the following arguments:

- a) The telecast of the speech was not within the ambit of Art.19(1) since the proceedings were telecast without the authorisation of the Hon’ble Speaker.
- b) The right to freedom of speech and expression guaranteed under Art. 19 (1) (a) of the Constitution is subject to reasonable restrictions under Art. 19(2).
- c) This Hon’ble Court may pass an appropriate order upholding the validity of the aforementioned rules under Art.19(2) in the interest of public order.

**IV. WHETHER THE ‘SEARCH & SEIZURE’ CONDUCTED BY THE POLICE IS CONSTITUTIONAL AND WITHIN THE PROCEDURE PRESCRIBED BY LAW OR NOT?**

The Respondent humbly submits that the ‘search & seizure’ conducted by the police was in accordance with the procedure prescribed by law & therefore, constitutional in the light of the following arguments:

- a) The ‘search & seizure’ conducted by the Police was in accordance with the procedure established by law & therefore, Mr. Ozan’s right to Privacy was not violated.
- b) The Hon’ble Speaker does have the authority to order for a ‘search & seizure’.
- c) This Hon’ble Court may pass an appropriate order and uphold the previous judgment of the Hon’ble High Court of the state of A.P.

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## ARGUMENTS ADVANCED

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### I. WHETHER THE PRESENT PETITIONS ARE MAINTAINABLE IN THIS HON'BLE COURT OR NOT?

The Respondent humbly submits that the PIL filed by NGO PEW under Art. 32, the Writ Petition filed by Mr. Hobart under Art. 32 and the SLP filed by Mr. Ozan under Art. 136 of the Constitution are not maintainable in this Hon'ble Court in the light of the following arguments:

#### A) THE PIL IS NOT MAINTAINABLE UNDER ART.32 OF THE CONSTITUTION.

The Respondent humbly submits that Art.32 confers the right to move the SC for the enforcement of fundamental rights contained in Part III of the Constitution<sup>1</sup>. Art.243T is a constitutional provision and not a fundamental right under Part III. In the case of *Northern Corporation v. UOI*<sup>2</sup> and *Indian Express Newspapers (Bombay) Private Ltd. v. UOI*<sup>3</sup> it was held that "For invoking Art.32 there must be a clear breach of fundamental right." In the present case, there has been no infringement of any fundamental right.

In *Shantabai v. State of Maharashtra*<sup>4</sup> it was held that "Art. 32 cannot be invoked simply to adjudge the validity of any legislative or administrative action unless it adversely affects the fundamental rights of the Petitioner." It was reinstated in the cases of *Maharshi Avadhesh v. State of Uttar Pradesh*<sup>5</sup>, *Hindi Hitarakshak Samiti v. UOI*<sup>6</sup> and *Manoharlal Sharma v. UOI*<sup>7</sup> that "Unless the policy is unconstitutional or arbitrary, the court does not interfere with the policy matters." In the present case, the decision of the Governor was not arbitrary. The decision was in the interest of the 'law & order' situation of the State and therefore, it was valid under Art. 371A(1)(b).

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<sup>1</sup> Ibid, at 5

<sup>2</sup> AIR 1991 SC 764

<sup>3</sup> AIR 1986 SC 515

<sup>4</sup> AIR 1958 SC 531

<sup>5</sup> AIR 1991 All 52

<sup>6</sup> AIR 1990 SC 851

<sup>7</sup> (2013) 6 SCC 616 (619)

In the case of *People of the Democratic Rights v. Ministry of Home Affairs*<sup>1</sup> it was held that “Though courts have the power to give directions to the executive, they are ill-equipped to run the administration or improve the channels of administration.” In *Parent of a Student of Medical College, Shimla v. State of Himachal Pradesh*<sup>2</sup> it was held that “There is a need to recognize the limits of judicial power in ordering relief in PIL.” The aforementioned principle was reinstated by this Hon’ble Court in a number of cases.<sup>3</sup>

In the light of the aforementioned arguments, the Respondent humbly submits that the PIL filed by NGO PEW is not maintainable under Art.32 of the Constitution since there was no violation of any fundamental right under Part III. The provision under Art.243T is a constitutional right and not enforceable under Art.32 of the Constitution.

**B) THE WRIT PETITION IS NOT MAINTAINABLE UNDER ART.32 OF THE CONSTITUTION.**

The Respondent humbly submits that under Art. 19(1)(a)<sup>4</sup> of the Constitution, the right to freedom of speech and expression is guaranteed. However, under Art.19(2)<sup>5</sup>, the aforementioned right is subject to reasonable restrictions. The Hon’ble Court held in the case of *Ramlila Maidan Incident v. Home Secretary, UOI*<sup>6</sup> that “It is necessary to place some curbs on the freedom guaranteed under Art. 19 (1)(a) for the maintenance of social order.” In *Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India*<sup>7</sup> it was held that “The right that springs from Art. 19 (1)(a) is not absolute or unchecked.”

In the present case, the decision of the Hon’ble Speaker was in the interest of public order under Art. 19(2). In *O.K. Ghosh v. E.X. Joseph*<sup>8</sup> it was held that “In clause (2), public order is virtually synonymous with public peace, safety and tranquillity.” In *D. Anantha Prabhu v.*

<sup>1</sup> AIR 1985 Del 268

<sup>2</sup> AIR 1985 SC 910

<sup>3</sup> Umed Ram v. State of Himachal Pradesh (AIR 1986 SC 847), Centre for PIL v. UOI (2000) 8 SCC 606, P.N. Thampy Thera v. UOI (AIR 1984 SC 74)

<sup>4</sup> Art. 19 “(1)All citizens shall have the right (a) to freedom of speech and expression;”

<sup>5</sup> Art. 19 (2): “Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”

<sup>6</sup> ((2012) 5 SCC 1)

<sup>7</sup> AIR 2012 SC 3829

<sup>8</sup> AIR 1962 SC 812

*Dist. Collector, Ernakulam*<sup>1</sup> and *Kedar Nath v. State of Bihar*<sup>2</sup> it was held that “The words in question must have pernicious tendency and the gist lies in incitement to disorder or the tendency or likelihood of public disorder or the reasonable apprehension thereof.” In *Romesh Thappar v. State of Madras*<sup>3</sup>, *Supdt., Central Prison v. Ram Manohar Lohia*<sup>4</sup> & *R.M. Lohia v. State of Bihar*<sup>5</sup> it was held that “Concept of public order under Art. 19(2) is wider than the concept of security of state.” In the present case, considering the law & order situation of the State, the decision of the Hon’ble Speaker was valid and within the ambit of Art. 19(2).

It was held in the case of *Northern Corporation v. UOI*<sup>6</sup> that “For invoking Art.32, there must be a clear breach of fundamental right not involving disputed questions of law or fact.” In the light of the aforementioned arguments, it is humbly submitted that Mr. Hobart’s fundamental right to freedom of speech and expression under Art.19 (1) (a) was not violated by the decision of the Hon’ble Speaker since it was within the ambit of the reasonable restrictions under Art. 19(2).

In the light of the aforementioned arguments, the Respondent humbly submits that the writ petition is not maintainable in this Hon’ble Court under Art.32 of the Constitution.

**C) THE SPECIAL LEAVE PETITION IS NOT MAINTAINABLE UNDER ART. 136 OF THE CONSTITUTION.**

The Respondent humbly submits that under Art. 136<sup>7</sup> of the Constitution, the Hon’ble Court has a discretionary power to grant special leave to appeal from any judgment of a High Court. In the case of *Pritam Singh v. The State*<sup>8</sup> it was held that “Supreme Court vested with wide discretionary powers under Art. 136.”

The Hon’ble Court held in the case of *Sahib Singh Mehra v. State of Uttar Pradesh*<sup>9</sup> that “SLP is allowed when a question of law is involved or a pure point of law is involved.”

Further in *Asst. Collector v. N.T. Co. of India*<sup>10</sup> and *B.C. Goswami v. Delhi Administration*<sup>1</sup> it

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<sup>1</sup> AIR 1975 Ker 117

<sup>2</sup> AIR 1962 SC 955

<sup>3</sup> AIR 1950 SC 124

<sup>4</sup> AIR 1960 SC 633

<sup>5</sup> AIR 1966 SC 740

<sup>6</sup> AIR 1991 SC 764

<sup>7</sup> Ibid, at 5

<sup>8</sup> AIR 1950 SC 169

<sup>9</sup> AIR 1965 SC 1951

<sup>10</sup> AIR 1972 SC 2563

was held that “SLP must involve a pure point of law.” In the present case, such a substantial question of law or pure point of law is not raised for consideration.

The present case raises a question of the procedural validity of the ‘search and seizure.’ In the cases of *Mohd. Khalil Chisti v. State of Rajasthan*<sup>2</sup>, *State of Haryana v. Prem*<sup>3</sup> & *Sambhu Das v. State of Assam*<sup>4</sup> it was held “The power under Art.136 should be exercised sparingly to interfere in cases where grave injustice has resulted from illegality.” In *Pritam Singh v. State*<sup>5</sup> “SLP is granted in criminal cases when there are exceptional circumstances and departure from legal procedure.” In the present case, there was no such departure from legal procedure in conducting the ‘search & seizure’. The Hon’ble Court held in the case of *Radha Mohan Singh @ Lal Saheb v. State of Uttar Pradesh*<sup>6</sup> and *Budhsen v. State of Uttar Pradesh*<sup>7</sup> that “The SC does not interfere with findings unless they are vitiated by errors of law.” In the present case, no such errors of law are present since the procedure of ‘search & seizure’ was valid.

In the light of the aforementioned arguments, it is humbly submitted that the SLP is not maintainable under Art.136 of the Constitution since neither raises a substantial question of law nor does it have a departure from legal procedure.

The Respondent, in the light of the aforementioned arguments, humbly submits that the PIL by NGO PEW under Art.32, the Writ Petition by Mr. Hobart under Art.32 and the SLP by Mr. Ozan under Art.136 are not maintainable in this Hon’ble Supreme Court of Indistan.

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<sup>1</sup> AIR 1973 SC 1457

<sup>2</sup> (2013) 2 SCC 541

<sup>3</sup> AIR 1990 SC 538

<sup>4</sup> AIR 2010 SC 3300

<sup>5</sup> AIR 1950 SC 169

<sup>6</sup> AIR 2006 SC 951

<sup>7</sup> AIR 1970 SC 1321

**II. WHETHER THIS HON'BLE COURT CAN PASS AN APPROPRIATE WRIT TO THE 'STATE' SEEKING THE ENFORCEMENT OF ART. 243T OR NOT?**

The Respondent humbly submits that the fundamental rights guaranteed under Art.14 & Art.15 (3) were not violated by the decision of the Governor. The provision under Art.243T was inserted by the Constitution (Seventy-fourth Amendment) Act, 1992 which, being an Act of the Parliament is subject to Art.371A. Furthermore, the decision of the Governor is valid under Art.371A (1)(b). Therefore, a writ seeking the enforcement of Art.243T<sup>1</sup> cannot be passed in the light of the following arguments:

**A) THE FUNDAMENTAL RIGHTS UNDER ART. 14 & ART. 15 (3) WERE NOT VIOLATED.**

The Respondent humbly submits that Art. 14<sup>2</sup> of the Constitution guarantees Right to Equality before the law and equal protection of laws. Under Art.15(3)<sup>3</sup> of the Constitution, the State has the power to reserve seats in favour of women. The Hon'ble Court in the case of *Government of Andhra Pradesh v. Maharshi Publishers Pvt. Ltd.*<sup>4</sup> held "Art.14 guarantees equal treatment to persons who are equally situated." According to the statement of facts,<sup>5</sup> typical gender discrimination is absent in the state & men and women are considered to be equal. In the case of *State of Sikkim v. Surendra Prasad Sharma*<sup>6</sup> it was held that "Art.14 prohibits the State from denying to any person equality before the law and Art.15(1)<sup>7</sup> protects the citizen against discrimination." In *Hindi Hitarakshak Samiti v. UOI*<sup>8</sup> it was held that "Policy preferences not involving fundamental rights cannot be agitated under Art.32. Articles of Constitution cannot be a means to indicate policy preference." Therefore, in the present case, there has been no violation of a fundamental right under Art.14 and Art.15 (3).

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<sup>1</sup> Art. 243T (2): "Not less than one third of the total number of seats reserved under clause ( 1 ) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes"

<sup>2</sup> Art. 14: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

<sup>3</sup> Art. 15 (3): "Nothing in this article shall prevent the State from making any special provision for women and children"

<sup>4</sup> AIR 2003 SC 296

<sup>5</sup> Ibid, at 6

<sup>6</sup> AIR 1994 SC 2342

<sup>7</sup> Art. 15 (1): "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them"

<sup>8</sup> AIR 1990 SC 851

The Hon'ble Court in the cases of *Kasturi Lal v. State of Uttar Pradesh*,<sup>1</sup> *Shyam Sundar v. State of Rajasthan*<sup>2</sup> and *State of Rajasthan v. Vidyawati*<sup>3</sup> held that "No suit lies against the Government for an injury in the course of exercise of its sovereign functions." In the present case, the Governor's decision was in compliance with the provision under Art.371A. The decision of the Government, therefore, was in the proper exercise of its sovereign powers. In *Manoharlal Sharma v. UOI*<sup>4</sup> it was held that "Unless the policy is unconstitutional or arbitrary, the court does not interfere with the policy matters."

In *S.C. Employees Association v. UOI*<sup>5</sup>, *Narinder Chand Hem Raj & Ors v. Lt. Governor, Union Territory Himachal Pradesh & Ors.*<sup>6</sup> and *Asif Hameed v. State of Jammu and Kashmir*<sup>7</sup>, it was held that "The Constitution does not permit the court to direct or advise the executive in matters of policy provided these authorities do not transgress their constitutional limit or statutory powers."

In the light of the foregoing arguments, the Respondent humbly submits that the fundamental rights under Art.14 and Art.15 (3) were not violated by the State action since the decision of the Governor was within Constitutional limits.

**B) ART. 243T IS SUBJECT TO ART. 371A & THE DECISION OF THE GOVERNOR WAS VALID UNDER ART. 371A (1)(b).**

Under Art.371A<sup>8</sup>, no Act of Parliament of Indistan has application to the (a) religious or social practices of tribes (b) Tribal Customary law & procedure. Art. 243T was inserted into the Constitution of Indistan by the Constitution (Seventy-fourth Amendment) Act, 1992. The Hon'ble Court in the cases of *Kesavananda Bharti Sripadgalvaru v. State of Kerala*<sup>9</sup>, *S.P. Gupta*

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<sup>1</sup> AIR 1965 SC 1039

<sup>2</sup> AIR 1974 SC 890

<sup>3</sup> AIR 1962 SC 933

<sup>4</sup> (2013) 6 SCC 616 (619)

<sup>5</sup> AIR 1990 SC 334

<sup>6</sup> AIR 1971 SC 2399

<sup>7</sup> AIR 1989 SC 1899

<sup>8</sup> Art. 371A (1): "Notwithstanding anything in this Constitution,(a) no Act of Parliament in respect of(i) religious or social practices of the Nagas,(ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law,(iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides."

<sup>9</sup> AIR 1973 SC 1461

*v. UOI*<sup>1</sup> and *S.P. Sampath Kumar v. UOI*<sup>2</sup> held “A Constitutional Amendment Act also falls within the ambit of law.” Therefore, a Constitutional Amendment Act passed by the Parliament amounts to law and is subject to the provisions of the Constitution. Art. 243T of the Constitution is, therefore, subject to Art. 371A of the Constitution. Furthermore, under Art. 371A (1)(b)<sup>3</sup>, in case of a law & order situation in the state, the Governor has the power to exercise his own individual judgment. It was held in *State of Gujarat v. R.A. Mehta*<sup>4</sup> “The Governor’s acts or decisions cannot be subject to judicial review unless arbitrary.” The court can interfere only if the decision taken is vitiated due to mala fides or patent arbitrariness.<sup>5</sup> In *Kachchh Jal Sankat Nivaran Samiti v. State of Gujarat*<sup>6</sup> it was held “If the policy of the Govt. is constitutional and not arbitrary, it cannot be disapproved in judicial review.” In the present case, the decision of the Governor was valid and constitutional under Art. 371A(1)(b) considering the law & order situation in the state.

In the light of the foregoing arguments, it is humbly submitted that under Art. 371A the decision of the Governor was valid and the implementation of Art. 243T is subject to the provisions of Art. 371A.

**C) A WRIT SEEKING THE ENFORCEMENT OF ART. 243T CANNOT BE PASSED TO THE STATE.**

The Respondent humbly submits that the decision of the Governor was valid and be upheld by this Hon’ble Court. It was held in *Natai Bag & Ors. v. State of West Bengal*<sup>7</sup> that “The court is only considered with the fairness of the decision making process and not the ultimate decision.” In the present case, the decision was constitutionally valid & fair. Court

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<sup>1</sup> AIR 1982 SC 149

<sup>2</sup> AIR 1987 SC 386

<sup>3</sup>Art. 371A (1)(b): “The Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland; the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken; Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub clause required to act in the exercise of his individual judgment, 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.”

<sup>4</sup> AIR 2013 SC 693

<sup>5</sup> Mohinder Singh v. State of Punjab (2013) 3 SCC 294; Sangeet v. State of Haryana (2013) 2 SCC 452; Devinder Pal Singh Bhullar v. State (NCT of Delhi) (2013) 6 SCC 195 (249); Manohar Lal Sharma v. UOI (2013) 6 SCC 616 (619)

<sup>6</sup> AIR 2013 SC 2657

<sup>7</sup> (2000) 8 SCC 262



cannot interfere with policy decisions of the administration unless they are clearly in violation of some statutory or constitutional provision or is shockingly arbitrary<sup>1</sup>. Furthermore, in *Bandhua Mukti Morcha v. UOI*<sup>2</sup>, *Suresh Seth v. Commissioner Indore Municipal Corporation*<sup>3</sup> and *Premium Granites v. State of Tamil Nadu*<sup>4</sup> it was held that “Matters of public policy must be left to the discretion of the executive and legislative authorities as the case may be.” In *State of Himachal Pradesh v. Parent of a Student of Medical College*<sup>5</sup> it was held that “The court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature.”

In the light of the foregoing arguments, it is humbly submitted that this Hon’ble Court may be pleased to uphold the decision of the Governor and thereby, not pass a writ to the State seeking the enforcement of the provision contained within Art 243T.

In the light of the aforementioned arguments, the Respondent humbly submits that the fundamental rights under Art.14 and Art.15(3) were not violated by the non-enforcement of Art.243T. Under Art.371A, the decision of the Governor was valid considering the law & order situation of the state of A.P. Therefore, it is humbly submitted that this Hon’ble Court may be pleased to uphold the decision of the Governor.

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<sup>1</sup> *Tata Cellular v UOI* (AIR 1996 SC 11); *Om Kumar v UOI* (AIR 2000 SC 3689); *Union of India v. S.B.Vohra*, 2004 (2) SCC 150; *Delhi Development Authority v Vijaya C.Gurshaney (Mrs.)*, 2003 (7) SCC 301; *Krishnan Kakkanth v Government of Kerala*, 1997 (9) SCC 495; *Ugar Sugar Works Ltd. v. Delhi Administration* (2001) 3 SCC 635

<sup>2</sup> AIR 1984 SC 802

<sup>3</sup> AIR 2006 SC 767

<sup>4</sup> (1994) 2 SCC 691

<sup>5</sup> AIR 1985 SC 910

**III. WHETHER THE RULES WHICH PROHIBIT THE ‘LIVE TELECAST’ OF THE PROCEEDINGS OF THE HOUSE ARE CONSTITUTIONAL & THE IMPUGNED ACTIVITY IS A PART OF ART. 19 OF THE CONSTITUTION OR NOT?**

The Respondent humbly submits that under the parliamentary privilege under Art.194(1)<sup>1</sup> & Art.194(2) is subject to the provision under Art. 194(3)<sup>2</sup>. The fundamental right to freedom of speech & expression under Art.19 (1)(a) is subject to reasonable restrictions under Art.19(2). Therefore, this Hon’ble Court may be pleased to adjudge that the order of the Hon’ble Speaker and the aforementioned rules are valid & constitutional in the light of the following arguments:

**A) THE PROVISION UNDER ART. 194 CANNOT BE INVOKED SINCE THE SPEECH WAS TELECAST WITHOUT THE AUTHORISATION OF THE HON’BLE SPEAKER.**

The Respondent humbly submits that under Art. 194<sup>3</sup>, parliamentary privilege is guaranteed to members of the Legislative Assembly of the State. In *Dr. Jagdish Chandra Ghosh v. Hari Shadhan Mukherjee*<sup>4</sup>, it was held that “something which is published without the authority of the Speaker is restricted and does not fall under the parliamentary privilege under Art 105(3) or Art.194 (3).” Similar contention was reinstated in *Suresh Chandra Banerjee v. Punit Goala*<sup>5</sup> and *Sudrendra v. Nabakrishna*<sup>6</sup>. In the present case, the Hon’ble Speaker did not authorise the publication of the speech and therefore, the provision under Art. 194 cannot be invoked. Furthermore, under Art.122 (2)<sup>7</sup>, each House has a freedom of judicial control over

<sup>1</sup> Art. 194: “(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (forty-fourth Amendment) Act, 1978.”

<sup>2</sup> Supra 1, at 20

<sup>3</sup> Supra 1, at 20

<sup>4</sup> AIR 1961 SC 613

<sup>5</sup> AIR 1951 Cal 176

<sup>6</sup> AIR 1958 Ori 168

<sup>7</sup> Art. 122 (2): “No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers”

its working. In *Ramdas Athawale v. UOI*<sup>1</sup>, it was held “No decision of the speaker can be challenged by the member of the house complaining of mere irregularities in the procedure in the conduct of the business. Such decisions are not subjected to the jurisdiction of the courts and they are immune from challenges.” Furthermore, in *M.S.M. Sharma v. Sinha*<sup>2</sup>, *Jai Singh v. State of Haryana*<sup>3</sup> and *K.A. Mathialagan v. P. Srinivasan*<sup>4</sup> it was held that “The validity of the proceedings within a house cannot be called in question in the court even if the court deviates or does not strictly follow or suspends its own rules of procedure.” In *Surendra v. Nabakrishna*<sup>5</sup> it was held “The court does not interfere with the functioning of the speaker inside the house in the matter of regulating the conduct of the business therein.” A similar contention stating that the court would not interfere with the legislative process in the house was held in *State of Bihar v. Kameshwar*<sup>6</sup>, *Thirumulpad v. State of Kerala*<sup>7</sup>, *Ramachandra Rao v. A.P regional communication*<sup>8</sup>, *Phukhan v. Mohendra Mohan*<sup>9</sup>, *Jagdish Gandhi v. Legislative council*<sup>10</sup> and *C. Subramaniam v. Speaker, Madras Legislative Assembly*.<sup>11</sup> Therefore, in the present case, the decision of the Hon’ble Speaker was valid since the publication was made without prior authorisation.

In the light of the foregoing arguments, it is humbly submitted that the live telecast of the speech was invalid and the provision under Art. 194 cannot be invoked since there was no authorisation by the Hon’ble Speaker to telecast the speech.

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<sup>1</sup> (2010) 4 SCC 1

<sup>2</sup> AIR 1960 SC 1186

<sup>3</sup> AIR 1970 P&H 379

<sup>4</sup> AIR 1973 Mad 371

<sup>5</sup> AIR 1958 Ori 168

<sup>6</sup> (1952) 1 SCR 889

<sup>7</sup> AIR 1961 Ker 324

<sup>8</sup> AIR 1965 AP 306

<sup>9</sup> AIR 1965 Gau 75

<sup>10</sup> AIR 1966 All. 291

<sup>11</sup> AIR 1969 Mad 10

**B) THE FUNDAMENTAL RIGHT UNDER ART. 19(1)(a) IS SUBJECT TO REASONABLE RESTRICTIONS UNDER ART. 19(2).**

The provision under Art.19 (2)<sup>1</sup> imposes reasonable restrictions upon the freedom guaranteed under Art. 19(1)(a).<sup>2</sup> In *State of Madras v. V.G Row*<sup>3</sup>, *MRF Limited v. Inspector Kerela Govt.*<sup>4</sup>, *Ramlila Maidan Incident v. Home Secretary UOI*<sup>5</sup> and *Sahara India Real Estate Corp. Limited v. SEBI*<sup>6</sup> it was held that “No freedom should be absolute or unrestricted.” Under Art.19(2), reasonable restrictions may be imposed in the interests of public order and security of state. In *O.K. Ghosh v. E.X. Joseph*,<sup>7</sup> *D. Anantha Prabhu v. Dist. Collector, Ernakulam*,<sup>8</sup> *Santokh singh v. Delhi Administration*,<sup>9</sup> *State of Bihar v. Shailabala*<sup>10</sup> and *Romesh Thapar v. State of Madras*<sup>11</sup> it was held that “Public order is virtually synonymous with public peace, safety and tranquillity.” In *Golak Nath v. State of Punjab*<sup>12</sup> it was held that the standard is really an elastic one and varies with time to, space and condition from case to case. In the present case, the speech of Mr. Hobart could have disturbed the public order considering the importance of customary law in the state. In *Dwarka Prasad Lakshmi Narain v. State of U.P.*<sup>13</sup> it was held that “The restrictions must strike a proper balance between the freedoms guaranteed under article 19(1) and the social control permitted by clauses (2) of Article 19.” If there exists nexus between the restriction and public order, then the restriction can be sustained as being in the ‘interests’ of public order<sup>14</sup>.

In the present case, the decision of the Hon’ble Speaker was in the interest of the public order in the state. Under Art. 19(2), such restriction is constitutionally valid. Therefore,

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<sup>1</sup> Supra 5, at 13

<sup>2</sup> Supra 4, at 13

<sup>3</sup> AIR 1952 SC 196

<sup>4</sup> AIR 1999 SC 188

<sup>5</sup> AIR 1978 SC 597

<sup>6</sup> (2013) 2 SCC 733

<sup>7</sup> AIR 1962 SC 812

<sup>8</sup> AIR 1975 Ker 117

<sup>9</sup> AIR 1973 SC 1091

<sup>10</sup> AIR 1952 SC 329

<sup>11</sup> AIR 1950 SC 124

<sup>12</sup> AIR 1967 SC 1643

<sup>13</sup> AIR 1954 SC 224

<sup>14</sup> See, *V. K. Javali v. State of Mysore*(AIR 1966 SC 1387), *O.K. Ghosh v. E.X. Joseph* (AIR 1962 SC 812), *Superintendent, Central Prison v. Ram Manohar Lohia* (AIR 1960 SC 633), *Saghir zahmed v. State of U.P.* (AIR 1954 SC 728)

the decision of the Hon'ble Speaker was constitutionally valid under Art.19 (2) and Mr.Hobart's rights under Art. 19(1)(a) were not violated by the aforementioned decision.

**C) THIS HON'BLE COURT MAY BE PLEASED TO ADJUDGE THAT THE ORDER OF THE HON'BLE SPEAKER & THE RULES ARE CONSTITUTIONALLY VALID.**

The Respondent humbly submits that the provision under Art. 19(1)(a) is subject to reasonable restrictions under Art. 19(2). In the present case, the restriction was reasonable since it was in the interest of public order. Furthermore, the Parliamentary Privilege under Art. 194 is subject to the authorisation by the Hon'ble Speaker. Therefore, in the present case, this Hon'ble Court may be pleased to adjudge that the decision of the Hon'ble Speaker was valid and the rules prohibiting the 'live telecast' of the proceedings of the House are constitutionally valid.

In the light of the aforementioned arguments, it is hereby humbly submitted that this Hon'ble Court may be pleased to adjudge that the acts of Mr. Hobart were within the ambit of Art. 19(2). The decision of the Hon'ble Speaker was in the interest of public order in the State and therefore, constitutionally valid. Furthermore, the Hon'ble Court may be pleased to adjudge that the rules prohibiting the 'live telecast' of the proceedings of the House are constitutionally valid.

**IV. WHETHER THE 'SEARCH & SEIZURE' CONDUCTED BY THE POLICE IS CONSTITUTIONAL AND WITHIN THE PROCEDURE PRESCRIBED BY LAW OR NOT?**

The Respondent humbly submits that the material obtained from the "Search & Seizure" conducted by the police is valid and admissible. It is further submitted that under Art. 21<sup>1</sup>, the right to privacy was not violated since the "Search & Seizure" was in accordance with the law prescribed. The acts of Mr. Ozan amounted to contempt of Parliament and therefore the suspension order by the Hon'ble Speaker is valid in the light of the following arguments:

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<sup>1</sup> Art. 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law"

**A) THE INFORMATION OBTAINED BY THE POLICE FROM THE ISP CONSTITUTES A SEARCH.**

The procedure for a 'search & seizure' is defined under the CrPC<sup>1</sup>. In the case of *State of Kerala v. Alasserry Mohammed*<sup>2</sup> it was held that "it has been observed that illegality in search and seizure may not vitiate the prosecution, trial and conviction unless prejudice is shown to have been caused to the offender." A similar contention was held in *State of Maharashtra v. Natwarlal Damodardas Soni*.<sup>3</sup> Furthermore, in *Shyam Lal Sharma & Anr. v. The State of M.P*<sup>4</sup> it was held that even if the search is illegal being in contravention with the requirements of Sec. 165<sup>5</sup> Cr.P.C. that provision ceases to have any application to the subsequent steps in the investigation." In *Barindra Kumar Ghose v. Emperor*,<sup>6</sup> *Emperor v. Allahad Khan*<sup>7</sup>, *Joginder Kumar v. State of U.P.*<sup>8</sup> and *Ramchandra Pansari v. State Of Bihar*<sup>9</sup> it was held that "Even if the search is illegal then also it will not affect the validity of the seizure and further investigation or the validity of the trial which followed." In *Radha Kishan v. State of U.P.*<sup>10</sup> *Sunder Singh v. State of U.P.*<sup>11</sup> and *State of Punjab v. Wassan Singh*<sup>12</sup> it was held that "this Court has clearly held that irregularity in a search cannot vitiate the seizure of the articles." Evidence obtained as a result of illegal search or seizure is not

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<sup>1</sup> Sec. 100: "(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein."

<sup>2</sup> AIR 1978 SC 933

<sup>3</sup> AIR 1980 SC 593

<sup>4</sup> AIR 1972 SC 886,

<sup>5</sup> Sec. 165: "(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place with the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station."

<sup>6</sup> (1910) ILR 37 Cal 467

<sup>7</sup> (1913) ILR 35 All 358

<sup>8</sup> AIR 1994 SC 1349

<sup>9</sup> 1988 (36) BLJR 429

<sup>10</sup> AIR 1963 SC 822

<sup>11</sup> AIR 1956 SC 411

<sup>12</sup> 1996 SCC (1) 458

liable to be shut out<sup>1</sup>. Therefore, in the present case, the information obtained from the ISP is valid and admissible.

**B) THE RIGHT TO PRIVACY UNDER ART.21 WAS NOT VIOLATED BY THE SEARCH AND SEIZURE.**

Art. 21<sup>2</sup> of the Constitution guarantees the Right to Privacy<sup>3</sup> however, it is subject to the restriction in accordance with the procedure established by law.

In *Narinderjit Singh Sahni v. UOI*,<sup>4</sup> it was held that “Life in Art.21 does not mean mere animal existence. The extent of the expansion of this article’s multi-dimensional features must be through the interpretative process of the court.” In *Govind v. State of Madhya Pradesh*<sup>5</sup> the Hon’ble Court reinstated that right to privacy is a fundamental right under Art. 21. A similar contention was upheld in *Mr X v. Hospital ‘Z’*<sup>6</sup> and *Justice KS Puttaswamy & Anr v. UOI*.<sup>7</sup> Therefore, since Right to Privacy is within the ambit of Art.21, it is also subject to the restriction as contained within a procedure established by law.

In *A.K Gopalan v. State of Madras*<sup>8</sup> it was held that “the interpretation of the procedure established by law was upheld and the SC held that the expression procedure established by law would therefore mean the procedure as laid down in the enacted law”. In *Niranjan Singh v. State of Punjab*<sup>9</sup>, it was held that “while depriving a person from its personal liberty, the procedure established by law must be strictly complied with and must not be departed from the disadvantage of the person affected.” In the present case, since the ‘search & seizure’ was legally and constitutionally valid and the information obtained from the ISP was valid and admissible. Therefore, in the light of the foregoing arguments, the Right to Privacy of the Mr. Ozan was not violated.

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<sup>1</sup> State of Himachal Pradesh v. Pirthi Chand and Anr., 1996 (2) SCC 37, State of Punjab v. Labh Singh, 1996 (5) SCC 520, Pooran Mal v. The Director of Inspection (Investigation), New Delhi & others, (1974) 1 SCC 345, M. P. Sharma And Others vs Satish Chandra, (AIR 1954 SC 300),

<sup>2</sup> Ibid 1, at 23

<sup>3</sup> See, R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632; PUCL v. UOI, AIR 2003 SC 2363; Sharda v. Dharmpal, (2003) 4 SCC 493.

<sup>4</sup> AIR 2001 SC 2810

<sup>5</sup> AIR 1975 SC 1378

<sup>6</sup> AIR 1999 SC 495

<sup>7</sup> (2014) 6 SCC 433

<sup>8</sup> AIR 1950 SC 27

<sup>9</sup> AIR 1952 SC 106

**C) THE SEARCH AND SUBSEQUENT SEIZURE IS NOT EXCLUDED DUE TO LEGISLATIVE PRIVILEGES AS AFFORDED TO THE MEMBERS OF LEGISLATURE.**

‘Contempt of Parliament’ is defined as “any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, even though there is no precedent of the offence.”<sup>1</sup> In *Ranjit D. Udeshi v. State of Maharashtra*<sup>2</sup> it was held that “the test of obscenity is whether the tendency of the matter charged as obscene is to deprive and corrupt those whose minds are open to such immoral influences.” In *Chandrakant Kalyandas Kakodkar v. State of Maharashtra*<sup>3</sup> and *Chandra Rajkumari v. Police Commissioner*<sup>4</sup> it was held that “what we have to see is that whether a class not an isolated case, into whose hands the material falls suffers in their moral outlook or become depraved or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must, therefore be judged from this aspect.” In the present case, the acts of Mr. Ozan were in a public place and further, it was displayed on National Television. The aforementioned act was an act of obscenity under Sec. 292 (2) of the IPC, 1860<sup>5</sup> and Sec. 67 of the IT Act, 2000<sup>6</sup>. Therefore, the acts of Mr. Ozan were not only of criminal nature but also in contempt of the Parliament.

In the light of the foregoing arguments it is humbly submitted that since the acts were in contempt of Parliament, Parliamentary Privilege under Art. 194<sup>7</sup> cannot be claimed. The order of suspension was valid. The information obtained from the ‘Search & Seizure’ was valid and admissible.

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<sup>1</sup> Thomas Erskine May, PARLIAMENTARY PRACTICE, 109 (7th edn.).

<sup>2</sup> AIR 1965 SC 881

<sup>3</sup> AIR 1970 SC 1390

<sup>4</sup> AIR 1998 AP 302

<sup>5</sup> Sec. 292(2): “Whoever—(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, shall be punished.”

<sup>6</sup> Sec. 67: “Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished.”

<sup>7</sup> Ibid 1, at 20



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## PRAYER

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In the light of the issues raised, arguments advanced and authorities cited, the Respondent hereby humbly submits that this Hon'ble Supreme Court of Indistan may be pleased to

1. *Declare that the PIL filed by NGO PEW, the Writ Petition filed by Mr. Hobart and the Special Leave Petition filed by Mr. Ozan are not maintainable in the Hon'ble Court.*
2. *Declare that the decision of the Governor is valid and thereby, uphold the same.*
3. *Adjudge that the acts of Mr. Hobart were within the ambit of Art. 19(2) and the decision of the Hon'ble Speaker was in the interest of public order in the State and therefore, constitutionally valid.*
4. *Declare that the rules which prohibit the 'live telecast' of the proceedings of the House as constitutional.*
5. *Declare that the judgment of the Hon'ble HC as valid and the 'search & seizure' as legal & not violative of right to privacy. The order of the Hon'ble Speaker was valid.*

*Any other order as it deems fit in the interest of justice, equity and good conscience.*

**For this Act of kindness, the Respondent shall duty bound forever pray.**

Sd/-

*Counsels for the Respondent*