



UNITY LAW AND DEGREE COLLEGE, LUCKNOW

**5th JUSTICE MURTAZA HUSAIN MEMORIAL MOOT
COURT COMPETITION
(7th to 9th September, 2018)**

MOOT PROPOSITION

1. The Republic of Indiana had been a colony of Britania for about 150 years and finally gained independence on 11th September, 1945. Post independence, Indiana Constitution was drawn up by an elected body of representatives of the people of Indiana known as the Constituent Assembly of Indiana which came into effect in January, 1947.
2. The Constitution of Indiana provides for a Democratic Parliamentary form of Governance with the concept of cooperative federalism wherein the legislative business was divided among the Centre and 29 States which constitute Indiana. The Judiciary of Indiana is an autonomous institution which is independent of the Executive and the Legislature. The independence of Judiciary has been upheld as a basic structure of the Constitution. The Supreme Court of Indiana is the guardian and interpreter of the Constitution and consequently has power of judicial review of laws and actions of the government.
3. Being primarily an agricultural economy, Indiana depends mostly on the farming and agricultural activity which in turn depends on the web of rivers flowing inter-state for irrigation purposes. Geographically, on the South, Indiana projects into and is bounded by the Indiana Ocean- in particular the Dorabian Ocean on the West, the Bruttweep Sea to the South West, the Bay of Belong on the West and the Indiana Ocean proper to the South.
4. More than eighty per cent of Indiana Rivers are inter-state rivers. According to the Central Water Commission, there are 120 inter-state water agreements in Indiana. Many of these agreements are more than 150 years old and had been executed without seriously considering socio-economic, political and geographical factors. Moreover, continuous redrawing of state boundaries during the Britania regime and after independence have kept the disputes alive.
5. The Lauperry is a perennial river which originates in one of the states of Indiana namely Sarwalaka and flows through another state known as Kapil Wadu and finally merges with the Bay of Belong. It is Kapil Wadu's only perennial river and currently the source of seventy per cent of canal irrigation that supplies water to the states's agricultural land. A number of

districts of central and western Kapil Wadu have come to depend on Lauperry for drinking water as well.

6. Equitable and timely sharing of drinking water by Sarwalaka to Kapil Wadu, therefore, is vital to both agricultural and drinking water needs of Kapil Wadu. For decades the two states have fought over the frequency and quantity of water that each is entitled to. In fact, this issue of Lauperry water has been an electoral issue and a means for polarising the two states against each other. Observing very bleak chances of the conclusion of this stalemate, the Centre established the Lauperry Water Dispute Tribunal in 1990, as per the provisions of the Constitution, which was expected to find a permanent solution to the decade long water sharing dispute between Sarwalaka and Kapil Wadu.

7. While the Lauperry Water Dispute Tribunal began investigating into the dispute, it passed an interim order requiring Sarwalaka to release 205 tmcft [thousand million cubic feet] of Lauperry water to Kapil Wadu which Sarwalaka refused to oblige to. In 1991, the Chief Minister of Kapil Wadu went on a fast demanding the state's share of water as per the interim order. As a result a deal was brokered between Sarwalaka and Kapil Wadu to set up a committee that would monitor the flow of River Lauperry into Kapil Wadu. Throughout the 1990s, Lauperry remained to be an issue which affected not only the farmers on both sides but also the electorate for whom Lauperry became a regional identity. In 2002, a Sarwalaka farmer jumped to his death in Lauperry River to protest against the release of its water to Kapil Wadu. The only time both states attempted an amiable solution was in 2006, when farmers from Kapil Wadu and Sarwalaka, independent of the government, came together for six rounds of talk to implement what was termed a 'distress shared formula'.

8. The dispute continued with no visible solution until April 2007, when the Lauperry Water Dispute Tribunal passed its final award (arrangement of water distribution). According to the tribunal's final award, the share of the contending parties is as follows: Sarwalaka 300 tmcft [thousand million cubic feet] and Kapil Nadu 426 tmcft. The tribunal also earmarked 10 tmcft for environmental protection and a mere four tmcft as "quantity determined for inevitable escapages into the sea".

9. Sarwalaka, which felt that the award was unjust as a major share of the water will go to Kapil Wadu leaving almost six Sarwalaka districts without adequate water for drinking and agriculture, approached the Supreme Court with a Special Leave Petition. The said petition was contested by Kapil Wadu, inter alia, on the ground that the specific bar in the Interstate River Water Disputes Act, 1956, in pursuance of Article 262 of the Constitution of India barred even the intervention of the Supreme Court from deciding this particular issue.

10. Supreme Court admitted the SLP, despite the express bar on its jurisdiction under the Act and awarded an additional 14.75 tmcft [thousand million cubic feet] to Sarwalaka keeping in mind the growing drinking water needs and Kapil Wadu's share of water was brought down proportionately. The Supreme Court also directed the Centre to formulate a 'scheme' to implement the verdict.

11. The Centre delayed the framing of the scheme saying it was an ‘emotive issue’ and one that is bound to create unrest among the people, and filed a petition in the Supreme Court to review its order granting special leave to appeal in the case as it will encourage disputing states to revisit stakes and claims before other river water tribunals. The petition also stated that after the declaration of the final award in 2007, the contending states had the right to go back to the tribunal with a review petition for a supplementary award and therefore the Supreme Court could have directed the SLPs to the tribunal.

12. Kapil Wadu moved the Supreme Court seeking contempt proceedings against the Centre and blamed the Centre for ‘wilful disobedience’ in carrying out the Supreme Court’s direction.

13. Immediately after the filing of the aforesaid contempt proceedings, the Parliament passed an enactment titled the Lauperry Water Dispute Act, 2018, which received presidential assent on July 1, 2018. The Lauperry Water Dispute Act, 2018, was passed under Article 262 of the Constitution of India, and provided that: (i) the distribution of the waters of Lauperry between Sarwalaka and Kapil Wadu and adjudication of any dispute or complaint in relation thereto, shall be done exclusively and ‘periodically’ by the Central Minister of Water Resources and Irrigation, (ii) the Lauperry Water Dispute Act, 2018, shall be applicable retrospectively, (iii) the Interstate River Water Disputes Act, 1956, shall not be applicable to the distribution of the waters of Lauperry and adjudication of any dispute or complaint in relation thereto, (iv) the Lauperry Water Dispute Tribunal stood dissolved *ab initio*, and (v) all adjudications in relation to the distribution of the waters of Lauperry (whether by the Lauperry Water Dispute Tribunal or the Supreme Court), shall be null and void *ab initio*.

13. Both Kapil Wadu and Sarwalaka challenged the Lauperry Water Dispute Act, 2018, before the Supreme Court, as *ultra vires* and being against public policy.

14. Taking cognizance of the complexity of the matter, the Supreme Court decided to club all the petitions with regard to Lauperry water dispute and decide on the following issues in the case of **State of Sarwalaka & State of Kapil Wadu Vs. Union of India** -

i. Whether the structure of federalism as adopted in the Constitution of India allows the Centre to give directions to State with respect to sharing of inter-state rivers.

ii. Whether the delay by Centre in implementing the scheme as per the directions of the Supreme Court amounts to contempt of Court.

iii. The scope of Article 136 *vis-a-vis* Article 262 of the Constitution of India.

iv. Whether the Parliament’s power under Article 262 is unfettered to the extent of passing an enactment such as the Lauperry Water Dispute Act, 2018.

Note: The Constitution and other laws of India are same as those of India. Taking into account various aspects of the case matrix, arguments are to be put forward from the side of

both the Petitioner and the Respondent. The arguments can be made on creative lines. Pleas in addition to those set out above will be appreciated.