

# 6th National Moot Court Competition, 2018

September 20<sup>th</sup> - 22<sup>nd</sup>, 2018

## MOOT PROPOSITION

**I-** The Union of Sind, situated in Asia, is a secular, democratic country with a dynamic and liberal economy. It witnesses a lot of social and cultural diversity and at the same time has a progressive society that while nurturing liberal views, respects diversity all the same. In the year 2017, the Supreme Court of Union of Sind had pronounced a judgement in a landmark case, invalidating 'Triple Talaq' as a form of divorce under Muslim Personal Laws as the same being against the basic principles of Constitution of Sind, infringes the Fundamental Rights of women as enshrined under the Constitution. The Apex Court further directed the Union of Sind to make laws invalidating Triple Talaq and also to make it a criminal offence. The Bill has been passed by the Lok Sabha of Union of Sind but is still pending before the Rajya Sabha due to political issues.

**II-** A young couple, Javed, 24 and Swati, 21, from Awadh, a city in the State of Madhya Sind were in relationship and they wanted to marry each other, but the families of Javed and Swati were against their relationship, as they both belonged to different religions. Javed persuaded Swati to embrace Islam with the pretext that once she embraces Islam his family would agree for their marriage and the same will not be against his religion. Accordingly, after much persuasion from Javed, Swati agreed to convert her religion to Islam and on 20th June 2016, Swati was given the name Shazia in a ceremony of 'Qubul Islam', by the Maulvi and the couple got married on 21st August of the same year after duly complying with all the formalities of Nikah.

**III-** After the marriage, Shazia and Javed started living separately from their families and Shazia also joined a school as a teacher. The marital life of the couple was going very smooth and they were happy together. On, 2nd November 2016, Javed decided to move with his parents, because of some family problems. Initially Shazia was against the idea of shifting with her in-laws, but due to the pressure from Javed, Shazia agreed to live with his parents. Accordingly, on 6th January 2017 the couple shifted to their in-laws house. First few days were very cordial between the family and Shazia, but slowly things started to change, Shazia was even told to leave her job. All these issues started affecting the marital relation of Javed and Shazia and they started having regular fights. Infact in one or two incidences when Shazia was having some heated arguments with her mother-in-law, Javed badly scolded Shazia in front of his family members.

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**IV-** On 15th September, 2017 there was a family function at Javed's place and many relatives and neighbours were present. Suddenly on some issue Shazia and Javed got into a heated argument and in a fit of rage Javed pronounced Talaq thrice on Shazia in the presence of family and the neighbours. Immediately after the incident, Shazia left her marital home and went back to her parent's place. After the incident Shazia was completely in a state of shock and she stopped talking to Javed. In between, Javed tried communicating with Shazia but she avoided any kind of contact with him. On the evening of 21st November, 2017, Javed texted Shazia, requesting her to meet him and discuss their problems. Shazia replied that she will be alone that day as her family will not be at home and she did not want to meet Javed and that she needs more time to evaluate their relationship. On the same evening, Javed, in an intoxicated state visited Shazia's parent's place, where Shazia was alone as her family members had gone out for a function. Shazia and Javed, both had a heated argument, this angered Javed who lost his control and forced himself upon Shazia against her will and consent. Shazia, being alone, feared for her life and did not resist much and therefore surrendered to the will of Javed. Thereafter, Javed left the place. The very next day, Shazia, in a state of shock, narrated her ordeal to her family who immediately, went to the nearest police station and lodged a complaint against Javed for committing Rape with Shazia. The police registered the FIR No. 28/2017 against Javed for the offence of Rape under section 375 and cruelty under section 498A, Assault or use of Criminal Force to woman with intent to outrage her modesty under section 354, Voluntarily causing Grievous Hurt under section 321 under the Sind Penal Code on 22nd November, 2017.

**V-** In the State of Madhya Sind, next assembly elections were to be conducted within a year. Thus, the case was highlighted and widely debated in media. The police was under pressure as the same was being made a political issue with respect to women safety and women rights. Many women NGO's came forward demanding justice for Shazia. The police started the investigation and filed the charge sheet within a month of registering the FIR. The trial court of Awadh expedited the matter due to societal pressure and the trial was concluded within six months. The trial court in its judgment dated 28th May, 2018 held that, the accused was not convicted for rape as the same could not be proved by the State. The trial court in its judgement further held that the accused was guilty for the offence cruelty under section 498A and convicted for two years imprisonment and a fine of Rs. 10,000 was imposed. Further, held guilty for outraging the modesty of women under section 354, convicted for one year simple imprisonment and held guilty for other offences related to women and convicted for 5 years imprisonment and fine of Rs 10000/- was imposed on Javed. The court in its judgement added that the aforesaid punishments shall run concurrently.

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**VI-** Aggrieved by the judgment of the trial court, Javed lodged an appeal dated 2nd July, 2018, before the High Court of Madhya Sind. Javed contended that he was not given a fair trial as it was more of a media trial. It was submitted by him that the witnesses of the accused were not heard at length, as the media had already given an impression to the court that Javed had committed Rape. The trial court was influenced by media reports and without going into further evidence wrongly convicted him for the said offences which he had not committed. Henceforth, Javed pleaded before the High Court to acquit him from all the charges as made out against him.

**VII-** In the month of August, 2018, Shazia with the help of an NGO 'Justice for women' filed a writ petition before the Supreme Court of Union of Sind, W.P. No. 2302 /2018 where the issues were raised before the court seeking justice for Shazia and making marital rape an offence under the existing penal laws of Sind. In the Petition Shazia also stated the social issue attached to such problems, as in the absence of any law the women in the country have become vulnerable at the hands of their husbands and hence the Supreme Court should give certain guidelines in the above matter in the absence of any existing laws and that the Supreme Court must direct the Union of Sind to bring laws for the protection women in such cases. Shazia further pleaded for justice in the absence of any existing laws through such extra-ordinary jurisdiction as the court deems fit.

**VIII-** Meanwhile, the petition of Javed in the High Court of Madhya Sind was dismissed and the judgment of the trial court was "upheld by the order dated" 10th August, 2018. Aggrieved by the judgment of the High Court, Javed filed a Special Leave Petition, S.L.P.No.1920 /2018 before the Supreme Court dated 5 September 2018. Javed contended that his conviction under section 354 of the Sind Penal Code was baseless, as Shazia was still his legally wedded wife and no act of his directed towards Shazia could be termed as 'Sexual Assault'. Javed also took the plea of natural justice and contended that the Trial Court and High Court have failed in their approach and have violated his natural justice by not providing him a fair trial, as his trial was influenced by media reports and thus it is nothing more than 'media trial'. Javed also contended that the case against him is based on false allegation and also discussing his personal life in live TV channels debate was an infringement of his Right to Privacy and also the reputation of his family was tarnished.

**IX-** Taking the urgency and the constitutional issues involved in both the matters the Supreme Court clubbed both the matters and is listed for further arguments. The Constitution and laws of the Union of Sind are pari materia to Union of India.

\* As per the rule of the Competition, each team has to prepare two [2] memorials, consolidating the four [4] parties of the two petitions clubbed together.  
Memorial 1 will constitute Issues and Arguments from

(I) Javed

(II) Union of Sind

Memorial 2 will constitute Issues and Arguments from

(I) Shazia

(II) State of Madhya Sind

**KNOWLEDGE PARTNERS:**



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