

Dr. Ambedkar Govt. Law College, Puducherry

39th All India Moot Court Competition

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Moot Problem

1. The Union of Swadesh, with a quasi-federal Constitution, is one of the largest democracies in the world. The Union of Swadesh became independent on the 19th of January, 1950, after almost 250 years of colonial rule. Soon after its independence, the political leaders of the Union of Swadesh constituted a committee to draft a Constitution that would guide the newly born Union of Swadesh and its people to a progressive, egalitarian and just society. Thus, the Constitution of Swadesh was adopted on the 26th of October, 1955 and came into force on the 12th February, 1956.¹ Subsequently, the Union of Swadesh also became a party to the UN and later joined several international organizations like the ILO, WTO, etc.² Since its independence, the Union of Swadesh has established several central educational and research institutions across the country to benefit its younger population, which accounted for 20% of its national population (as of 1950). As of 2019, this population has grown to 34.26% (based upon a survey conducted by the Union of Swadesh).
2. The National University for Research in Science & Technology (NURST), was established in 1951 in *Badra*-the capital city of the State of Kalinga (one of 12 constituent states of the Union of Swadesh and the most progressive).³ Over the years the Union Government of Swadesh has gracefully funded NURST and NURST had become one of the leading Universities of the world, contributing to the technological and scientific development in various fields in the Union of Swadesh.

¹ The Constitution of Swadesh, 1956; the Acts, Rules, Notifications, etc., in force in the Union of Swadesh are *in pari materia* to the Constitution of India, 1950, the Acts, Rules, Notifications etc., in the Union of India.

² The international commitments of the Union of Swadesh are similar to that of the Union of India.

³ The National University for Research in Science & Technology (NURST) was established by an Act passed by the Swadesh Parliament- "The National University for Research in Science & Technology (NURST), Act, 1951. According to the Act, one of the main objectives for which the University was established could be stated as follows: "...The University shall endeavour to attain through affordable education: national integration, economic and social justice, secularism, democratic way of life, international understanding and scientific approach to the problems of society."

3. Though the Union of Swadesh was progressive in various fronts, it was still a developing nation and approximately 29% of the total population of the Union of Swadesh were below poverty (earning only around US\$12 a month. The wages of middle-income families, ranged anywhere between US\$ 140 to US\$ 210 a month on an average. In the recent past, due to the global economic slowdown caused by the trade wars happening between sovereign States, the Union of Swadesh brought in several structural economic reforms including its long and pervasive tax-regime.
4. The Union of Swadesh was reeling under a ‘severe economic slowdown’ and the Government was adopting several disinvestment measures in its Public Sector Undertakings (PSU’s) so as to reduce the financial burden upon the government.
5. On the education front, the Union was unable to: continue its education funding programmes which largely benefitted students belonging to the marginalized and economically weaker sections and also grant financial aids to Central and State educational and research institutions. Therefore, with the objective of making such institutions self-sustainable; to provide these institutions with a robust financial structure by granting full-autonomy in academic and financial matters and thus reducing financial grants to these institutions, the Ministry of Higher Education, Research and Development (MHERD on 31.10.2019 after following necessary procedures notified the “**Financial Autonomy of All Higher Education and Research Institutions Rules, 2019**” (hereinafter referred to as the ‘Financial Autonomy Rules’), framed under Section 26 of “**The Swadesh Establishment and Regulation of Higher Educational Institutions Act, 1957**”.⁴
6. The ‘Financial Autonomy Rules’ conferred upon all higher education institutions in the Union, the autonomy to devise their own programmes to match global standards; award degrees; matters of affiliation; regulation of fees-structure (tuition fees, hostel fees, etc.- which contribute significantly to the financial reserves of the Institution) so as to enable them compete with universities of global standards; and other ancillary measures necessary to achieve the abovesaid goals.
7. Soon after this notification, all central educational institutions across the country starting with NURST and some State Universities including the ones in the State of Kalinga, started rolling out the modified fee structures for various programmes offered

⁴ The Act and the Rules framed thereunder was extended to the whole of the Union of Swadesh and is *in pari materia* to the “University Grants Commission Act, 1956” passed by the Indian Parliament and the Rules framed under it.

by them from the next session onwards. The modified fees structures constituted a hike to the extent of around 85% to 105% (depending upon the institution's national and international performance, infrastructure, faculty-student ratio and ranking) of the fees levied earlier. Though many academicians, political organizations, industrialists welcomed this move, it was not by large appreciated by the student communities including those at NURST.

8. Students from several parts of the country started agitating against the said move of the Union Government of Swadesh as they felt that the government by denying funding for education; withdrawing grants to institutions; and granting them financial autonomy, has shifted the burden to the shoulders of the students who hail from families that are marginalized and economically weaker. There were also claims that such measures would discourage students from marginalized and economically weaker families, particularly women to pursue higher education and also would leave them with no option but to quit their education or would rather push them into debt-traps causing them hardships at the start of their career.
9. The “**NURST Students’ Association**” a registered students union of NURST, planned series of agitations condemning the notification of ‘Financial Autonomy Rules’ and placed a demand to the Union Government to withdraw the said rules as it violated their constitutionally guaranteed rights. When the demands were not met, the “**NURST Students’ Association**” started carrying out series of agitations, within the university premises, hostels and also at the entrance of the University. As the agitations hardly made any impact, the “**NURST Students’ Association**”, decided to carry out a demonstration towards the Legislative Assembly of the State of Kalinga located in its capital-*Badra*, demanding that the government withdraw the ‘Financial Autonomy Rules’ with immediate effect and direct the educational institutions not to collect the modified fees.
10. The “**NURST Students’ Association**” sought permission from the Kalinga administration to carry out a protest march from the University premises to the Legislative Assembly on 24.12.2019. However, the District Magistrate of *Badra* denied permission to continue the protest and requested the students to restrict their protest to the campus premises in the interests of public order, peace and tranquillity. Not heeding to this request and being disappointed with the denial of permission, the “**NURST Students’ Association**” decided to carry forward its agitation as decided in its General Body Meeting on 19.11.2019. Anticipating students’ unrest and possible

disturbance to public order, peace and tranquillity in Kalinga, the District Administration issued prohibitory orders under section 144 of the Swadesh Code of Criminal Procedure.

11. On 24.12.2020, despite the prohibitory orders being issued by the DM of *Badra*, “**NURST Students’ Association**” supported by other student organizations, activists, and certain political outfits in the opposition, started a protest march towards the Kalinga Legislative Assembly, while it was still in session. Despite frantic efforts by the Police to pacify the protesters, and failed negotiations between them, the students relentlessly proceeded with the protest, while some even tried to cross-over the barricades put in place by the Kalinga Police, thereby, leaving the Kalinga Police without any option but to resort to forceful measures to disperse the protesters. The Kalinga Police had to use mild-force upon the protestors which in-turn led to sporadic violence in the entire city of *Badra* and soon spread to other parts of the Kalinga State and subsequently to other states of the Union of Swadesh.
12. Several videos, photographs about police brutalities committed in the name curbing violence during the protest march emerged in online platforms and was also broadcast in several news channels. These were also disseminated through various online platforms uncensored and several anti-social elements took advantage of the situation to propagate a strong anti-State narrative.
13. The Kalinga police reacted sharply against such information and in an official statement declared that “such videos and photos were either doctored or does not pertain to the current situation” and justified the use of ‘minimal force’, as a last resort to disperse the protesters. On 26.12.2019, the Union Government issued directions to all the state governments including the State of Kalinga to adopt measures to curb violence and maintain law and order throughout. The Union Government also immediately devised an elaborate set of guidelines stipulating the conditions and procedures for ‘total ban on internet’⁵ to be put in place during desperate times to maintain law and order and also prevent the spread of fake information online. The said guidelines were published on 31.12.2019 and came into effect from 01.01.2020.

⁵ The said rules were identical to Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, which is in force in the Union of India.

14. On 02.01.2020, when violence was still on in the State of Kalinga, the Kalinga administration, issued an order directing all internet-service providers-ISPs to discontinue broadband services on grounds of ‘public emergency’ not only in *Badra* but also to several other cities where violence was rampant. The said order apart from the ground of ‘public emergency’ did not state any additional grounds to justify the ban. Additionally, the order also did not stipulate the exact timeframe within which the said order would be in use.
15. This measure was severely criticized by several politicians, business associations, civil society groups and the common public, on grounds that the Kalinga administration did not comply with the procedures stipulated by the ‘total ban on internet rules’, therefore, claimed that a blanket ban on internet services was a measure disproportionate and was totally unwarranted. Until 13.03.2020, the Kalinga administration had not withdrawn the said ban and kept justifying the ban on grounds that sporadic violence was still in place throughout the State and lifting the ban would result in hatred and fake information spreading like wildfire across social media platforms.
16. Affected by the said measure, which caused irreparable damages to the students, business communities, pensioners, bank customers, news agencies, hospitals etc., the representatives of “**NURST Students’ Association**” in a press meet dated 20.03.2020, declared that they were intending to file a public interest litigation before the Hon’ble Supreme Court of Swadesh, on the following grounds:
 - 1) The Financial Autonomy Rules, 2019 resulted in ‘commercialization of higher education’ in the Union of Swadesh and is violative of the Swadesh Constitution and, therefore, should be struck down;
 - 2) The order issued by the Kalinga administration in respect of the ‘total ban on internet’ *sans* complying with the due process laid down under the ‘total ban on internet rules’ violated the fundamental rights guaranteed under the Swadesh Constitution.

On the very same day the “E-Traders Association”-An Association of Traders and Franchisees who use online platforms for conduct of their business activities, filed a separate writ petition before the Hon’ble Supreme Court of Swadesh contesting that the order on ‘total ban on internet’ was disproportional, arbitrary and the administration could have been more prudent and could have taken other selective measures for curbing violence instead of resorting to the extreme measure imposing a blanket ban on the use of internet, while other options were available under other laws in force in the Union of Swadesh. They also alleged that the internet ban caused severe economic loss to the traders, whose businesses were entirely dependent upon the use of internet. They estimated the economic loss for the period of around 80 days’ internet ban would amount to around \$ 25 billion and demanded that the economic loss be compensated.

In the light of the above stated facts the following issues arise before the Hon’ble Supreme Court of Swadesh:

- 1) Whether the ‘Financial Autonomy Rules’, 2019 framed under The Swadesh Establishment and Regulation of Higher Educational Institutions Act, 1957 violated Articles 14 and 21 of the Swadesh Constitution?
- 2) Whether the ‘total ban on internet’ imposed by the Kalinga Administration violated Article 21 of the Swadesh Constitution?
- 3) Whether the Kalinga Administration is liable to compensate for the economic loss accrued by the internet-dependent-business enterprises caused by the ‘total ban on internet’?

***The Participating teams are required to research upon, argue and present all the above three issues in their oral and written submissions. ***

Note: This Moot Problem is drafted by Mr. Varadharajan Udayachandran LL.M., PGDILD, Assistant Professor, Dr. Ambedkar Govt. Law College, Puducherry exclusively for the 39th All India Moot Court Competition organized by Dr. Ambedkar Govt. Law College Puducherry from 27.03.2020 to 29.03.2020 and is for academic purposes only.