



Remembering
PADMA BHUSHAN PROF. (DR.) N. R. MADHAVA MENON



PROF. N. R. MADHAVA MENON ASIAN JURAL CONCLAVE 2021-2022

- Mooting
- Students Conference
- Judicial Colloquium
- Research Paper Presentation

7th PROF. N. R. MADHAVA MENON ASIAN MOOTING COMPETITION (INDIA ROUND)

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- Round Table Conference 2021
- Best Student Award

MOOT PROPOSITION

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MOOT PROPOSITION FOR INDIA ROUND

This moot proposition has been authored by Dr. Anant Vijay Maria, Advocate, Supreme Court of India and settled by Mr. R. Venkataramani, Senior Advocate, Supreme Court of India for the INDIA Round of 7th Prof. N. R. Madhava Menon Mooting Competition - Asian Jural Conclave 2021-22. This moot proposition has been formulated solely for the purpose of this competition furthering the academic exercise.

1. Thorland is a State in Staple a Federal Country with a constitution providing for clear distribution of legislative and administrative powers between the Federal Government and the states. Staple took pride in being a model Federal Country, with unique distribution of powers among its constituent units. In the years 2010 – 2015, the National Democratic Party formed the Federal Government. In order to showcase its model Federal structure seminal constitutional amendments were made. One among them was rearrangement of the concurrent legislative list. Entry 31 in the Federal list was partially deleted and a separate entry No. 39A was added in the concurrent list. The said entry 39A reads as follows: Public Security, Economic Security, Information Technology, Data Protection, Privacy subject to entry 31 A in the Federal list.

The New Entry 31A in the Federal list reads as under:

Entry 31A: National Security, Cyber Crimes, Social Media, Indigenous Technology including design and public outreach.

Article 19 (2) was also amended to include the following heads of restrictions viz “technology subversions, subterfuges, or frauds and cyber space integrity and responsibility”

2. Staple is endowed with rich resources and minerals. Staple is a developing economy and it maintains a fairly good GDP at 6.2%. Staples has Iron and Copper ore in abundance which are of increasing importance since the use of chips and steel products had increased manifold times in the world. This was of utmost interest to various domestic and global commercial ventures as public auction of various mines began to take place in various parts of the country and the same generated a lot of interest in the world market. The current set of public auctions of minerals started happening after a 5-year hiatus due to various proceedings pending before the Apex Court of Staple which finally allowed the auctions and mining operations to take place in terms of the amendments brought to the Federal Law relating to Mines and Minerals.
3. Blueberry is a company in Staple and a leading industrial company in the steel sector. It has captured sizeable international market as well. In the year of 2019 they successfully bid for Iron ore mining in the State of Thorland, one of the states with rich mineral resources. They were granted a license for the same at a fairly huge price. Blueberry started its mining operations in the hilly parts of State of Thorland for use in the production of steel. Due to the scarcity of steel in the market as the Apex Court of Staple had earlier banned all mining operations, Blueberry was interested in the opportunities it could reap in future as the metal market showed promising increase in prices. Factoring this into account, Blueberry went

overdrive to increase its industrial output in the mining sector in order to be the market leader in the steel and related sectors and control the market forces. This was aimed towards consolidating their position in the world market as well.

4. Trizag was an upcoming social media company, which was a micro blogging site for people to interact and connect. It has its registered office in the State of Pilot a neighbouring State of Thorland and became a buzz amongst the youth. People loved expressing themselves through this platform and were happy to re-share memes, posts, thoughts or jokes on the app. Many people joined Trizag as a platform to connect and follow their peers on this app. Trizag as a platform gathered enormous interest and several public personalities, as well as media, and film world celebrities, joined too. This became a rage as the number of users was ever-increasing all over the country. Trizag was especially popular in the State of Thorland and was even used by various Government Agencies/Institutions to communicate information in special sectors. Trizag hailed itself as a value sensitive design movement, which seeks to provide theory and method to account for human values like fairness, dignity, justice, equal participation in social communications. It claimed that unlike facebook, it has no commercial or socio-political agendas.
5. Mr. Penn and Mr. Fernandes are two journalists with high qualifications in the fields of Mass Communication, Law, Public Policy and International Affairs. They have authored several independent pieces on critical issues of concern for the country. They became well-known journalists, as well as policy lobbyists. Their look “Markets without Misery” became an international best seller. They were awarded several distinctions, medals and honours and were known as the “Dissenter Brothers”. They were called for several lectures and also earned Professor Emeritus positions in several leading liberal Arts Universities as well as Advisors in research and think tanks. They have written certain acclaimed pieces on public and economic policies of the Federal Government. Some of them generated strong public responses, both for and against the ruling parties at that Federal and State level. FIR's against them for inciting public unrest, defamation etc., used to be lodged unsuccessfully. Some cases are pending against them.
6. Blueberry started its mining operation in the State of Thorland in the district of Fuchsia Field which has expensive Iron ores. Along with the mining operations, they also set up a manufacturing plant near the foothills, to manufacture steel for export and domestic use in 2020. They acquire huge tracts of land for setting up this plant. It was generally stated that Blueberry used illegal methods in the process.
7. The operations however got in full swing despite protest by the farmers and tribal people and even in the first year of operations the company reported to have earned huge profits as they began covering domestic as well as international demand for steel. The projections that the financial reports showcased were ambitious and encouraging. They kept steadily increasing their production with the advent of higher raw material input from the mines and had plans of further expansions. The Board of Blueberry considered in their meeting in 2020 to float an Initial Public offer to capture this robust supply as well as the huge popularity it was gaining

amongst the investors. This led to the filing of a red herring prospectus and the IPO was to be listed on FSR (Federal Stock Exchange) and also in Grow well stock Exchange (GWSE) which was Thorland's primary Stock Exchange.

8. There was a huge / buzz for Blueberry prospectus as many leading portfolio managers, as well as finance gurus, gave their nod for the stock and termed it as a must-have stock. The creation of this Stock Exchange buzz led to several hostile responses from the public and also media debates. They all centred around alleged misconduct and fudging of accounts by Blueberry. Residents of Fuchsia Field alleged that people are being threatened and some were allegedly manhandled by Blueberry agents and henchmen. This made the “Dissenter Brothers” to take up the entire issue and they launched a full fledged investigation into the affairs of Blueberry. They further received an anonymous tip disclosing several malpractices committed by Blueberry. The Brothers seem to have assured whistle blower protection to the source of information. They met the local people and were appalled to hear their disturbing stories and narratives with respect to their treatment in the Fuchsia Field and in the course of Blueberry operations. Upon further enquiry, they found out that in November 2018 Blueberry had a record of systematic pattern of human rights abuse in their other commercial ventures as well as they were running 'sweat shops' in order to increase the scope of manufacturing and achieving their ambitious production goals.
9. The Dissenting Brothers posted their entire evaluation and commenced a series of posts on Trizag from 28th September 2020. They narrated the human rights abuse, exploitation, lack of dignity, land grabbing and extortion in the areas surrounding the manufacturing unit of Blueberry. In the post, they also imputed that goons were performing directly under the direction of the CEO of Blueberry and majority shareholder Ms Kat An. They alleged further that elimination of family members of protesting people were even suggested by the Company if they did not comply with the land acquisition and other such plans of the company in general. This led to immense media splash by Media Groups which were critical to the current government of the State of Thorland governed by “Clean Hand Party” under the Chief Minister Ms. Mai Zing.
10. All this created a huge up swell of public opinion followed by protests scheduled around Fuchsia Field demanding a comprehensive judicial probe into the matter. The protesters began their do or die protest at Fuchsia Field. The security in the area was amped up. The protesters were demanding a proper and impartial judicial enquiry along with prosecution by the Criminal Bureau of Staples, the highest law agency in the country on the conduct of state agencies of Thorland and of Blueberry. The State government only made a mild attempt to pacify which led to the protestors firm on their demands.
11. On November, 8th 2020, The Dissenting Brothers further posted a provocative post on Trizag, titled “power to the people, online is our weapon.” The post further read: “let's burn the fields and factory of these stee(a)lers. They are corrupt, thugs and goons and have made a profit illegally at public expenses. Let's teach the power that we possess and take back what is rightfully ours.”

12. The Dissenting Brothers continued their posts with reference to the judgements of the Apex Court of Staple, on Tribal rights and ban on mining operations in scheduled Areas of the country. These judgments were being cited in other countries with indigenous tribal population.
13. Subsequently, on 2nd December 2020, the protesters said to have assembled from the different from different parts of the country, burned some parts of the Iron ore field and a portion of the factory. Protesters used stones, lathis and traditional indigenous weapons against the police as well as the private security forces of Blueberry. This led to retaliation by the State police force clamping several bans on protesters. Public unrest thus escalated which led to huge riots on a Sunday called "Black Sunday". In the course, several people sustained injuries both grave and simple. The situation became grim and volatile.
14. Considering such backlash, the Board of Blueberry felt that situation like this is not an apt time to take out an IPO and called for an Extraordinary General Meeting and passed a resolution of withdrawing its Draft Red Herring Prospectus from the Securities Regulator in the State of Trombay. This was a big economic loss for it and also considerably injured its reputation internationally.
15. The State level Ministry of Electronics and Technology was directed by the Chief Minister, of Thorland to order immediate internet shutdown of the area in order to prevent the spreading of false and libellous information in the state. Under Section 144 A, Staples Procedure Code, 1973, Section 5(2), Staples Telegraph Act, 1885, Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017, the Ministry of Information of the state of Thorland issued shut down status until further orders. The legislature of the State of Thorland convened an extraordinary sitting and invoking entry 39 A of the newly added entry in the concurrent list, added a provision in the Information Technology Act of 2015 namely section 68 B, providing for shutdown of all forms of information technology driven communications including social and online communications. Soon thereafter the above said shut down orders were issued. The state also sent advisories to international social media platforms to assist the state in dealing with the issues of law and order. Section 68 B (3) provided for punishment of persons acting in violation of shutdown orders issued under the Act.
16. On 9th December 2020, an FIR was registered by the State Police U/s 147, 148, 149, 109, 114, 124A, 186, 307, 341, 353, 452, 34 of the Federal penal code. Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 ('PDPP Act', for short), Sections 13, 16, 17, 18 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA', for short) and the newly added provision of section 68 B in the Information Technology Act, 2015, were subsequently added to the subject FIR against the Dissenting Brothers along with other protesters. Soon thereafter, the CEO of Blueberry also filed a Criminal Complaint of Defamation against the Dissenting Brothers for their slanderous attacks on the company.
17. The State Police Investigation Team filed an application to the Ministry of Electronics and

Technology seeking a track down of mails and correspondences of Mr. Penn and Mr. Fernandes and sought such tracking information via Trizag. Trizag denied compliance with the same, holding that it is against the rights and privacy of its users and they are not supposed to comply with such requests without authority of law. They contended that the social media is a concept distinct from other means of communication, owned by private or public entities. Social media is a open play ground with no rules for entry or use; It has no property or similar connotation and no law can seek to deal with it on par with other media.

18. On the basis of some complaints received by them the State Police soon registered FIRs against the Dissent Brothers. Mr. Penn was arrested under one of the said FIR's on the basis of the provision of S.66A and S.66 B of the IT Act. Mr. Penn's laptop was also seized during investigation. On 28th January, 2021 the forensic investigation revealed that Mr. Fernandes was in Germany, while he was sighted two days back in a public event in the State of Thorland. Finding this suspicious the State Police on further investigation found out that Mr Fernandes was using VPN and asked the Ministry of Electronics and Technology permission and the procedure for investigation in the matter. The state police called upon Trizag to comply with the shut down orders and to provide the information sought for, failing which its registration would be cancelled. A citizen, Mr. Logi filed a PIL in the Supreme Court of Thorland on 8th February 2021 stating that the offence of online defamation and prosecution needs to be thereof regulated as a Police Arrest or even investigation without any reasonable cause violates the fundamental and inalienable right to personal liberty and free speech of citizens.
19. Another NGO called 'Save Internet Organization' consisting of software experts filed a PIL on 23rd March 2021 in the Supreme Court of Staple stating that the internet shutdown and its subsequent tracking are violative of Articles 14, 19 and 21 of the Constitution of Staple. They challenged that the insertion of S.68 B is unconstitutional and impinges on the Federal structure. Further, they claimed use of VPN as a privacy design parameter should not be prohibited as it protects free speech and avoids unnecessary internet censorship. The State of Thorland filed an application against Trizag on April 24th, 2021 wherein it prayed to the Court to order the release of private data of Mr Fernandes and not limit it to metadata only. Trizag contested this on the ground that that they are protected by safe harbour provisions and since they are not a significant social media company they are not obliged to comply with the Intermediary liability.
20. Several people were arrested in above said incitement of violence and the Trial of Mr Penn is yet to commence. Mr. Fernandes was also arrested in the meantime. Internet Shutdown continues till date, in order to prevent public unrest and to ensure public safety in the State of Thorland. The Federal Government ruled by another national party namely National People's party began talking about imposition of federal rule in the State of Thorland. It also questioned the amendment to the Information Technology Act, 2015. The President of Staple was requested to refer the entire set of issues to the Supreme Court for its Advisory opinion.
21. Few months past the entire incident, Blueberry Company began to improve its relationship

with the farmers after several joint talks and meetings. They further strengthened their position with other workers in their operations and the conditions began to improve according to formal and informal reports. Considering the same, Blueberry filed a petition in the High Court of Thorland stating that all defamatory and unsubstantiated material against the company should be struck down under Right to be forgiven limb of the law of Defamation specifically enacted by the State of Thorland. It argued that, it inherently affects the share price of the Company when listed as well as in the future when it may file an IPO again. Considering this the High Court issued notice in the said petition. The NGO and Trizag filed applications in the Supreme Court for Transfer of the said proceedings. Blueberry has opposed the transfer.

The supreme court of Staple consolidated the petitions and on completion of pleadings has let them for hearing after framing the following issues:

- a) Whether Constitution permits the state impose an Internet Shutdown? Is it constitutionally valid to clamp down Internet services merely on account of the social media posts which are critical of State Conduct?
- b) Whether section 68B the Information Technology Act 2015 is not unconstitutional?
- c) If so, whether the actions taken there under affecting the rights of parties being illegal, are they not entitled to be compensated?
- d) Whether such shut down would not amount to pre-censorship and disabling free speech right of a particular target viz., Trizag? Whether newly added provisions of restrictions under Article 19 (2) are not vague and arbitrary and liable to be struck down?
- e) Whether the Ministry of Electronics and Technology can issue an order for tracing the data relating to an accused to an intermediary? Whether the use of VPN is not a constitutional protection of free speech and a gift of technology?
- f) Whether the Dissenting Brothers can be tried under U.s 147,148,149,109,114,124A, 186 307,341,353,452,500/34. Sections 3 / 4 of the Prevention of Damage to Public Property Act, 1984, sections 13 / 16 / 17 / 18 of the Unlawful Activities (Prevention) Act, 1967 and Section 68A of the IT Act and whether these offences would not mutate against Free Speech Right?
- g) Whether a Private limited company can seek to enforce the right to be forgiven through judicial process?
- h) Whether social media managers and users do not have personal and social responsibility for airing views and opinions which may be unverified, hearsay and defamatory? If so whether the State of Thorland does not have the authority in the interests of Public Order and other restrictions under Article 19 (2) to initiate legal proceedings in this regard?
- i) Whether people promoting or using social media can at all claim the right to Privacy, as against superior concerns of Social and National importance?

NOTE: For the purpose of the Moot Proposition, few important clarifications:

- Participants can further come up with additional issues.
- The Constitution laws of Staple are parimateria to that of the Union of India.
- No COVID related exemptions and orders are applicable to this problem.

