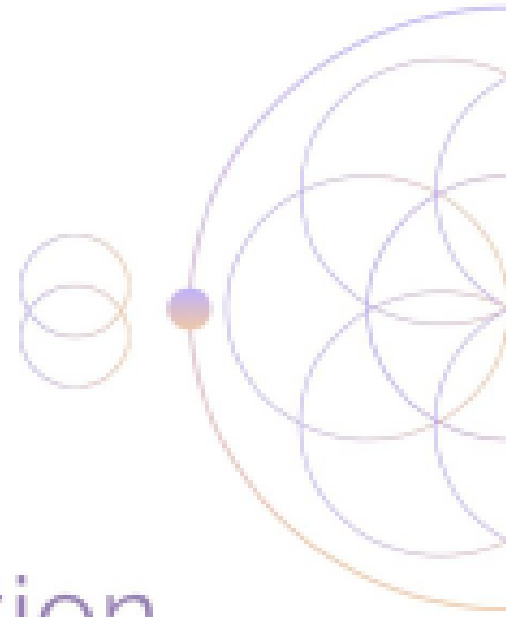




School of Law
Bangalore



PRESENTS

National Virtual Moot court Competition



M Mulla Associates



1st NATIONAL VIRTUAL MOOT COURT COMPETITION



NARSEE MONJEE INSTITUTE OF MANAGEMENT STUDIES, SCHOOL OF LAW, BENGALURU



MOOT PROPOSITION

“Union of Inida” (hereinafter referred to as Inida) is a constitutionally democratic country in South Asia with 135.26 crore population and Relhi as its capital city. Inida has a quasi-federal system and the Constitution and all laws of the Union of Inida are in *pari Materia* to the laws of India. In 2020, a virus outbreak resulted in the death of over 4 lakh people around the world and the same, which was identified as Severe Acute Respiratory Syndrome Coronavirus-2 (hereinafter 'virus') affected more than 2.5 lakh people in Inida and was responsible for the death of more than 8000 people. The disease caused by the virus, identified as COVID-19 *a.k.a.* Corona Virus Disease (hereinafter 'disease'), was declared as a global pandemic by the WHO and is still spreading across the world at a shocking rate.

To control the spread of the virus, the Inida government declared a nationwide lockdown that lasted for 2 months. Partial lifting of lockdown started in the latter half of the second month and the Inida government had allowed inter-district and inter-state travel by road, rail and air modes subject to travellers following the government's institutional and home quarantine instructions.

PLOT 1

The Inida government with a view to safeguard people from contracting the virus and to curb massive spread of virus mandated the installation and use of a mobile application named “Health link”¹ (hereinafter 'application') especially for travel by air and rail. According to the Inida government, the application is intended to enable contact tracing as a means to control the spread of the virus. The government has mandated that the application

¹ For all purposes, 'Health Bridge' shall be construed as India's 'Aarogya Setu' app.

should be mandatorily used by all private and government employees and it has been implemented as part of the country's health surveillance due to drastic increase in the number of positive cases and deaths due to the virus. The government has also promised delivery of smart phones at concessional prices to those who are unable to use the application due to non-availability of smart phones. The application that uses both 'bluetooth' and 'location access' relies on voluntary data collected to discover clusters and take sufficient safety measures to curb spread of virus. Hence the users must regularly update their health status so that community spread can be controlled.

Though the Inida government repeatedly stated that the mobile application “Health link” is in tune with mobile applications launched in other countries for tracing persons who test positive for the disease, an Inida cyber security analyst named Ryan, residing in the capital city of Relhi, made several Facebook audio posts alleging that the mobile application “Health link” which uses both 'bluetooth' and 'location access' cannot be said to be similar to those applications developed by other countries as the applications of other countries do not access user's location and only uses 'bluetooth' for identifying positive cases. The audio posts also alleged that “Health link”, on account of its access to user's location, is a threat to privacy and hence cannot be made mandatory under the guise of health surveillance. The audio posts also stated that the excessive data collected with the help of access to user's location is a severe violation of fundamental rights.

Ryan files a petition before the Honourable Supreme Court of Inida challenging the directions of the Inida government making installation and use of “Health link” mandatory on account of violation of right to privacy. He specifically mentions in his petition that the compulsory instructions to use the application go against the ratio propounded in *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India*.

PLOT 2

The Relhi state police arrested Ryan on account of the Facebook audio posts made by him against the directions of the Inida government making installation and use of “Health link” mandatory and charged him under section 153A of the Indian Penal Code for the offence of causing disharmony and feeling of hatred which disturb public tranquility. During the trial, the trial court directed the investigating agency to test voice samples of the accused with the help of technical experts. Ryan approached the Relhi High Court by way of a writ petition challenging the direction of the trial court to test the voice samples but the Relhi High Court dismissed the writ petition on

account of the precedent set by the Honourable Supreme Court of India in the matter of *Ritesh Sinha v. State of UP (2019)*.

Aggrieved by this, Ryan approaches the Honourable Supreme Court of India by way of an appeal and contends that the decision laid down in *Ritesh Sinha v. State of UP (2019)* needs a recheck as the Honourable Supreme Court of India cannot invoke Article 142 of the Constitution of India to confer power on the trial court to order to test voice samples which is equivalent to invoking Article 142 of the Constitution of India to infringe fundamental rights, especially, right to privacy.

PLOT 3

During the COVID-19 pandemic, the Prime Minister's Office of India (PMOI) received several requests from members of the public to set up an emergency fund that could be used for combating COVID-19 pandemic and other similar situations in the future. Accordingly, the PMOI created the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) with the primary objective of dealing with any kind of emergency or distress situation, like posed by the COVID-19 pandemic, and to provide relief to the affected.

After a month from establishing the PM CARES Fund, PMOI in response to an application filed under the Right to Information Act, 2005 informed the applicant that the PM CARES Fund is not a public authority under the RTI Act.

Immediately after this response to the RTI application, a PIL was filed in the Delhi High Court seeking transparency in PM CARES Fund and a direction to display information in the concerned website regarding details of money received and spent under the Right Information (RTI) Act, 2005.

The PIL was filed by a Delhi based lawyer Dino and though the petitioner contended that the public and especially the COVID-19 victims have a “right to know” about the fund collected, the Delhi High Court dismissed the PIL and affirmed that the PM CARES Fund is not a public authority within the meaning of Right to Information Act, 2005. Aggrieved by this, Advocate Dino has approached the Honourable Supreme Court of India by way of an appeal.

PLOT 4

The government of Inida, as part of partial lifting of lockdown, also allowed reopening of places of worship in addition to allowing all industrial units and places of employment to function with 100% staff.

Though the Inida government had issued Standard Operating Procedures (SOP)², a section of atheists of Inida who are part of a voluntary organization named “Ethics Without Religion” filed a petition before the Honourable Supreme Court of Inida challenging the decision of the Government of Inida to allow reopening of places of worship during the time of an emergency situation posed by the COVID-19 pandemic.

According to the petitioners, the freedom of religion under Part III of the Constitution of Inida is subject to "health" and it is not the right time to reopening places of worship. All the above petitions and appeals have come before the Supreme Court of Inida in the same period and considering the fact that all the petitions and appeals involve issues related to constitutional validity, the Chief Justice of the Supreme Court of Inida decided to hear all these matters jointly before a five judges bench through its virtual platform. All the petitions and appeals are fixed for hearing before the Supreme Court of Inida on 13th September 2020. The parties are free to identify all possible issues and frame contentions accordingly, but not frame issues and contentions on maintainability and admissibility as they can consider all petitions and appeals admitted by the Supreme Court of Inida.

This Moot Proposition is purely a work of fiction and resemblance to any such incidence shall be purely coincidental. The above set of facts is only for the purpose of conducting moot court competition and educational purpose amongst law students. Any representations of the Governments and other institutions or persons are work of fiction only employed for academic purposes. The details on SARS-CoV-2 and COVID-19 available on the WHO website shall be applicable in this case.

(PARTICIPANTS NEED TO FRAME THEIR OWN ISSUES DEPENDING UPON 4 PLOTS. MAXIMUM OF FOUR ISSUES ARE ALLOWED)

Credits to

Dr. Sandeep Menon Nandakumar.

BALLB Hons. (NUALS), LLM (CUSAT), LLM (University of Exeter, UK), PhD (NUALS).

Thank you, sir, for helping us with this, if any participants found contacting him in any manner shall be disqualified.

² Standard Operating Procedures (SOP) to mean the same Standard Operating Procedure issued by the Union Ministry of Health and Family Welfare ahead of opening up of places of worship for the public from June 8, 2020 under Unlock 1.