

Law College Dehradun, faculty of Uttarakhand University

5TH NATIONAL MOOT COURT COMPETITION, 2021

On Constitution, Biodiversity and related Laws

[1-2 MAY, 2021]

MOOT PROPOSITION

1. **Indus**, a country situated in South-Asia, possesses one of the richest biodiversities in the world. Indus got independence from British Rule in August 1947, and since then has been progressing in all spheres of Statehood and life. The country has been traditionally very rich in natural wealth having diverse and abundant flora and fauna, however, during the two centuries of colonial rule, its natural wealth was substantially plundered by the colonial rulers through the use of biased administrative orders and legislations. Yet, with only 2.7% of the world's land area, it accounts for approximately 7-8% of the world's recorded species.
2. Even after independence, *Indus* has been very rich in its natural wealth, with enormity of flora and fauna and for a long time, neither Central Government of Indus nor the State Governments paid much attention for preserving and protecting its forests, rich in biodiversity. It is to be noted that many tribes live in forests of Indus. Naturally, they protect and preserve the forests because they believe that forests are their shelter, home and provider. However, rapid expansion of human habitat and industry, owing to population explosion and industrialization inevitably started affecting the forest cover which resulted in deforestation, among other environmentally degrading activities, which led to significant damage to flora and fauna, many species of which have disappeared over the years. The state of affairs became grave with the passage of time, and owing to rising national and global concerns regarding environmental degradation and loss of biodiversity, the Parliament of Indus enacted laws for protecting wildlife in 1972, thereafter also bringing about an important Constitutional Amendment in 1976 which made imposed an obligation not only

for the State, but also a duty for the citizens to protect and preserve the environment, including the biodiversity.

3. *Indus* is a welfare State, and hence many specific provisions for legal protection and emancipation of the tribal population have been incorporated in its Constitution, originally as well as through Amendments. Additionally, in 2006, a specific legislation relating to forest rights of the tribal population has also been enacted by the Central Legislature.
4. Although *Indus* is a developing country, it maintains its conformity with international standards of environmental protection. It has been a State-member of the *International Union for Conservation of Nature* (IUCN) since 1969, the only international organization in the United Nations General Assembly with an expertise in environmental issues. *Indus* is an important member of the international community that strives for protecting the environment—especially biodiversity. It is a State-party to all mainstream and crucial biodiversity-related International Conventions, viz., the *United Nations Convention on Biological Diversity* (CBD) and *Convention on the Conservation of Migratory Species of Wild Animals* (CMS or the Bonn Convention). In furtherance of the objectives agreed to by *Indus* under these Conventions, the Parliament enacted the Biological Diversity Act, 2002 [hereinafter, '**the Act**'].
5. The Act includes provisions relating to conservation of biological diversity, their sustainable use and fair and equitable sharing of benefits, arising out of biological resources. The provisions relating to equitable profit-sharing, among others, are one of the most important. Many scientists and research institutions await a clear interpretation of these provisions.

I.

6. Mr. Aman, a scientist, is a resident of *New Dalias*, a metropolitan city that is the capital of Indus. He was employed in a company that created pharmaceutical products with medicinal properties, which were easily available with a prescription. However, there generally were few mild side-effects of such medicines which were clearly stated on their cover.
7. Mr. Aman worked part-time with the company's laboratories, while dedicating his remaining time in research, owing to his strong acumen towards it. He consistently endeavored to develop new medicines and preparations which could be used in curing endemic diseases, within the Indus sub-continent. With avid reading, he became increasingly interested in and impressed by the miraculous features of the *Ayurvedic medicinal system*, the medicines of which are mainly derived from plants. Recent policies of Central Government and many State governments are also favoring the development of *Ayurvedic* medicine.
8. In February 2019, a government-hospital (in the North-Eastern part of country) reported cases where several groups of people exhibited symptoms like dry cough, running nose and high fever for over two-weeks. They were diagnosed with and medicated for the seasonal flu that was common in the area during those months. The patients got better at first, but in the sixth or seventh week, body temperature rose to very high levels and the patients died. Before this last stage, many patients had trouble breathing. The transition from the flu-like symptom to the last stage of increased body-temperature and the consequent death, was a maximum of 9 months.
9. 55 deaths were reported from the area within a few months; blood-tests of the patients showed the presence of a deadly virus that was responsible for these symptoms and deaths. The medical community termed this condition/disease as '**Bloodfire**'. There were many ways by which the virus could spread to another individual and even the remotest physical communication with an infected person led to causation of the disease. The disease spread to other parts of the country very quickly and more deaths were reported. Scientists across the country and beyond dedicated themselves to finding a cure for the disease.

10. Most parts of the country were in an imposed lockdown to stop the spread of the disease, while number of diagnosed people increased. A lot of people were scared which led to the formation of a lot of support groups for the patients and their families.
11. Ministry of Home Affairs passed an order invoking the Disaster Management Act, 2005 and the Central Government called for the implementation of Epidemic Diseases Act, 1897, which was duly implemented by various State Governments many of whom announced and notified new “*Precautionary Rules*”. Everything came to a standstill. The result of such a strict lockdown reflected in decline of the economy of the country as many people lost their jobs, especially the *lower-middle* class. One of the cherished rights of the people of Indus is the *right to livelihood*, which was severely affected during the lockdown period.
12. Mr. Aman, after hearing this news, started reading intensively about the *familia* of the causative virus. His research pointed that some medicinal plants in the Himalayan forests, which is one of the globally identified biodiversity hotspots, shall positively culminate in creating the cure for *Bloodfire*. He quit his job intending to move to the forests in the Himalayas, in order to invent the cure. Owing to a contractual agreement with the company he worked for, he was required to work for a minimum period of 7 years for any post-employment benefits. That time not having passed, he was denied all such benefits.
13. Textbook research showed that a flowering plant of the species *Astragalus mustacioides* had properties that purified blood and maintained blood temperature levels. This, when mixed with normal cough and cold curing plant-roots, could cure all symptoms of *Bloodfire*.
14. Hence, he tried to acquire small quantities of this plant but failed to do so. He was not allowed by the police to proceed to Himalayan Region, given the strict lockdown. Consequently, Mr. Aman made an application to the National Biodiversity Authority of Indus in a manner provided under Form I of the Biological Diversity Rules, 2004 [hereinafter, ‘**the Rules**’]. However, since he did not possess the amount of fees specified in the Rules, he included an additional application for the waiver of fees. Around the same time, a U.S. Pharmaceutical Company ‘**Tiscola**’ applied for acquiring another specie of

Astragalus i.e., *Astragalus himus*.

15. The appropriate Authority deemed Aman's application incomplete and hence rejected it without providing him an opportunity of hearing. It was stated that since the application was not complete, non-perusal of the application did not amount to rejection under Rule 14(9) of the Rules. However, *Tiscola* was allowed to have access to *Astragalus himus* which is useful in developing an analgesic drug.
16. Dejected, Mr. Aman appealed to the support-groups of the nearby localities declaring the possibility of a cure for *Bloodfire*. Word spread and an NGO, named '**Spreading Smiles**' dedicated to pro-bono medical care for children, contacted him. He explained his situation to them. The legal counsel for the NGO agreed to offer his legal services to Mr. Aman.
17. Mr. Aman appealed against the aforementioned 'order' to the National Green Tribunal (NGT), that dismissed his appeal preferred on grounds of 'procedural impropriety'. He further appealed against this order to the Supreme Court of the country.
18. The NGO, along with Mr. Aman, also filed a petition in the Supreme Court challenging the constitutional validity of Rule 14(2) of the Rules. They were challenged as violative of Article 21 of the Constitution, as the life of thousands of diagnosed patients and many others were affected by it. They also challenged it on the ground of violating Article 14— dubbing the amount mentioned in the provision as *arbitrary* and *classifying*.

II.

19. The **Bholiya** Tribe is an indigenous tribe in the foothills of Himalayas. They have their own way of life and their culture and traditions that have, since time immemorial, focused around plants and forests. The region inhabited by the *Bholiyas* boasts a huge diversity of flora and fauna. They are predominantly an agricultural community, and their lives—mostly devoid of technology, have been self-sufficient due to their ancient knowledge of utilizing nature to lead a self-sufficient life, without external interference. *Jemej* (scientific name, *Begonia fonli*), a plant grown only in certain regions of Himalayas by the *Bholiyas* is used in the preparation of a unique and effective remedy for high fever and chills. The local '*hakims*' and '*vaidyas*' specialize in synthesizing this as a medicinal drug, which was a part of their source of income. The fruits of the plant, from which the medicinal drug is created, is characterized by potent compounds, notably a chemical found which if consumed (in the form created by the *hakims*) acts as a more efficient form of paracetamol. The leaves, flowers and seeds of *Jemej* have a great potential to cure many diseases if synthesized properly.
20. *Jemej* plant is listed as Endangered on the IUCN Red List of Threatened Species.
21. This species was one of several other species, that formed the other part of the drug, in addition to *Astragalus mustacius*, that could cure *Bloodfire*-symptoms. Until this day, the disease that was soon threatening to turn into a pandemic, could only be cured by curing its symptoms.
22. Certain ceremonies that were unique to the *Bholiyas* also employed the use of *Jemej* flowers and leaves. In weddings, the ceremony wasn't deemed complete without inscribing the name of one's partner on the leaves of that plant. The bridegroom, as a mandatory custom, was to gift the bride a bracelet made out of the flowers of the plant. Moreover, in a list of indigenous festivals, *Jemej* was employed in one way or another.
23. Meanwhile, amid the protests in the country led by the NGO, news spread quickly that there was a potential cure resting somewhere within the knowledge of the National Biodiversity Authority [hereinafter, '**the NBA**']. Accruing to public pressure and urgency of the situation that had now become more substantial, the

Chairperson, NBA, acting *suo motu* and invoking his discretionary powers (vested in him by the virtue of his office) constituted a Committee headed by an independent researcher Llyod Simon, a leading botanical expert, for the purpose of potential bio survey and research. Mr. Simon works for a private firm, **Waynetech Creations**, but was authorized to undertake independent contracts as well. The essential idea behind the dispatch of the Committee was to affirm the claim of Mr. Aman that such a variety of species exists and could be potentially used to cure *Bloodfire* and/or its symptoms.

24. Apprehending that more problems might be raised by Mr. Aman and his peer, the NBA reached out to him and informed him about the dispatch of such a Committee and assured him that if his claim holds true then he would be made a stakeholder in the consequent benefits that follow. Mr. Aman agreed to the proposition of NBA but maintained that he will give his final consent only after looking at the express terms and conditions.

25. Consequently, the dispatch reached the area of inhabitation of the *Bholiyas*. Mr. Simon had become aware, through the members of the Committee he was assigned, that there existed certain medicinal plants in the area. Mr. Simon got in touch with the local heads of the Tribe and explained to them, the grave situation of the fast-spreading disease. They were promised 'due benefits' if they informed the Committee the methods to synthesize drugs out of the *Jemej* plant, among the others. They were promised that the benefits would help in the betterment of their agriculture and living standards. The tribal heads saw this as an opportunity to advance their culture in the rest of the country and with promised credentials, they approached **Bholiya Developmental Board** [hereinafter, referred to as '**BDB**']. BDB was a tribal developmental organization, in the nature of a Non-Governmental Organization, for the *Bholiya* tribe, with educated members. The BDB considered the promise of commercial benefits and intellectual property rights and they decided to consider an agreement. A contract was to be entered into by the parties, according to Section 21 of the Act.

26. Knowledge was shared, and combining Mr. Aman's research finding with the tribe's medicinal knowledge worked wonders. Initial quick and effective results gave NBA the incentive to send more Research Units to the area. Truckloads of

Jemej and other indigenous plants were uprooted and were taken to the nearby laboratories. Soon, the local residents realized that their community was being interfered with and the possibilist approach of the Authority would ultimately destroy their way of life. Also, with absolutely no commercialization of the discovered medicine, no benefits were attributed so far.

27. After 30 days of relentless uprooting of plants, the BDB received the determination of benefit-sharing proposed by the NBA. Dissatisfied, the BDB appealed against this determination in the High Court of Himachal, under Section 52 of the Act, within the prescribed time. The Board claimed that important information was withheld by the agents of the NBA (Mr. Simon and the Committee), and that irreparable loss to the *Bholiya* livelihood and culture vitiates the very essence of the agreement. In defense, it was contended that they are assisting the administration of Indus in curing the *Bloodfire* by utilizing the abovementioned plants, hence working in the larger public interest.
28. However, as the entire country was under a strict lockdown, Courts in Indus were also affected and no physical presence in the courts allowed. In fact, Courts had been working Online, through modes of Video Conferencing.
29. The BDB also filed a separate writ petition before the High Court against the NBA, praying for directions to stop the excessive uprooting of the *Jemej* fields. It claimed that the plant formed a part of their 'culture' and was liable to protection under Article 29 of the Constitution. Meanwhile, NBA is claiming protection under Section 54 of the Act. An additional claim of BDB raised is that 'the right to protect culture' was a Fundamental Right, and hence could not be waived by agreement/settlement.
30. The Supreme Court, in exercise of its powers, withdrew the case from the High Court before itself and clubbed these matters together, including those of Mr. Aman's and collateral petitions.

III.

31. Ramesh is a citizen of Indus and a resident of *New Dalias*. *Bloodfire* had severely affected this part of the country, as there was a huge influx of population in the capital city throughout the year, from various parts of the country—owing to the numerous job opportunities and other facilities. Ramesh is an advocate and specializes in Civil Right matters, and is known to undertake several pro bono cases of Human Rights Violations as well.
32. As a result of the spread of the communicable disease, the Government of *New Dalias* had announced and notified THE DELHI EPIDEMIC DISEASES (MANAGEMENT OF COVID-19) REGULATIONS, 2020. Deriving authority from the Epidemic Diseases Act, 1897, it allows “authorized persons” from taking action against a person violative of these Rules.
33. On May 5, 2020, as a result of having exhausted food supplies, Ramesh stepped outside the Housing Society premises at 09:00 PM. Barely a few minutes had passed, when a few police officers nabbed him. On asking what was wrong, they didn’t respond and restrained him from going elsewhere.
34. Ramesh was arrested by an authorized person from the *Dalias* police and kept in the lock- up overnight. He also alleges that he had been treated brutally by the concerned officers who beat him with blunt objects in custody and also hurled derogatory abuses at him. He was later informed that a “*night-curfew*” was imposed, just a day before the day of arrest and presence of people on Main Streets was prohibited after 08:00 PM as a Quarantine Rule.
35. After 20 hours in custody, Ramesh was released. Prosecution against him is pending. After release, he was shocked to see the state of arbitrariness in implementing the Lockdown/Quarantine Guidelines. On reading up, he found that the authorizing/parent Act, i.e., the Epidemic Diseases Act, 1897 provides no guidelines or reasoned authority under Section 2 for the framing of regulations by State Governments. He concluded that the Act is filled with ambiguity, excessive delegation and provides a huge scope for unguided discretion in administrative action. In addition to these, the law included undefined key terms and is unsuitable in a post-Constitutional right-based civil society and a developing nation.

36. On the aforementioned grounds, Ramesh challenged the constitutional validity of the Epidemic Diseases Act, 1897 and the imposition thereof, in the High Court of *New Dalias* under Article 226 of the Constitution of *Indus*.

37. The High Court of *New Dalias* dismissed the petition after preliminary perusal, without hearing the case on merits. The Court's order read as:

“It is completely beyond the powers of a Constitutional Court to direct the Parliament or a State Legislative Body to enact a law for a purpose. Judges can't be legislators. In difficult circumstances like the present, the only law available for redressal cannot be struck down.”

The aforementioned order was passed during an Online Hearing.

38. Now, Ramesh is seeking to file a Special Leave Petition against the order of dismissal by the High Court. The appeal presents an additional concern that if proper methods are not employed in the containment of the disease, there is a high probability of global consequences.

39. The matter, while pending before the Apex Court, has been clubbed with the aforementioned matters and the Court shall hear them together.

40. The Court has scheduled to hear the matter May 1, 2021 onwards. The spread of the disease of *Bloodfire* still subsists in the country.

NOTE:

- A. The laws and legal and social set-up of *Indus* is *pari materia* to the democratic republic of India.
- B. All facts and circumstances mentioned in this Moot Proposition are illustrated purely for the purpose of academic discussion and dialogue on legal issues and any arguments mentioned do not represent the view of the Institution/University. This Proposition also doesn't seek to make any direct or indirect reference to any tribe or community of people; all nomenclature of people and communities employed herein are imaginary and any resemblance to any actual people and tribes is purely coincidental.

ISSUES BEFORE THE COURT

- I. Whether the non-perusal of an incomplete application under Rule 14 of the Biological Diversity Rules, 2004 amounts to an 'order' or 'determination' within the meaning of Section 16(j) of the NGT Act, 2010 and is hence appealable?
- II. Whether Rule 14 of the Biological Diversity Rules, 2004 is constitutionally valid?
- III. Whether the NBA is a 'State' and whether its decisions are protected as 'sovereign' functions?
- IV. Whether the non-disclosure, as alleged by the Developmental Board, vitiates their contract?
 - a. Whether the acts of the NBA amount to violation of Article 29 of the Constitution?
- V. Does the State, via the NBA, stand responsible/accountable for harm to an endangered species?
- VI. Whether the Epidemic Diseases Act, 1897 and the implementation thereof is constitutionally valid?

Note:

- 1. The petitioner/appellant party (-ies) may frame one additional issue, in addition to the Issue of Maintainability.**
- 2. For the purposes of the Competition, it shall be deemed that the issues have been framed by the parties and accepted by the Court.**