

1ST NATIONAL ANIMAL LAW MOOT COURT
COMPETITION, 2016

MOOT PROBLEM

Organised By:

Centre for Advanced Study in International Humanitarian Law, (CASH)
&
Rajiv Gandhi National University of Law, Punjab

In Collaboration With

International Council of Jurists, ICJ
&
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Humane Society International, HSI



Humane Society International

Versus

Union of Swatantra & Ors.

1. **The Kind Monarch:** The Kingdom of Great Barrier had colonized half of the world during the peak of imperial expansion. Ever since Suu Lock became their new monarch, she strived to establish a humane order by giving independence to all colonized territories one by one. The Kingdom under her reign led from the front on the stage of world diplomacy. The Kingdom signed almost all such international treaties and conventions which were recognized as customary international law.
2. **Mechanism of Independence:** To carry out the orders of their Monarch, the government of the Kingdom of the Great Barrier sought to identify territories on the basis of a common connection, be it language, culture, religion or belief-system, and accordingly marked territories as a nation and granted them independence by legislative enactment of the Parliament of the Kingdom. These legislations mandated all independent territories to recognize the Universal Declaration of Human Rights as well as basic rights of all living organisms, in their respective laws. These legislations also contained a three year supervision period by the Kingdom during which period the new nations were run jointly by the Kingdom and elected governments of the new territories, after which complete independence was granted to the new nations. Most of these new nations adopted the welfare democracy model with an elected head of the State.
3. **Independence of Swatantra and Paratantra:** The State of Paratantra got independence on the 14th of August 2007, just a day before their neighbour Swatantra. Both developing States enacted written constitutions and in Art. 3 of the Constitution, both states made a solemn acceptance of all the international treaties and conventions which the Kingdom of the Great Barrier had ratified, mutatis-mutandis. Both nations received full independence by August 2010 and remain low on the human development index.
4. **Animal Worship:** Historically, animal worship was highly prevalent in the area and the only difference between the people of the two nations was regarding their belief systems, while the people of Swatantra believed in polytheism, the people of Paratantra believed in monotheism. Their belief system and religions centered on animal worship, and while the Swatantras worshipped all animals- each for a special quality, the Paratantras worshipped

only the Whale-God, a half whale-half human form of a deity which is supposed to have protected the people from the perils of the ocean and which was supposed to be the real ruler of the people. The Whale God was also one of the most important deities in Swatantra. Both nations continued their long tradition of not killing animals for meat, but to consume meat of animals which die on their own or are not killed for the reason of consumption.

5. **Beaches of Padmaprastha:** The beaches of Padmaprastha were pristine white sand beaches near crystal clear waters. The beaches ran across the territory of both land masses, and due to the high tourist activity, they were a rich source of revenue. People from the power corridors and celebrities could be seen spending their time on these beaches, which thus also became liaison joints for those who had any concern with the rich and the powerful.
6. **HydroCarbon Petroleum Group Ltd.:** The HydroCarbon Petroleum Group Ltd. [HPGL], a company which has existed for over hundred years, is one of the biggest corporates existing in the area, with multinational businesses and having its offices in almost all important capitals of the world. Its promoters include both Swatantras and Paratantras, with majority ownership concentrated with Swatantras. Due to this reason, at the time of independence, the HydroCarbon Petroleum Group Ltd. chose to recognize its main registered office in Swatantra and accepted the Swatantra jurisdiction. The HPGL has several private properties with beach view at Padmaprastha and allows Politicians and powerful civil servants of both nations to use these facilities gratis.
7. **Transitional Disputes:** One of the big disputes during the transitional period after independence was regarding the beaches of Padmaprastha. When no mutual settlement was forthcoming between Swatantra and Paratantra regarding the division of beaches, it was decided that the beaches will be measured from east to west, and be divided by a north-south fence to be erected at what was decided by the Kingdom of the Great Barrier as the boundary. Across the length of beaches, there were several special spots which allowed whale sightings and therefore had a great importance for the people.
8. **The Paliata Spot:** The best sightings happened at a spot called Paliata and both nations had lobbied for getting this spot in their territory at the time of independence. However, the Kingdom of Great Barrier decided that the Paliata spot will go to Swatantra, while three other important spots will go to Paratantra. This not only led to the border becoming zig-zag, but also led to an attempt to forcibly capture the Paliata spot by Paratantra. The

attempt was massively retaliated by Swatantra and there was a heavy loss of life and property.

9. **Joint Control:** When the war was about to become nuclear, the Kingdom intervened and directed that the captured territory including the spot of Paliata would remain under joint control of the two new nations till they do not find an amicable solution. The situation continues as such till date.
10. **Heavy Militarization:** This led to heavy military presence and establishment of a fortified military outpost by both the nations in the area on both sides of the boundary and the area of joint control.
11. **Festival of Palikattu:** The high point of the Padmaprastha's beach tourism used to be around the winter solstice when the ocean levels would become abnormally high and it was a belief that during this period the spirit of the Whale God visits to bless the followers at the Paliata Spot. This day was celebrated as the Festival of Palikattu.
12. **The Event Of Sorrow:** About three hundred years ago, on the eve of the Palikattu, some Paratantras sighted a lone whale calf dying near certain dolphins. This led to a great discomfort among the Paratantras who felt that they have allowed harm to their god figure and a three day mourning was observed by the Paratantras.
13. **Daiji from Sapan:** Daiji from a southern town called Sapan was the Supreme religious leader of the Paratantras, and he issued a fatweh to all Paratantras to kill dolphins on the Palikattu and invite the Whale-God in water which is red from the Dolphin blood as a fitting revenge against the enemy and the evil. What began as a religious edict, over the years turned into a worship method for the Paratantras and a nightmare for dolphins.
14. **The Daiji Worship Method:** Every year, a group of expert fishermen were selected by the Religious leader, who carried out the fatweh and used the traditional steel pipe-mallet method. They would spot a pod of dolphins, lower a steel pipe and strike the pipe with mallets at strategic points around the pod to herd them towards land. It disrupted the natural sonar of dolphins, and their sense of navigation. Once herded, the area is closed with fishing nets and the agitated dolphins are allowed to calm down. Then, the dolphins are caught one at a time and killed by cutting the dolphin's throat, severing blood vessels, and causing death due to exsanguinations. These steel pipes and mallets are manufactured as per conventional techniques as was directed by the Daiji of Sapan. The contract for the manufacturing has remained for decades with MetalCarbon Technologies Pvt. Ltd. a fully owned, fully funded subsidiary of HPGL incorporated in Paratantra.

15. **Protest by Swatantras:** The Swatantras over the years had opposed this Daiji worship method, as for them the Dolphin-deity was the deity of intelligence and the method of killing was extremely cruel and degrading. The Paratantras have cited religious reasons and use of dolphin as a food in response.
16. **Dolphin Processing Plants:** Due to the high killings of dolphins, commercial entities saw a great market for processing dolphin meat in the area, and several industries of meat processing were established. Given the high profit and easy availability of raw material, BioCarbon Pvt Ltd, also a fully owned, fully funded subsidiary of HPGL incorporated in Paratantra and in the business of meat processing for years, also established a unit in the area.
17. **Oil and Gas:** During early explorations on the Swatantra side, deep sea Oil and Gas deposits were found, but it required heavy investment to study the continental shelf and related data before wells could be dug and hydrocarbon could be taken out. Permissions were given to several companies for exploration in 2011, and due to its close connections with the ruling powers, the HydroCarbon Petroleum Group Ltd. got the highest number of contracts. In early 2012, HPGL sought permission to establish a seismic gun manufacturing unit close to the Padmaprastha beaches on the Swatantra Side.
18. **Palikattu of 2014:** During the Palikattu of 2014, there were an unnaturally high number of marine mammals sightings, and both whales and dolphins were sighted in very high numbers. This led to a belief of great happiness amongst the people, who thought that the high number is directly correlated to the blessings of their deities. It also resulted in a higher than usual kill of the Dolphins and the meat processing industry was the happiest amongst all.
19. **Humane Society International:** The Humane Society International is one of the only international animal protection organizations in the world working to protect all animals—including animals in laboratories, farm animals, companion animals, and wildlife. Due to its multi-jurisdiction work, it incorporates itself in a legally recognised entity in each jurisdiction. In the Union of Swatantra, HSI works as a registered society. HSI made thorough investigation into the higher sightings and found out that to appease people, the President of Swatantra had directed its armed forces to herd marine mammals especially whales and dolphins to the Swatantra side. For this purpose, special Seismic Guns, Side-scan Sonars, Deep-tow Sonars supplied by HPGL were employed by the Swatantra Navy. However, during the final stages of the process of herding from deep sea

towards land, it was realized that the equipment went out of control, and instead of Swatantra side, a higher number of mammals concentrated on the Paratantra side. There were news reports that this failure of equipment was deliberate and controlled by highly sophisticated satellite guided technology.

20. HSI had filed a petition in 2012 before the Supreme Court of Swatantra praying for mandamus against State to proscribe establishment of any seismic gun manufacturing unit in Swatantra. Recognizing that seismic guns can cause a lot of problems for marine animals, the Supreme Court accepted the prayers and granted the mandamus. This did not deter HPGL, which started importing the equipment used for hydrocarbon exploration. The Court was again petitioned, but the Government cited economic interest and the Court directed the Government to ensure that the activity is not beyond “bare minimum” and also directed for suitable alternatives to be explored.

21. **Palikattu of 2015:** During the Palikattu of 2015, no whale sightings happened, which caused a great agony to the people; it also resulted in a catastrophe on the tourism industry and caused a cascading domino effect on the economy. The President of Paratantra, directed their forces to find whales at any cost and bring them to the sighting spots in Paratantra to appease the populace in a nation which was going to elections in the coming year. However, no whales could be found in deep sea. Environmentalists world over blamed this on “the callous and highly culpable approach adopted by both Swatantra and Paratantra, their state agencies and their greedy corporates”.

22. **The Holocaust Of Acoustics:** Given the past events, the HSI again filed a petition before the Supreme Court of Swatantra against HPGL and the Union of Swatantra. It prayed inter-alia that:

- a. HPGL and its subsidiaries are one entity in law for the purposes of prosecution of the present matter;
- b. Based on prayer (a) above, it prayed:
 - i. HPGL is liable for no whale sightings in 2015 due to the totality of its activities including use of tortuous equipment, calculated failure of equipment benefitting its own subsidiary etc.
 - ii. Use of any technique which results in cruelty on animals is to be declared illegal;
 - iii. No company incorporated in Swatantra can actively or passively support the

Daiji method as Dolphins are sacred deities in Swatantra, and it amounts to violation of constitutional rights;

- iv. Time has come to proscribe use of geo-blasting and other such techniques which result in trouble for marine life.
 - v. An assessment of damage be done by a Special Investigation Group (SIT) to be appointed by the Supreme Court and based upon the findings of the SIT, prosecution of the wrongdoers be done, and compensation and damages be directed to be paid by HPGL.
- c. In alternative and without prejudice, if the Court declines prayers above; it is prayed that
- i. HPGL be declared vicariously responsible for the activities of its subsidiaries;
 - ii. Union of Swatantra be directed to enforce the law strictly and prosecute HPGL for all illegal activities done by it.

23. In response, HPGL and Union of Swatantra as respondents prayed to the Court that:

- a. Before declaring any technology illegal, an assessment of cost-benefit analysis in the context of environment-development paradigm is essential, which having not been done in the Public Interest petition, it is liable to be dismissed with costs;
- b. HPGL and its subsidiaries are different entities in law, and there cannot be any extra –territorial application of Swatantra Law;
- c. HPGL is not responsible under the extant Swatantra law for the acts or omissions of its subsidiaries;
- d. Corporate Veil cannot be lifted;
- e. No ban can be imposed on the present methods of hydrocarbon exploration;
- f. While dolphins are undoubtedly sacred under the Swatantra law, any adventure into the pipe-mallet method may result in acrimony between the two nations, as the Daiji method is very sacred for the Paratantras and comity of nations must be maintained at any cost as mandated under the Constitution;
- g. Swatantra Constitution directs for a separation of powers, and any of the prayers if granted by the Court would be venturing into the domain of the Executive and the Legislature which is impermissible under the Constitution and the Court must draw a ‘Lakshmanrekha’ for itself;

24. Pleadings are complete, and the matter has been posted for hearing before a Constitution

bench by the Supreme Court of Swatantra.

25. Subsequently, similar petition was preferred against the subsidiaries of HPGL and other companies doing similar work; as well as the Union of Paratantra by some activists before the Supreme Court of Paratantra. In the motion-hearing, the Court found a prima-facie case of illegality, but the counsels for the companies persuaded the Court to await the outcome of the proceedings before the Swatantra Supreme Court.

Nota Bene:

- a. All references, actual, deeming or fictional; are fictional. The legal system and legal history of India, applies *as it is* to Union of Swatantra and Paratantra, with all its laws (including subordinate legislation), and judgments. The Supreme Courts of Swatantra and Paratantra function in the same manner like the Supreme Court of India.
- b. Participants stand advised to devise a “litigation strategy”. The issues can be argued in alternative/without prejudice, be divided into sub-issues, **and can be added to or amended upon**. It is permissible to concede issue(s) at the time of oral arguments subject, however, to appropriate explanation readily available on the query of the bench. However, the written submissions must address all the issues. After the submission of the memorials is complete, a list of issues that can be argued by either side will be published on the competition web-page.
- c. Any citations, without actual para/page references, will invite negative marking. Unnecessary citations and *passim* references are to be avoided. In case of oral arguments, primary references for all case-laws being referred **is mandatory** and no participant will be allowed to cite a case-law from a secondary source like text-books or commentaries. Primary reference may be made to select treatises which are treated as authorities in their own right.
- d. The moot problem is the way it is, with full application of the principle of “*as is, there is...whatever where is*”. No queries or requests for clarifications will be entertained.
- e. The moot problem is drafted by **Mr. Rishabh Sancheti**, Advocate, Supreme Court of India. All participating teams are restrained from communicating with Mr. R. Sancheti in relation to moot problem and violation of same will lead to immediate disqualification.