



8th RMLNLU – SCC ONLINE®

INTERNATIONAL MEDIA LAW MOOT

COURT COMPETITION, 2020

February 28 – March 1, 2020

MOOT PROPOSITION

Statement of Facts

1. The Democratic Republic of Flavia is the 2nd most populous country in the world with a population of about 1.03 billion people. Article 19 of the Flavian Constitution guarantees the fundamental right to freedom of speech and expression subject to the restrictions of public order, morality, national security, defamation and incitement to an offence. In 1953, the Flavian Supreme Court has declared the freedom of the Press as a fundamental right. Despite the guarantee of free press, it is often alleged that the press has not been able to function as freely as it wishes to. The World Press Freedom Index in its Report of 2019 ranks Flavian press as 124th among 180 countries.
2. The Democratic Republic of Flavia shares its northern border with the Federation of Rastow. The region of Kazalia is the northern most region of the Democratic Republic of Flavia. In view of its strategic importance, Kazalia is the only region in the Democratic Republic of Flavia to have a ‘Special Category Status’. The region of Kazalia, known for its scenic beauty and abundant natural resources, has been the subject matter of a long standing territorial dispute with the Federation of Rastow. Since 2008-09, Kazalia has seen the rise of secessionist movements resulting in severe deployment of the armed forces in the area and fights between the secessionists and the army. The official statistics released in 2018 showed that nearly 2000 people have lost their lives in Kazalia as a result of the insurgency. Over the last decade, the insurgency in Kazalia has escalated into the most important internal security issue of Flavia.
3. The Presidential Elections of 2017 was a watershed moment in Flavian history. Mr. Asurto Mosante led National Democratic Party (NDP) swept the elections winning 252 of the 300 seats in the National Assembly. Prior to entering politics and announcing his candidature for Presidency, Mr. Mosante was a real estate tycoon. His AZM Group was engaged in the building and renovation of luxury hotels, golf courses as well as modernisation of heritage sites and buildings. His entry into politics was unexpected and within a short span of time he rose to be the leader of the NDP. The political commentators have described his Presidential campaign of

2017 as very aggressive, built on hyper-nationalism and polarisation. It was alleged that massive finances were pumped into various media houses to ensure that their news focussed exclusively on the campaign of Mr. Mosante.

4. In the December 2018 report of the Media Rights Council, an independent think tank of media organisations in Flavia, it was observed that ever since Mr. Mosante came to power, the attacks against journalists by his supporters have increased. It was also noticed that the coordinated hate campaigns waged on social networks against journalists who dare to speak or write against Mr. Mosante and his Government are alarming. In July 2019, Section 500-A was introduced in the Flavian Penal Code making the defamation of the President a punishable offence. The relevant text of this Amendment is set out in **Annexure-I**. The amendment was widely criticised as being intended to stifle the legitimate criticism of the functioning of the Presidency and the Government.
5. On 1st December 2019, Mr. Mosante announced the decision to abolish the ‘Special Category Status’ of Kazalia. Mr. Mosante stated that the historic decision was taken to further the integration of Kazalia to Flavia and thereby defeat the secessionist forces in the region. He further stated that the move was also to ensure that Kazalians are not deprived of the fruits of his development policies. Immediately before the announcement, mobile and internet services in Kazalia were disconnected. All form of protests in Kazalia were banned for 15 days. The decision was met with mixed reaction in the rest of Flavia. Media reports on the situation in Kazalia after the announcement were sketchy. Majority of the print and electronic media channels reported that the situation in Kazalia was under control and there are no visible sign of protests in Kazalia.
6. Mr. Dolfopa Sorial is a very reputed journalist of Flavia. He is the Editor in Chief of the newspaper ‘The Flavian Express’. The Flavian Express is known for its honest coverage of controversial issues. In 2013, a group of journalists of the Flavian Express led by Mr. Sorial unearthed the massive corruption by the then Government in a defence deal. Mr. Sorial through his editorials has been very critical of the Mosante regime from its very beginning. In 2017, the Flavian Express introduced a page in its daily newspaper as well as in its online edition called the ‘Open Book’, wherein anyone could anonymously post/publish articles criticising and complaining

about the activities of the Government. An independent investigation conducted by the Press Association of Flavia revealed that about 50-55% of the anonymous news published in 'Open Book' has been true.

7. On 15th December 2019, an anonymous article appeared in the print edition as well as in the Online Edition of 'Open Book' page titled '**Family First: The Great Kazalia Land Scam**'. The anonymous article, inter alia, said as follows:

“One important consequence following the abolition of the Special Category Status of Kazalia is that not only the permanent residents of Kazalia but outsiders can also now purchase property in Kazalia. Mr. Mosante, although may not be officially associated with his AZM Group, still takes an active interest in its affairs. After he has become the President of Flavia, his son and son-in-law, who are currently the President and Vice President respectively of the AZM Group have acquired contracts for renovation of luxury hotels in many places using his influence. Immediately after the abolition of the Special Category Status, on 7th December, the AZM Group and real estate companies close to them have acquired large tracts of land in Kazalia for construction of a heritage hotel. The AZM Group has also been given contract, without following any legal procedure, for renovation of the historical Kazalia Palace. Sons and daughters of certain ministers under Mr. Mosante have also been beneficiaries of this scam.

In effect, the abolition of Special Category Status was for the personal gains of the President and his family. It was a large scale organised fraud. The Opposition, which has till now been shown to exist only on paper, may hopefully, hold the President and the Government accountable for this legalised fraud. If not, the citizens must protest against this corruption and nepotism”

8. The publication of the article was followed by massive demonstrations in Kilmonack, the capital of Flavia and in many other places. The Opposition parties demanded an investigation into the allegations. In the Parliament, Mr. Tom Doniphon, one of the leaders of the Opposition called Mr. Mosante 'a liar', who put the business interest of his family before the national interest. In a function attended by the President, there were jeers during his speech and the crowd shouted "Mosante is a fraud, a liar, a national disgrace". This resulted in a fight between the

supporters of Mosante and the opposition resulting in the death of five protestors and injury of many.

9. The publication of the news also resulted in violent protests in Kazalia. The Flavian Army had to intervene and in dealing with the protestors the army had to open fire in many places resulting in the death of about 25 people. The leaders belonging to the Opposition Parties in Kazalia were arrested and many protestors were detained under the preventive detention law. Internationally, the Federation of Rastow attempted to take the developments in Kazalia before the United Nations but failed to generate sufficient attention from the international community. The Flavian Intelligence Agencies have also warned about the possibility of secessionist forces being actively aided by Rastow to create instability in the already chaotic Kazalia and other regions of Flavia.
10. In the above backdrop, the Government of Flavia sought an order to restrain and prohibit the print and electronic media from publishing any information or news on the situation in Kazalia till such time normalcy is restored in Kazalia. By a judgment dated 1st January 2020, the High Court of Kilmonack restrained and prohibited the print and electronic media from publishing any information on the situation in Kazalia till such time normalcy was restored. The High Court reasoned that such a restriction was necessary in the interest of national security and maintenance of public order. Certain media houses preferred an appeal against the said judgment which was dismissed by the Supreme Court on 15th January 2020.
11. The President strongly denied the allegations of the news dated 15th December and said that Mr. Sorial was acting in tandem with the opposition parties to tarnish his reputation. On a complaint by Mr. Mosante, The Flavian Express and Mr. Dolfopa Sorial were prosecuted for defamatory allegations against the President and for the offence of Sedition. The definition of Sedition under the Flavian Penal Code is provided in **Annexure-I**.
12. As the prosecution of the case began, the Criminal Court of Kilmonack by its order dated 20th January 2020, ordered the Flavian Express and Mr. Sorial to reveal the identity or email address of the author(s) of the anonymous article. Mr. Sorial refused to communicate the information sought for and stated that as a responsible journalist it was his duty to protect the anonymity of the author(s) of the article. The

Court has accordingly sentenced him for obstruction of justice. The decision was challenged before the Appellate Court, which affirmed the same. The matter is now in appeal before the Supreme Court of Flavia as **Criminal Appeal No. 62 of 2020**.

13. In the course of the trial, Mr. Sorial requested for access to certain official documents to substantiate the allegations in the article. These documents included:

- (a) The deliberations in the Government preceding Mr. Mosante's announcement abolishing the Special Category Status of Kazalia;
- (b) The deliberations in the Government leading to the decisions of allotment of land in Kazalia after 01st December 2019 and the contract of renovation of the Kazalia Palace in favour of the AZM Group
- (c) The details of the assets of the President and his family members.

14. The Government refused access to the documents. **Document no. (a)** was refused on the ground of national security and being prejudicial to the sovereignty and integrity of Flavia. **Document no. (b)** was refused on the grounds that they relate to third parties in the proceeding and that the Government is not under any obligation to disclose such deliberations under the Right to Information Act of Flavia, which is pari materia to the Right to Information Act of India. **Document no. (c)** was refused on the ground of violation of privacy of the President and his family members.

15. The refusal to grant access to official documents was challenged before the Appellate Court on the ground that it prevented Mr. Sorial from proving the truth of the allegations of corruption in the article. The Appellate Court affirmed the judgment of the Court below. Aggrieved, Mr. Sorial has preferred an appeal before the Supreme Court of Flavia as **Criminal Appeal No. 85 of 2020**.

16. At this stage, on the advice of their lawyers, The Flavian Express and Mr. Sorial decided to challenge the constitutional validity of the provisions under which they were charged. It was contended that Sections 124-A and 500-A of the Flavian Penal Code violate the freedom of speech and expression guaranteed by the Constitution by stifling the legitimate criticism of the Government. Alternatively, they also prayed that even if the Sections are held to be constitutionally valid, their prosecution is an abuse of the process of law as the facts do not attract the offences alleged against them. These reliefs are claimed in **W.P. No. 107 of 2020**.

17. While so, on February 5, 2020, a news article appeared in the Flavian Express titled **'The Never Ending Troubles for Kazalia'**, which read as under:

“Locals say deployment of armed forces has increased in the last one month. The mobile and internet connectivity has still not been restored in Kazalia. Sources in the Flavian Interior Ministry say that if it is restored, it will result in circulation of fake news and aggravate the already tense atmosphere in Kazalia. There is a deep distrust among the Kazalians that Mr. Mosante has cheated them. The Government and Mr. Mosante does not want anyone to know of this and is attempting to create an image in the rest of Flavia that “All is Well” in Kazalia.

.....while rest of Flavia may be celebrating a very Happy New Year, millions of their brethren in Kazalia are denied of their basic rights since December 2019. A poor policy decision actuated by personal gains has resulted in this trauma for the millions of Kazalians.”

It was the first major news on the situation in Kazalia after the order of restraintment by the Supreme Court on 15th January 2020. The Government of Flavia promptly approached the Supreme Court for punishing and imprisoning Mr. Sorial and other editors of the Flavian Express for having committed a breach of the order of the Supreme Court. Mr. Sorial and the editors filed a Review Petition contending that the indefinite continuance of the order of 15th January 2020 is against the constitutional guarantee of free speech. The Supreme Court agreed to reconsider the issue. This relief is claimed in **R.P. No. 13 of 2020 in CIV. APP. 17 of 2020.**

18. The Supreme Court has constituted a Special Bench comprising of all its nine Judges to reconsider the validity of the restraintment order sought by the Government. In a preliminary hearing before the Nine Judge Bench, a specific question was posed by the learned Judges as to the time within which the Government expects normalcy to be restored in Kazalia, the Attorney General, on instructions, has submitted that the Government expects it by end of March or by mid- April. The said statement was recorded. The Special Bench has also agreed to the request of Mr. Sorial to consider

the Criminal Appeals and Writ Petition filed by him. Accordingly, the Special Bench has raised the following issues for consideration:

- i) Whether the Court order directing Mr. Dolfopa Sorial to reveal the identity of the author(s) who posted the anonymous article and punishment for refusal to communicate the requested information is illegal and violative of the freedom of the press?**
- ii) Whether the refusal by the Government to grant access to the requested official documents is valid?**
- iii) Whether Sections 124-A and 500-A of the Flavian Penal Code are violative of the fundamental right to freedom of speech and expression?**
- iv) Whether the prosecution against 'The Flavian Express' and Mr. Dolfopa Sorial is liable to be quashed?**
- v) Whether the order of restraintment sought by the Government on publication of news from Kazalia is valid and enforceable?**

19. The Supreme Court has posted the matters for final hearing on 25th February, 2020. In view of the importance of the questions involved in this matter, the Supreme Court has granted liberty to the counsels to cite judicial decisions and relevant legal principles from all leading jurisdictions including supranational courts in support of and against the propositions that are going to be canvassed by them. The Supreme Court also observed that since Flavia is a signatory to the International Convention on Civil and Political Rights (ICCPR) and has ratified the same, judicial decisions interpreting the relevant provisions of ICCPR is also entitled to great weight in considering the issues raised in this case.

ANNEXURE-I

500-A. Defamation of the President of the Republic

(1) Whosoever publicly defames the President of the Republic, in a meeting or through the dissemination of written material shall be liable to imprisonment from three months to five years.

(2) The penalty shall be imprisonment from six months to five years if the act constitutes an intentional defamation of the President.

(4) The offence may only be prosecuted upon the authorisation of the President of the Republic.

Explanation 1.- For the purposes of sub-section (1), 'written material' includes audio-visual media, data storage media, illustrations and other depictions.

Explanation 2.- For the purposes of sub-section (2), whosoever intentionally and knowingly asserts or disseminates an untrue fact related to the President of the Republic, which may defame him or negatively affect public opinion about him or endanger his creditworthiness publicly, in a meeting or through dissemination of written materials is said to commit the offence of intentional defamation of the President.

124-A.- Sedition.- Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred to contempt, or excites or attempts to excite disaffection towards the Government established by law in Flavia, shall be punished with imprisonment which may extend to three years or with fine.

Explanation 1. The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

Explanation 3. Comments expressing disapprobation of the administrative of other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.