



**First Prof. N. R. Madhava Menon  
SAARC Mooting Competition & Law Students Conference  
2016**

*Organized By :*

**LLOYD LAW COLLEGE**

Greater Noida - U.P.

**&**

**MILAT**

**MENON INSTITUTE OF LEGAL ADVOCACY & TRAINING**

**Kerala**



**Moot Proposition for Indian Round**

*This Moot proposition has been formulated by **Mr. Ravi Prakash**, Advocate, Supreme Court of India the Indian Round of First Prof. N.R. Madhava Menon SAARC Mooting Competition & Law Students Conference, 2016. This Moot Proposition has been formulated solely for the purpose of this competition for furthering the academic exercise.*

**First Prof. N. R. Madhava Menon**  
**SAARC Mooting Competition & Law Students Conference**  
**2016**

**Moot Proposition**

1. The Republic of Indistan, a South- Asian economy, having a population of over 100 million people shares its international border with 8 different countries. It is a highly diversified economy, having rich biodiversity, flora, fauna and presently had been one of the favourite destinations for FDI and other economic investments. It is aptly mentioned as 'bright spot' in the emerging economies because of the substantial policy reforms undertaken by the Govt. of Indistan to alleviate the large section of its population from poverty, illiteracy, and prevailing superstitions. There has been a new wave of rationalism and 'quest of scientific enquiry, humanism and the spirit of inquiry and reform' to achieve 'equality of status and of opportunity'.

2. The supremalex of republic of Indistan is the 'Constitution of Indistan' which has been framed by the Constituent Assembly. The constitution- framers of republic of Indistan, mindful of socio- economic conditions of the country, realizing the aspiration of its citizens in an independent Indistan – has framed a constitution which has not only guaranteed certain inalienable fundamental rights, contained the principles of welfare state rather than also outlines the objectives and vision of socio- economic development in terms of certain Directive Principles of State Policy. The Constitutional, legal and policy framework of Republic of Indistan are similar to the Republic of India.

3. The Chairman of the Constituent Assembly at the end of making of the Constitution solemnly affirmed and promised as:-“...To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions, hunger and diseases; to abolish distinction and exploitation and to ensure decent conditions of living. We are embarking on a great work.”

The shared dreams and vision of the Constitution of Indistan as outlined by the makers of Constitution; as embodied in the preambular goal, DPSP and Fundamental Rights has been a distant dream even after sixty-five years of constitutional governance. The successive Governments at Centre and States have rolled out many programs in order to bring

*Moot Proposition for Indian Round*

equality, justice (social, economic and political) to its citizens. But, due to lack of coherent policy and adequate infrastructure including exact mapping of its demography, the progress made in living conditions of its majority population was still unequal in its outcomes.

4. The self-reliant economic progress of Indistan, had been largely due to state controlled economy and through its public sector with diversified social-security schemes including Education, Health, Transportation. The successive Govts. of Indistan have taken various measures to nationalize and promote the development of those economic sectors which were of public importance and had a significant role in delivering large scale welfare services. This was coupled with a heavy taxation scheme.

5. Over a period of time keeping in tune with international developments and moving away from State regulated economy the State of Indistan, began to focus on social and economic development of the deprived and backward sections of the community by addressing enhancement of capabilities, and promotion of opportunities in economic activities. The increasing demands of compliance with human rights and the need to identify deserving target groups and sections of the community led to need for formulation of scientific, technically relevant tools and measures to facilitate effective implementation of State measures.

6. The importance of identifying and designating target sections of the community, thus became a major area of concern and endeavor. Coupled with this was the general need to facilitate citizens with identification parameters, of general and particular use in matters of accessing education, healthcare, travel security, and tourism etc.

7. The Government of Indistan thus understood that promotion of social justice and equality as well as facilitating comfort and security for the citizens, the instrumentality of citizen identification would be integral and essential.

8. That the Govt. of Indistan based on recommendations of various expert panels decided to issue unique identification numbers to such individuals to ensure that the benefits of all Government sponsored schemes and measures reach to right person and not misused. The Central Government decided to issue identification numbers to all residents in Indistan and to certain other designated persons.

9. It is significant to note that the executive order by which UIDAI was established envisaged that the unique identification number were to be issued not only to the citizens

*Moot Proposition for Indian Round*

rather to all residents. Several international organizations and NGOs working for promotion of universal human rights appreciated the effort of Govt. of Indistan towards extending the benefits to all residents and not confining it to citizens alone.

10. The scheme of unique identification involves collection of demographic and biometric information from individuals for the purpose of issuing of unique identification numbers to such individuals. For the purpose of issuing unique identification numbers, the Govt. of Indistan constituted the Unique Identification Authority of Indistan (UIDAI) in January, 2010, through an executive order, which is at present functioning under the Prime Minister's Office.

11. Simultaneously, in year 2010, the Govt. of Indistan had also presented a Bill titled as National Identification of Authority of Indistan Bill, 2010 in Upper House of Parliament. The Bill entitles every resident to obtain an unique identification number, apart from entitling such other category of individuals as may be notified from time to time. The Bill was sent to the Standing Committee of Finance for consideration in the present form. The Standing Committee presented its final report in year 2011 to the Upper House and it conveyed their unacceptability of the National Identification Authority of Indistan Bill, 2010 in its present form.

12. The Govt. of Indistan, which has a majority in the Upper House of the Parliament, insisted on the report to be laid in the House and ensured a debate on the pros and cons of such exercise which is needed to facilitate the socio- economic development and vital for realizing goals of social justice as contained in the Constitutional scheme. After having a robust and meaningful debate, the Govt. insisted on vote and managed to get the Bill passed with a simple majority.

13. With the passage of Bill in the Upper House, the Govt. was hopeful to get the nod of Lower House of Parliament in relation to this Bill. Thinking of this, the Govt. of Indistan allocated a substantial sum of Rs. 1000/- Crore to the existing functional UIDAI, which was established by executive order. The Bill was presented to the Lower House of the Parliament and in the next session of Parliament, it failed to secure the approval of Lower House. The main opposition to the Bill in the Lower House of Parliament was, that when Govt. intended to bring a National Authority as envisaged under the Bill, why it chose the executive route to establish the Authority.

14. A noted activist and anthropologists filed a PIL titled as Mr.X vs. Union of Indistan

### *Moot Proposition for Indian Round*

invoking the writ jurisdiction of Supreme Court of Indistan challenging the manner in which the Bill has been passed in the Upper House of the Parliament inspite of Standing Committee rejecting the Bill in its entirety in present form. The Supreme Court has issued notice on the limited issue to examine the legality and the manner in which the Bill has been passed in the Upper House of Parliament. One of the contentions is that ignoring the concern and recommendation of standing committee of the Parliament in toto is against the constitutional convention.

15. The jurist, social workers, anthropologists in their writings had raised various concerns about the violation of basic liberties as issues of liability and responsibility for maintaining accuracy of data on the Register, conducting identity checks and ensuring the integrity of the overall operation of the UID scheme have not been resolved.

16. Whereas the technocrats and another set of distinguished authors have written in favour of continuing the exercise by UIDAI through generation and allotment of unique identification number to facilitate and ensure that the benefits of social-schemes reaches to the beneficiary concerned, eliminating the threat of corruption by middlemen and other agencies.

17. By the year 2014, the UIDAI claim to have issued unique identification number to 80% of its target population. Simultaneously there have also been reports in the media of recklessness and carelessness in generating unique identification numbers and in the collection of data by the authorized agencies of UIDAI.

18. Fearing the misuse of data at the hand of Govt. agencies and its leakage to private corporations, agencies – one of the distinguished members of the Supreme Court Bar filed another PIL titled as “Mr. Y vs. Union of Indistan” questioning the linking and availability of social security schemes to the Unique identification number. The main contention remains that while Govt. maintains that the UID is purely voluntarily and non- mandatory to avail the social- security scheme, nevertheless, it has made it compulsory and mandating to have such unique identification number indirectly to avail social- security benefits. It also seeks to challenge the entire UID scheme as a potential threat to 'Right to Privacy' as one of the inalienable human rights under the constitutional scheme.

19. Meanwhile, in year 2014, the General election took place, which saw change of Govt. in the Parliament. However, the new Govt. in order to extend the facilities of centrally sponsored schemes and social- security measures, have taken a decision to continue with

*Moot Proposition for Indian Round*

the use of unique identification number.

20. Another perennial problem of Indistan is that it has a very porous border and it is facing a serious problem of illegal immigrants and infiltration from across the borders. In some of the parts of Indistan, the problem of illegal migrants is to such an extent that the son of the soil (Mulnivasi) or citizens feel that the UID Scheme as being issued to the 'residents' without proper verification of citizenship, will eat away their legitimate claims.

21. The Supreme Court of Indistan in another context had also expressed its concern about the permanent settlement of 'illegal migrants' from neighbouring countries, and opined that it is a kind of 'external aggression' and 'internal disturbance' is caused by the huge influx of such illegal migrants.

22. In light of the legal proposition as laid down by the Hon'ble Supreme Court, a local NGO has also questioned the legality of UID card vis-a-vis issuance of the same to the illegal migrants based on residence criteria by way of a Writ Petition in the High Court of United Province.

23. Both the PILs have been clubbed together by the Supreme Court of Indistan and it also transferred the Writ Petition pending before the High Court of United Province in exercise of power conferred under Article 139-A of the Constitution of Indistan. The Division Bench of the Supreme Court fixed the date of hearing on 18th August 2015.

24. When the hearing assumed on 18th August 2015, the Attorney General of Indistan defending the UID scheme as facilitating the implementation of social-security schemes through it, questioned the very existence of right to privacy under Constitutional Scheme and cited a decision of 8 judges bench which reads as under:- "When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction." [M.P. Singh & Others v. Satish Chandra & Others, AIR 1954 SC 300, page 306 para 18]

25. The Division Bench of the Supreme Court prima facie opined that 'a substantial question of law' has thus arisen and passed the following reference order:- "Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of M.P. Sharma (supra) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to

### *Moot Proposition for Indian Round*

privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength.”

26 The Government of Indiastan has supported its stand concerning the UID Card on the ground that it is a measure integral to several aspects of social justice including matters of security, and that the alleged right to privacy cannot be extended to the issue in question and in any event will be subordinate to the major constitutional concerns in promotion of social justice. The Government further holds that the measure in question has not and will not lead to infringement of any right to privacy howsoever widely understood.

27. The quagmire as what is 'substantial question of law' to be decided by 'Supreme Court of Indistan' as final arbiter of disputes and interpretation of Constitutional texts has always engaged the attention but, hardly any authoritative decision exists. It is pertinent to note that the Constitution of Indistan uses different expressions like 'Substantial question of law as to the interpretation of this Constitution' [Article 132(1), Article 133 (2), Article 145 (3)] and 'substantial question of law of general importance' [Article 133(1)(a)] and 'such questions are substantial questions of general importance' [Article 139A] and 'a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance'[Article 143 (1)], and 'any case involving a substantial question of law as to the interpretation of this constitution' [Article 145(3)]. 28. A bench of 'appropriate strength' has been constituted by the Chief Justice of Indistan to consider all the above issues raised in the moot proposition and the final hearing is scheduled to take place on 9th -10th January 2016.

\*\*\*\*\*

*\* This moot proposition has been formulated by Mr. Ravi Prakash, Advocate, Supreme Court of India and settled by Mr. R. Venkataramani (Senior Advocate), Supreme Court of India.*