



## Moot Proposition

***Drafted by:***

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Indradhwaja is an Asian country whose socio-politico-legal order is similar to India. It has 29 states. It is a multi-cultural, multi-lingual and multi-religious country. It is an ancient country with history of more than 5000 years. It is a secular country and is home to several religions, tribes, communities and castes. Majority of the population (approx. 60%) follows 'Pihu' religion. Other prominent religion is 'Soham' which constitutes about 25% of the population. Out of twenty states, majority population in the State of Panchtara follows 'Soham' religion whereas in 20 states, Pihus are in majority. In rest of the states, people following different religions co-exist without there being majority of people belonging to any of the religions. Constitution provides for federal system of governance. The Constitution of Indradhwaja provides that the country shall be secular, democratic republic. However, in various parts of the country, religious tensions and riots frequently take place.

Sasha was a very popular religious and spiritual preacher of 'Pihu' religion. Sasha was based in Hansa State which is a neighbouring state of Panchtara State. He was popular among all sections of society including people belonging to other religions owing to his moderate ideas and views about religion. He used to convene and address several lectures preaching the true meaning and tenets of Pihu religion throughout the country.



## 2<sup>nd</sup> Dhawani Manocha Memorial National Moot Court Competition, 2016

On the night on August 2, 1998, Sasha was to deliver a lecture in Thar District of Panchtara State. When he reached the venue at around 8.30 PM, several persons came forward to touch his feet as a mark of respect. In the meantime two persons who were identified as Rimpo and Hardo also touched his feet and thereafter fired at him. 10 bullets were fired at him. He was taken to Government Medical College and Hospital, Thar and was declared dead on arrival. Both the accused fled away after the incident.

Both Rimpo and Hardo were of Soham religion and were permanent residents of Panchtara State. However, six month prior to the date of incident, they hired a house in Hansa State where they were residing alongwith some other persons.

An FIR No. 298/1998 was registered at Thar Police Station under Arms Act, Indradhwaja Penal Code (hereinafter referred to as IPC) and Terrorist and Disruptive Activities Act (TADA). An FIR was registered on 02<sup>nd</sup> August 1998. Subsequently, on 03<sup>rd</sup> August 1998, Government of Panchtara issued a notification under Federal Special Police Establishment Act (FSPEA) for investigation of crimes registered under FIR No. 298/1998 by Federal Bureau of Investigation (FBI). Under FSPEA, any State government can give consent for investigation of crimes by FBI. The said notification vested the powers in FBI regarding investigation of offences registered in FIR No 298/1998. The jurisdiction to investigate the offences was conferred in respect of the entire state of Panchtara. Subsequently on 04<sup>th</sup> August 1998, federal government of Indradhwaja issued a notification for investigating of offences by FBI. FBI nabbed both the culprits on 11<sup>th</sup> August 1998 from National Capital Territory when they were trying to flee away from the country.

In the meantime, following the assassination of Sasha, riots broke out on 03<sup>rd</sup> August



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1998 in the neighbouring state of Hansa. Approx. 3000 persons belonging to both the religions died in the worst ever riots in the history of Indradhwaja. A magisterial enquiry was ordered into the incident. Moreover, State police raids at the house occupied by Hardo and Rimpo led to discovery to highly explosive substances, bombs, arms and ammunition. Police also found print material aimed at spreading religious hatred among Pihus and Sohams. Enquiry also revealed that after the incident both the accused returned to their place in Hansa and spread communal hatred leading to riots. They ordered merciless killings of Pihus. Enquiry revealed that the assassination was carried out with a view to spread communal hatred and riots. Laptops and computers recovered from the place also reveal the criminal design and conspiracy to spread riots. Report of the enquiry was sent to the state government and accordingly, an FIR No. 219/1998 was registered in Peru district of Hansa booking 7 persons including Rimpo and Hardo. FIR No. 219/1998 was registered on 10<sup>th</sup> August 1998.

FBI investigation into FIR No. 298/1998 led to chargesheet of 12 persons under various provisions of Arms Act, IPC, TADA. All accused were sentenced to death by Special Court and the same was confirmed by the High Court. An appeal was filed in High Court of Panchtara but the same was rejected. Subsequent appeal to Supreme Court was disposed off as dismissed in October 2005. Immediately accused filed mercy petition under Article 162 which was rejected and subsequent mercy petition filed under Article 72 before the President of Indradhwaja was also rejected. Mercy petition under Article 72 was rejected in April 2014. All accused filed petitions before the Supreme Court of Indradhwaja for commutation of death sentence into life imprisonment on the ground of inordinate delay in disposal of mercy petitions. The Supreme Court converted the death sentence into life imprisonment by its order dated 30<sup>th</sup> January 2015. After the said



## 2<sup>nd</sup> Dhawani Manocha Memorial National Moot Court Competition, 2016

order, State of Panchtara wrote to Federal Government that it proposes to remit the sentences of all convicts contending that they have suffered more than 16 years of incarceration. State of Panchtara wrote a letter dated 04<sup>th</sup> February 2015 with the aim of consulting the Federal Government as required under Criminal Procedure Code of Indradhwaja. The letter asked the Federal Government to give its opinion within five days so that the convicts can be released.

On the other hand, FIR No. 219/1998 was investigated by the State Police of Hansa and chargesheet was filed against 7 persons. Out of these, Rimpo and Hardo were also named as accused in FIR No. 298/1998 filed in Thar District of Pachatara State. All the accused were charged with offences under the Arms Act, Explosive Substances Act and IPC for various offences including planning, abetting and conspiring the murder of 3000 innocent persons. The trial court convicted all accused and sentenced them to life imprisonment. The High Court disallowed the cross appeals filed by the State and the convicts. On appeal, the three judge bench of the Supreme Court held that punishment must be commensurate with crime and held that the crime is so grievous that convicts deserve harsh punishment. Accordingly, Supreme Court passed an order stating that a special category of offenders can be put beyond remission and ordered that all the seven convicts be sentenced to imprisonment till life ends with no remissions. Union of Indradhawja filed review petition in Supreme Court of Indradhwaja for review of the order claiming that the said order is illegal and unconstitutional as no such category of offences exists in CrPC/IPC.

Immediately after letter dated 04<sup>th</sup> February 2015 become public, large scale agitations were held in Hansa demanding that the culprits be given death penalty and that they should not be released under any circumstances. On 06<sup>th</sup> February 2015, State of Hansa



## 2<sup>nd</sup> Dhawani Manocha Memorial National Moot Court Competition, 2016

wrote a letter to State of Panchtara contending that Rimpo and Hardo have been sentenced to imprisonment for life till life ends with no remission by the Supreme Court of India in offences registered under FIR No. 219/1998 in the State of Hansa. State of Hansa claimed that after the release of Rimpo and Hardo from Panchtara, they need to be shifted to Hansa State for serving the rest of their sentence.

Thereafter, a PIL was filed by an NGO namely HELP based in Panchtara in Supreme Court of Indradhwaja for securing the release of Rimpo and Hardo on the ground that they have already suffered more than 15 years in jail.

On a petition filed by State of Hansa, release of all the convicts, convicted in FIR No. 298/1998 was stayed. State of Hansa has claimed that after the exercise of pardoning powers under Articles 72 and 162, further remission by the State of Pachatarra is illegal and unconstitutional. It has also claimed that once the President has refused to grant pardon/remission to the convicts of FIR No. 298/1998, the Union can not give consent for remission as required under Criminal Procedure Code of Indradhwaja and that without the consent of the Union, State of Panchtara can not release the convicts. The petition has prayed for grant of appropriate orders/writs for restraining the federal government from giving the consent. On the other hand, Panchtara State argues that Criminal Procedure Code only requires consultation and not consent of Federal Government. It has also contended that the Provisions of Criminal Procedure Code of Indradhwaja can be used to grant remissions even after the exercise of powers by the Governor and the President under Articles 72 and 161 respectively. State of Panchtara has also contended that second FIR i.e. FIR No. 219/1998 registered in Hansa State was illegal as the acts mentioned in second FIR formed part of the same transaction which were purported to be investigated under FIR No. 298/1998 of Panchatarra State.



## 2<sup>nd</sup> Dhawani Manocha Memorial National Moot Court Competition, 2016

PIL, Review Petition of Union of Indradhwaja and Petition filed by State of Hansa were clubbed and were fixed for hearing before the three judge bench of the Supreme Court of Indradhwaja. Considering the significance of issues involved, sentencing practices and nuances of pardoning power and other matters involved therein, the three judge bench recommended that a larger bench be constituted in the matter. A Seven Judge bench has been constituted by the Supreme Court of Indradhwaja to decide the case.

Constitution of Indradhwaja is analogous to Constitution of India; Federal Special Police Establishment Act is analogous to Delhi Special Police Establishment Act, 1946; Criminal Procedure Code of Indradhwaja is analogous to Criminal Procedure Code of India; Terrorist and Disruptive Activities Act is analogous to TADA Act of India and Indradhwaja Penal Code is analogous to Indian Penal Code. All other laws of Indradhwaja are analogous to laws of India.

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