



**VIVEKANAND EDUCATION SOCIETY'S  
COLLEGE OF LAW**

*Sindhi Society, Chembur, Mumbai - 71*



# **MOOT COURT ASSOCIATION**

**(MCA)**

**presents**

## **5TH SHRI HASHUJI ADVANI MEMORIAL NATIONAL MOOT COURT COMPETITION**

**13th -15th  
January, 2023**



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## MOOT PROPOSITION FOR THE PRELIMINARY ROUND

1. The Lebola epidemic has claimed 12000 victims world over, since the outbreak in December 2019. Although there are about 30,000 patients suffering from this viral hemorrhagic fever, victims of this deadly virus are largely in West Africa and the countries in the south – Asian peninsula.
2. Union of Indusland is a Socialist, secular, Democratic Republic. In Union of Indus alone there are about 2500 Lebola patients. In March 2020, Zayer Inc., a multi-national company, patented its recently developed drug formulation and the only known cure for the haemorrhagic fever caused by the Lebola virus, in the United States of America. The drug, sold by the commercial name Lebin X, was classified as an Orphan Drug in the USA, owing to which 50% of the R&D costs of Zayer were reimbursed by the Government. Zayer went on to obtain a patent on its drug in over 45 countries. In October 2020, Zayer was granted a patent in Union of Indusland too, pursuant to its application in April that year. This patent was worked by Zayer Indusland Ltd., a wholly owned subsidiary of Zayer Inc, and Lebin X was sold at Rs. 36,000 for 60 tablets per month by it in Union of Indusland.
3. Kipla Pvt. Ltd, one of the largest pharmaceutical companies in Union of Indusland, had also undertaken R&D to produce a drug molecule, after the Lebola outbreaking 2019. In November 2020, Kipla sought to enter into a license agreement with Zayer Indusland to manufacture and sell its drug formulation, stating the growing public need and the unaffordability of Lebin X in Indusland. It sought to sell the drug at a price of Rs. 600 per month, for the same dosage of 60 tablets. Negotiations however never took off, and ultimately, the license was refused by Zayer Indusland.
4. In February 2021, Kipla introduced Lebocin, its generic variant for treatment of Lebola, at a price of Rs. 600 per month, in The Union of Indusland market. It also sought to patent its formulation on the footing that it possessed the therapeutic efficacy over existing drugs in the market. Zayer Indusland, however was swift to move the High Court of Cimpri in an original suit against Kipla, seeking protection against infringement of its patent in the drug formulation of LebinX, and an interim injunction against manufacture and sale of Lebocin by Kipla. Aggrieved by such action, Kipla moved the Competition Commission of Indus (“CCI”), arguing that Zayer Indusland’s refusal to license the drug to it, and the subsequent effort to injunct Kipla from manufacturing and selling the drug, amounted to a gross abuse of its dominant position, especially in light of the growing number of deaths caused by the Lebola virus.

5. However, the CCI found that there was no prima facie case made out against Zayer Indusland. In appeal proceedings before the Competition Appellate Tribunal (“COMPAT”), Kipla argued that the CCI ought to have, as a regulatory body, recognised the disparate public health impact caused to the patients of Indus, by Zayer Indusland’s abuse of dominant position. The COMPAT set aside the order of the CCI, finding that there were heavy social costs to permitting Zayer Indusland to violate its obligations towards public health, keeping in mind the fundamental right to health recognised under Article 21 of the Constitution of India. It noted particularly that the public would be solely and absolutely dependent on Zayer Indusland for access to life-saving drugs, should Kipla be injuncted, even as a willing licensee. Such conduct by Zayer Indusland was found to squarely fall within the prohibition of Section 4 of the Competition Act.
6. Mr. Thomas Ali, a member of the Board of Directors of Zayer Indusland and shareholder, moved the High Court of Cimpri under Article 226 of the Constitution of Indusland, against the order of the COMPAT, raising several grounds of challenge. Chief among them was that the order of the COMPAT was a nullity for lack of jurisdiction to enforce fundamental rights. Other substantive grounds of challenge were also raised, including, inter alia, the violation of the fundamental right under Article 19(1)(g). The High Court however dismissed the petition, finding that the cost to public health was irreparable as against the monetary losses incurred by Zayer.
7. Zayer Indusland then sought special leave to appeal against this judgment of the High Court, before the Supreme Court of Indusland. When the SLP came up for admission, the Court issued notice to Kipla, and also directed that notice of the proceedings be given to the Attorney General for Indusland, to represent the views of the Union Government.

The special leave petition has been listed for final disposal on 14th January, 2023.

#### **ISSUES:**

1. Whether the instant Special Leave Petition is maintainable or not?
2. Whether the decision of the Hon’ble High Court should be upheld or not?

Apart from the issues raised Additional issues pertaining to the above problem can be framed.

Participants are requested to frame maximum 2 more issues to the above problem.

Note: The Laws in Indusland are in Pari Material with laws in India.

## MOOT PROPOSITION FOR SEMIFINAL AND FINAL ROUND

1. The Union of Jamb is one of the most populous democracies in the world. It is a religiously and ethnically diverse nation, with deep cultural beliefs and complex social mores. Among the many societal mores, having children and epitomising motherhood is considered very important. This along with the desire of couples to have children drives parents to conceive children. However, where the parents are unable to conceive a child through biological means, they are compelled to take recourse to scientific means. This has *inter alia* resulted in the increase in surrogacy practices in the Union of Jamb. Surrogacy means a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple.
2. Women agreeing to become surrogate to earn livelihood. A number of them belonged to economically backward class and participation in such procedures became a means to move out from the vicious cycle of poverty. Also, some of the surrogate mothers agreed to become surrogates not out of their free will but from some form of compulsions either socio-economical or personal. A survey conducted that most of surrogate mothers are not adequately remunerated and are often exploited due to their socio-economic background.
3. In the course of time, commercial surrogacy, became extremely popular in the Union of Jamb. It provided an opportunity amongst the intending parents from Jamb and other developed nations to have child at the relatively low cost. This gave rise to various advanced clinics. Some of them conducted themselves professionally while others acted in a nefarious fashion. Despite such prevalence of such businesses in the Union of Jamb society and despite multiple efforts in the past, due to a number of underlying issues, no standardized law was enacted to regulate commercial or altruistic surrogacy.
4. To stop the exploitation of the surrogate mothers, The Surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare to eradicate the practice of Commercial surrogacy. The Surrogacy (Regulation) Act, 2021, came in to force from January, 2022. It bans commercial surrogacy but altruistic surrogacy is permitted on the conditions provided in the Act. The Surrogacy (Regulation) Act, 2021 allows a gestation period of 10 months from the date of the law coming into force to surrogate mothers to protect their well-being. The gestation period is the time between conception and birth, this period was allotted to protect the existing surrogate mothers.

5. Altruistic surrogacy is permitted through ART technique (Assisted Reproductive Technology). Many infertility clinics are practicing this technique for their patients who are aspiring parents for commercial and altruistic surrogacy.
6. These clinics shall be registered under the **Surrogacy (Regulation) Act, 2021**. ART includes all fertility treatments in which either eggs or embryos are handled. In general, ART procedures involve surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. They do not include treatments in which only sperm are handled.
7. **Altruistic surrogacy provided under the Surrogacy (Regulation) Act, means** that no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative.
8. Other provisions inter alia are : Surrogacy is permitted when it is: (i) for intending couples who suffer from proven infertility; (ii) altruistic; (iii) not for commercial purposes; (iv) not for producing children for sale, prostitution or other forms of exploitation; and (v) for any condition or disease specified through regulations.
9. In Union of Jamb, there are three major film industries. Many celebrities like actors, actresses, directors and others take help from 'Anjali' ART clinic. The clinic 'Anjali' is reputed ART clinic among the many clinics that provided the surrogacy services in State of Melon –one of states in Union of Jamb. This clinic was known for its exemplary services for surrogacy procedures and therefore many celebrities prefer this clinic. The clinic is registered under Act, after it is made compulsory to register for ART clinic to continue in practice.
10. Mr. Mohan and Ms. Suhasini both are the superstars of film industry working for more than 15 years. They acted separately and against each other in films. They have a huge fan following. The news of their affair and speculation about their marriage used to get circulated and printed in tabloids for last 6 to 7 years. Both of them married this year in June, 2022. Their fans were overjoyed to know about their marriage. News channels had shown the clips of the ceremony.
11. In month of October, 2022, Mr. Mohan and Ms. Suhasini announced within four months of marriage that they became the proud parent of two sons. It was also come out that they sought these services from the clinic 'Anjali'. This news created a storm as speculations were made that couple opted for commercial surrogacy which is banned in India. Also under the law, the couple can opt for surrogacy if they do not get child even after five years of marriage. It is also being speculated that Mr. Mohan and Ms. Suhasini may have conceived the babies by violating the law.

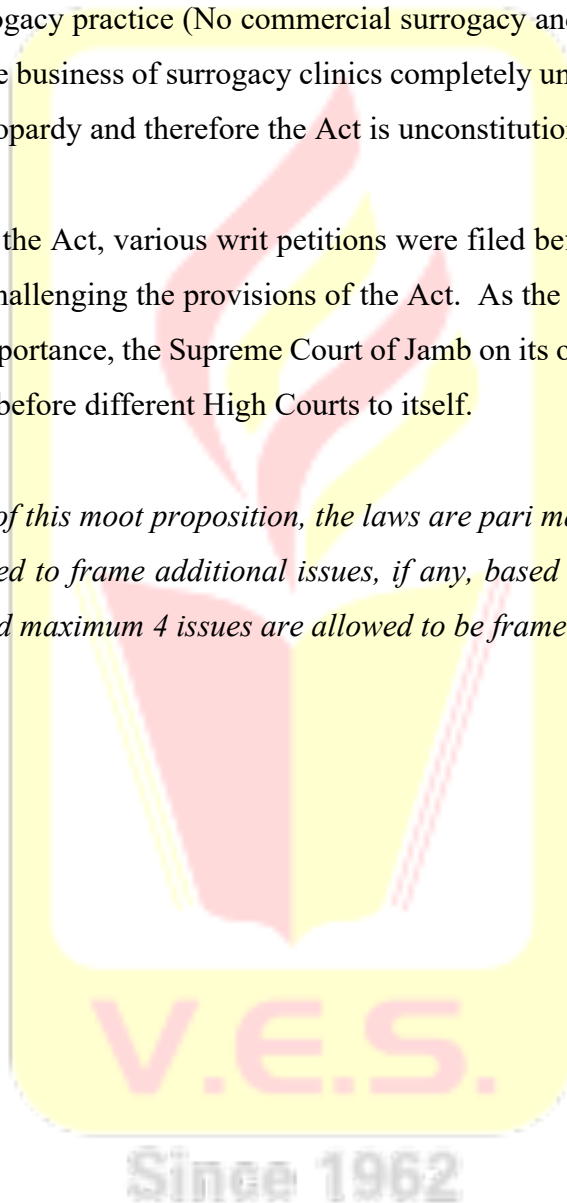


12. The inquiry was ordered after the couple announced the birth of their twin boys by the four-member panel constituted (under the Act) to probe whether couple violated the law and the clinic had indeed breached the norms.
13. In the inquiry it was found that the couple is guilty and clinic had breached the norms. Both filed a writ petition challenging the decision in Supreme Court. The Clinic challenged the decision inter alia on the ground that The Surrogacy (Regulation) Act, 2021 imposes restrictions on the surrogacy practice (No commercial surrogacy and only altruistic surrogacy permitted) and made the business of surrogacy clinics completely unviable. This put the Clinic under huge financial jeopardy and therefore the Act is unconstitutional.

Since the enactment of the Act, various writ petitions were filed before different High Courts in the Union of Jamb challenging the provisions of the Act. As the cases involved substantial questions of general importance, the Supreme Court of Jamb on its own motion transferred the Writ petitions pending before different High Courts to itself.

*Note: For the purpose of this moot proposition, the laws are pari materia with laws of India.*

*Note: Teams are advised to frame additional issues, if any, based on the Factual and Legal aspects. Minimum 3 and maximum 4 issues are allowed to be framed.*



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