

MOOT PROPOSITION

1. Aashiyana is currently world's largest democracy. The Constitution of Aashiyana is the Grundnorm which governs the entire nation. It guarantees Fundamental Rights to all citizens under Part III. There are three organs of Government- Legislature, Executive and Judiciary. The Judiciary is very active and is often called as protector of Fundamental Rights of people. The Hon'ble SC of Aashiyana has widened the Right to Life to include Right to Health and Right to live in Healthy Environment.
2. The beginning of 21st century was marked by invention of World Wide Web. The commodity boom and consequent advancement in technology led to increase in consumption of electronic gadgets so much so that Desktop Computers, Laptops, Televisions, Washing machines and refrigerators became household necessities even in rural areas of Aashiyana. The increase in standard of living of people coupled with the invention of wireless gadgets and 'Internet of Things' has made communication easier and Aashiyana has emerged one of the biggest markets for mobile phones in world.
3. Boski, the national capital territory of Aashiyana, has long been suffering from the issue of waste disposal so much so that one of the dumping grounds in the Charag area had by now become a complete mountain of garbage with roads constructed in between for trucks to go up and dump the waste collected. According to Newspaper reports, about 2,200 metric tonnes of garbage coming from east Boski is dumped at the landfill every day. A waste processing unit is installed nearby but it does not even touch the tip of the iceberg of the garbage present there.
4. Following the criticisms and protests from various NGOs, Boski High Court had issued various directions and orders for the Municipalities and the Government to take various steps to treat the waste in an environmentally sound manner and reduce the troubles faced by the people living in the vicinity.
5. In a survey conducted by the Ministry of Environment and Forest and Climate Change of Aashiyana, it was found out that one of the major contributors in the waste generated every year is that of electronic waste. Of the total e-waste generated in Aashiyana, approximately 5% is recycled by formal recyclers, while 10% is rendered useless and goes to landfills. The remaining 85% is handled by the informal or unorganised sector. Also as per Global E-waste Monitor, a report released in December 2017, the world generated 44.7 million metric tonne (mt) of e-waste in 2016. Of this, only 20% was recycled through appropriate channels. As per a Study conducted by a NGO 'HUMANS FOR LIFE' the traditional methods and unsafe disposal of e-waste led to increased levels of Lead in Blood of workers.
6. Pineapple India Inc. was duly incorporated company having its holding company in USA. It manufactures PinePhones. PinePhone is a line of smartphones designed and marketed by Pineapple Inc. The PinePhone lines of products use Pineapple's PiOS mobile operating system software. The first-generation PinePhone was released on June 29, 2007, and multiple new hardware iterations with new PiOS releases have been released since. Pineapple has released eleven generations of PinePhone models, each accompanied by one of the eleven major releases of

the PiOS operating system. The company is very famous and its consumer base is growing. Some scholars have pointed out that with the release of PinePhone and subsequent market strategy of launching 'improved versions' every couple of years has led to increase in e-waste as other players also follow the same techniques. The criticisms, however, has not impacted its sales in any manner.

7. The Government of Aashiyana enacted E-Waste Rules in 2016. It introduced certain new concepts in existing 2011 rules mainly Extended Producer Responsibility (EPR), Restriction of Hazardous Substances (RoHS) and it included Fluorescent bulbs and tubes in definition of E-waste. In January 2016, a company was incorporated by name of Jack and Judy Bing Recycling Co. in Boski. It claims to have the latest technology equipment to recycle e-waste. The company brought the technology by tying up with its American counterpart. In order to fulfil its non-investment obligations, JJB Recycling Co took authorisation under 2016 Rules and accepted the EPR scheme. EPR is an authorisation given by the Central Pollution Control Board (CPCB) for collecting and managing the E-Waste. This authorisation is given for five years and for obtaining an EPR, a producer is required to submit a detailed plan for the collection of the E-Waste, mode of collection, details of collection points and agency responsible for such collection.
8. It claimed to have technology that made 98% of e-waste recoverable. It provided comprehensive E-waste Management & Handling services on a Pan Aashiyana basis. It collected all types of E-waste like de-bonded assets or any other electrical & electronic equipment which have become obsolete end of its life; E-waste includes Batteries, CFLs, Tube lights, CDs, Toner Cartridges, Floppies, etc.
9. The company is authorized and licensed by the State Pollution Control Boards & the Central Pollution Control Board for safe Collection, Transportation, Dismantling, Segregation & Disposal of E-waste. We extend our services across India, with locations at Boski, Hoida, Burugram, South Aashiyana etc. its services are centred on conserving the natural resources, providing intellectual property protection to our customers, extending asset recovery services, enabling reverse logistics and ensuring 100% recycling of E-waste. JJB company got consent to operate under The Air (Prevention and Control of Pollution) Act, 1981 as well as Water (Prevention and Control of Pollution) Act, 1974 and it employed 600 workers. JJB Company had a contract with Pineapple Inc. wherein it agreed to recycle phones of Pineapple Inc. which it gathers under its 'end of life take back scheme.'
10. Meanwhile, on July 14, 2017, a big part of the landfill collapsed in afternoon, trapping a few people under the debris and sweeping a car and a two-wheeler into a nearby canal. Official reports confirmed death of 5 people, and 8 people injured. The whole nation was appalled at the incident of collapse and the presence of similar landfills and hazardous waste disposal systems in various cities across the country were reported by an NGO, and resultantly, a PIL was filed in the SC. SC directed the government to take stringent steps immediately to tackle with the waste disposal issue in the country. SC also formed a committee to advise on reduction of e-waste and to find out latest recycling systems.
11. The committee found that 'PLANNED OBSOLESCENCE' is prevalent in electronic industry. Planned or programmed obsolescence refers to the deliberate shortening of a product's useful life by the manufacturer in order to increase consumption. Planned obsolescence, or built-in obsolescence, in industrial design and economics is a policy of planning or designing a product with an artificially limited useful life, so it will become obsolete (that is, unfashionable or no longer functional) after a certain period of time. The rationale behind the strategy is to generate long-term sales volume by reducing the time between repeat purchases (referred to as "shortening the

replacement cycle"). The environmentalists and other members of civil society were discussing this topic in various academic conferences. And tackling planned obsolescence is not only a battle against abusive use of resources and an unsustainable economic model, but also against climate change.

12. Planned obsolescence is a serious environmental problem for the planet. Every year, up to 50 million tons of electronic waste are generated, a very high percentage of which – around 85% - is usually discarded randomly, ending up in waste tips in developing countries, creating a risk for the environment and the health of people, animals and plants. The organizations claim that electro-domestic items, for example, are currently made to last between two and 12 years, yet are made from materials that should comfortably remain useful for half a century at least. With consumer electronics becoming increasingly more complex with digital hardware and software features, many electronics manufacturers have instituted systems whereby the only means to repair a device or obtain repair parts would be through one of their authorized vendors or original equipment manufacturer (OEM).
13. The committee further noted that every time a new PinePhone (or PinePad) is released PineApple "releases" new software and makes users' life miserable if they don't "upgrade." Macrosoft, and a slew of other companies do it as well. It was not limited to mobile phones, laptops and Tabs but it extends to Television and Air Conditioners as well. The power of Advertisement coupled with these practices has led consumers believe that 'latest is the best'.
14. The committee further took note of certain incidents. In late 2017, users of PineApple, Inc. older PinePhone models discovered evidence that recent updates to the phone's operating system, PiOS was purposely throttling the speed of the phone. PineApple responded initially that the goal of the software was to prevent overtaxing the older models of lithium-ion batteries to avoid unexpected shutdowns of the phone. Many blogs instilled on PineApple users' minds that PineApple was purposely slowing down their phones to make users upgrade their phones. In response, PineApple allowed users to control the battery throttling feature (disabling the feature and allowing the phone to shut down under load, or let the feature work as intended) in a PiOS update. And to obtain service to replace batteries in out-of-warranty phones for a reduced cost of service However, the committee pointed out that such a scenario could have been handled if PineApple allowed consumers to purchase third-party batteries and possess the instructions to replace it at lower cost to the consumer. Similarly, the committee found that the companies selling Mobile Phones, Laptops and Computers have certain 'warranty void' clauses. After a so called new version is launched, the repairs of older versions is reduced and ultimately stopped. This forces consumers to buy latest versions which leads to more electronic waste. The committee also notes the new trend of integrated phone batteries and questioned why new phones don't come with removable batteries.
15. In order to counter this problem, committee recommended certain reforms in existing legal paradigm. The SC sought views of Law Commission and commission agreed to the views of committee and enacted a Bill to counter planned obsolescence that would force vendors to design products for longer life and easier maintenance, in an effort to combat electronic waste and abusive practices like manufacturers legally preventing users from repairing their devices. The Govt. passed the bill and enacted **Right to Fair Repair Act, 2018** which mandates that each and every device should also have a mention of its minimal life expectancy. It also wants longer warranty periods and criteria to measure a product's strength.

16. SOME PROVISIONS OF THE ACT ARE AS FOLLOWS:

1. *It enacted that devices shall be easier to repair: batteries and other components should be freely accessible for replacement, unless safety dictates otherwise. Manufacturers shall give other companies access to their components so that consumers can visit those companies for repairs.*

The provision is aimed to prevent situations like Samsung's Galaxy Note 7 fiasco. The battery proved to be an explosion hazard and seeing how it could not be replaced; the South Korean company was forced to recall every single device.

The Parliament also hopes the resolution will also stimulate job creation, because it should result in more independent repair services. The second-hand market should also benefit from the resolution, because products will get a new lease on life.

2. *Electronics Manufacturers shall make repair information and parts available to product owners and to third-party repair shops and services.*
3. *It also mandates that Repair services for desktop computers, Televisions and electric products which involve the use of Cathode Ray Tubes shall be mandatorily provided for at least 7 years unless circumstances dictate otherwise.*
4. *Any person or electronic manufacturer who violates the provisions of this act shall be fined upto 10% of profits and also court can apply principle of Sustainable Development, Polluter Pays Principle, Public Trust Doctrine and Doctrine of Inter-Generational Equity while imposing fine.*
5. *The terms which are not defined shall have same meanings as are given to them in E-Waste (Management) Rules, 2016.*

17. PineApple India Inc. along with other companies has challenged the constitutional validity of this Act on the ground of violation of Part III rights. It also contends that third party repair may lead to leakage of trade secrets and there is also a threat of reverse engineering. Govt. on the other hand cites concerns of E-waste and its ill impacts and argues that recent incidents in technology industry demand such restrictions. The SC has accepted the appeal and is listed for final hearing.

18. Though the claims of company were tall, soon it was found that company was violating various norms of EPA and 2016 rules. A complaint was filed to CPCB which sent a team to take sample from the plant and nearby area. The Commission found that the levels of lead, cadmium and mercury due to burning of batteries and Cathode Ray Tubes have increased the level of these chemicals in Road Dust. The Air Control Equipment was faulty and the water facility was in bad condition.

19. The CPCB took samples from the Main Stream and found that notwithstanding the fact that pollutants from other sources reach the water bodies, it is clear that this canal is also heavily impacted by contaminants that are found in e-waste. It has also found the e-waste generated by the plant exceeded the limits mentioned in consent form. There have also been changes in the abundance and biomass of surviving species and changes in food chains. The water has become poisonous. This was due to the fact that the water of waste facility flowed into this canal. The local aquatic environment is at a potential high risk, because the piles of e-waste components stored outside are routinely drenched or flooded by rainfall, producing run-off from storage sites to local waterways. Both water and sediment samples show that e-waste-related contaminants have entered Aashiyana's water ways.

20. It was also found that due to increased level of mercury, a species of Fish named MATASAYA had died in Main Stream. The death of fish raised huge controversies as this Fish was worshipped as vehicle of a local Water Goddess. The people became furious and protested against the company.
21. The Board took emergency measures and prohibited the JJB Company from discharging any waste or noxious substance into the canal. It ordered closure of the recycling plant. An appeal was filed by Company against Board to NGT and it was argued that Board has not sent notices before collecting samples and that Principles of Natural Justice have been violated. It also argued that proper Authority to take action was Central Govt. under EPA as the 2016 rules are framed under EPA. The CPCB on the other hand argued that it ordered closure on the basis of sample collected from Main Stream and hence, no notice was necessary. The NGT upheld the order of the Board and also imposed a fine of Rs. 10.5 Crore on JJB Company by applying PPP Principle. It ordered compensation of Rs. 450 Crore on account of loss of Biodiversity and restoration of ecology. It fixed all costs of cleaning Main Stream on JJB Company. The company has appealed to SC against this.
22. Since the matters arose from same issue, the SC clubbed both matters. The issues are:
 1. Whether JJB Company is liable under various Environmental law Legislations? If yes, to what extent? Is the fine imposed by NGT proportional?
 2. Whether the CPCB's order of closure of JJB plant be justified? Also, whether or not CPCB is correct authority to take sample as E-Waste rules are framed under Environment Protection Act but relevant Authority under this act is Central Government.
 3. Whether Right to Repair Act is constitutionally valid?
 4. Whether Right to Repair can be taken to be part of Extended Producer Responsibility?

Note:

1. Participants have to argue from both sides.
2. The laws in Aashiyana are *parimateria* to India.
3. Any resemblance to any person, natural or artificial is purely co-incidental.
4. The participants are free to raise additional issues.