



4<sup>th</sup> SURANA & SURANA AND RAMAIAH COLLEGE OF LAW  
NATIONAL TORT LAW MOOT COURT COMPETITION  
&  
JUDGMENT WRITING COMPETITION, 2021



22 – 24 April, 2022

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**Moot Proposition**

1. The Union of Indus is a Socialist, Secular, Democratic Republic. It adopted its Constitution in the year 1950 after getting freedom from colonial rule in 1947. The various features of the Constitution of Indus were borrowed from different Constitutions of the World. The members of the Drafting Committee of the Union of Indus were greatly influenced by the Universal Declaration of Human Rights, 1948, and adopted many provisions of the Constitution from UDHR, 1948.
2. The Constitution of Indus has made a clear-cut distinction between Civil and Political Rights, recognized under Part III as "justiciable" rights, and Economic, Social and Cultural rights recognized under Part IV as "non-justiciable" rights. However, the Supreme Court of Indus has established that there is no inherent conflict between the Fundamental Rights and the Directive Principles of State Policy under the Constitution of Indus.
3. Being a dual polity, power is divided between the Centre and the States. The subject of the "public health and sanitation, hospitals and dispensaries" given under the State List" in Schedule 7 of the Constitution. However, the 15<sup>th</sup> Finance Commission Report, 2017, recommended that the subject of "public health" should be shifted to the Concurrent List.
4. The years 2019-20 and 2020-21 witnessed an outbreak of a deadly Coronavirus Disease known as Covid-19, following which the Government of Indus imposed a nationwide lockdown. The Covid-19 pandemic has shown every existing inequality in society. It has also exposed the Government's low priority over the health sector of Indus. For the year

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2018, a mere 1.3% of the GDP was spent on public health care. While economically developed countries spend as much as 17% of the country's GDP towards healthcare. The coronavirus outbreak resulted in a health crisis in the country, and the country's flawed health care system was exposed to the public at large.

5. On the other hand, the Constitution of Indus recognized the Right to Health as an integral part of the Right to Life under Article 21 of the Constitution. The right to health care and protection has been recognized since the independence of the country. The Constitution of Indus recognized that the people of the country are the right holders, and the State is duty-bound and the primary provider of all the health-related facilities; however, post-1990s, the involvement of the private players was increased in the health care sector. The State of Indus is a founder member of the United Nations; it has ratified various international conventions promising to secure the health care right of individuals in society.
6. Article 21 of the Constitution of Indus guarantees a fundamental right to life & personal liberty. The Supreme Court of Indus from time to time has established that the right to health is inherent to a life with dignity, and Article 21 should be read with Articles 38, 42, 43, & 47 to understand the nature of the obligation of the State in order to ensure the effective realization of this right.
7. According to the World Health Organization, "health" is a state of complete physical, mental and social wellbeing and not merely the absence of disease. The Preamble of the Constitution of Indus provides for a Welfare State with socialistic patterns of society under Article 21 of the Constitution. The concept of democratic socialism aims to improve the

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condition of health care of the people. The principle of socialism is also embodied in various provisions of part III & part IV of the Constitution of Indus.

8. Owing to the coronavirus outbreak, the Parliament of Indus adopted the Epidemic Diseases (Amendment) Ordinance, 2020, which amended the Epidemic Diseases Act, 1897. The Act provides for the prevention of the spread of dangerous epidemic diseases. Section 2 and Section 2 (A) of the Act give the Central Government powers to take extraordinary measures and prescribe regulations for dangerous epidemic diseases.
9. The Ordinance amended the Act to include protections for healthcare personnel who are combatting the epidemic diseases, and it also expanded the powers of the Central Government to prevent the spread of such diseases.
10. Another critical legislation passed by the Parliament of Indus is the Disaster Management Act, 2005. The Act gives the power and responsibility to the State of Indus with regard to management and control of any disaster. Section 2 (d) of the Act defines "disaster "as "a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area". Further, Section 2 (e) of the Act also defines it "disaster management as a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for the prevention of danger or threat of any disaster. " Further, Section 6 of the Act recognizes that the National Authority for Disaster Management shall have the

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"responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to a disaster."

11. For a country with a 135-crore population, Indus has approximately 45,000 private hospitals and 25,000 thousand public hospitals. Statistically, there are five hospital beds for every 10,000 people. Considering the acute shortage of medical infrastructure, the Government of Indus decided to set up "Covid Recovery Facilities" to provide medical care to those infected with the novel Coronavirus.
12. The Government set up one such Covid Recovery Facility at Badlapur, one of the State under the Union of Indus. As a Covid Recovery Facility has several varying requirements such as medicines, medical equipment, sanitizers, face masks etc., the Government engaged a company called HealthONE who was tasked with ensuring an adequate supply of required medical infrastructures and consumables.
13. By the end of the year 2019 and the beginning of 2020, the cases of Covid-19 saw a dip, and the first wave of the Coronavirus seemed to come to an end; therefore, normalcy resumed. The Health Minister of the State of Indus even publicly affirmed that the 1st wave of the Coronavirus had come to an end and the Government of Indus relaxed the restrictions imposed on the public due to coronavirus outbreak by reopening offices to set the economy back and to recover from the losses suffered by the majority, relaxation on wearing masks, opening public transportations etc. The normalcy and the fatigue of precautions lead to the public lowering their guard against the pandemic, causing the covid-19 cases to surge again exponentially.



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14. Top researchers and virologists had advised that patients recovering from Covid-19 would need oxygen support on priority. Early studies revealed that the lungs were highly vulnerable to the Covid-19 virus, and even mildly symptomatic cases could require oxygen support. Several private hospitals increased their orders for the supply of oxygen immediately as a contingency. HealthONE approached the Government seeking approval to place additional orders for oxygen cylinders. Various free vaccination camps were also organized to make sure to cover the senior citizens of the country. There were awareness camps with advertisements that were set up to make sure that information is duly passed on to the public.
15. Mr. Thupden is a 50-year-old male who works as a driver with type-2 diabetes; considering his medical condition, he was very vigilant and exercised great caution while in public. Unfortunately, despite all safeguards, Thupden was infected with the Covid-19 virus. What started with mild symptoms escalated to difficulty in breathing.
16. Owing to the acute shortage of hospital beds, Thupden was shifted to Covid Recovery Facility, Badlapur. The doctors at Covid Recovery Facility administered Thupden with steroids and monitored his health condition constantly.
17. Unfortunately, the Covid Recovery Facility at Badlapur ran out of oxygen on midnight of July 7th, 2021; Thupden and seven others admitted in the Covid ward lost their lives due to the lack of oxygen supply. The hospital authorities even told relatives of patients to take care of the oxygen supply by themselves as the hospital had run-out of oxygen, and there were no chances of reviving the same. Mr. Chetri, son of Mr. Thupden, who owns an autorickshaw and is an autorickshaw driver, left no stone unturned to find an oxygen



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cylinder for his father, but all of his efforts were in vain as none of the oxygen supplies at Badlapur had the oxygen to refill the oxygen cylinders for the patients.

18. Mr. Chetri lost his father along with others on the morning of July, 8th 2021. After the death of his father, the hospital authorities issued a 22-page bill of Rs. 20 Lakh for his father's treatment, which included Rs. 18,000/- per day for ICU for a month, Rs. 20,000/- per day for a month using the ventilator unit, about 2 Lakhs for staying in a single room, coronary care units at Rs. 9,500/- and Rs. 10,000/- per day for a month, and the expenses on medicines and related expenditures were around Rs. 15,000/-. In order to pay the hospital bills, he was forced to sell his autorickshaw and spent his entire life savings even though he could not save his father. He was stunned by the Government's insensitive and indifferent attitude, claiming on social media platforms that "no lives were lost due to a shortage of oxygen". The question still loomed as to why the unpreparedness and where does the buck stop?
19. Mr Chetri decided that he cannot forego the negligence of the authorities resulting in his fathers' death. He and seven others instituted a suit against the State and HealthONE before the Badlapur High Court seeking compensation of Rs. 10 crores against the State and HealthONE on the ground of medical negligence and failure to perform statutory duty by the State.
20. Mr Chetri and others contended that the death of his father and others were owing to the negligence of the State and the HealthONE while performing their functions, due to which seven people had needlessly lost their lives. The suit for damages also sought compensation



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to be paid to the family members of all those who died due to the negligence at the Covid Recovery Facility, Badlapur.

21. HealthONE has filed its written statement asserting that its role at best was that of a service provider and that liability has to be fastened solely on the Government. It has further contended that it did not have an obligation towards the Plaintiffs as it was working for the Government alone.
22. The State has contended that there was no negligence on the part of the State; the Government tried their best to curb the situation and that the second wave of the pandemic was not foreseeable. In any event, the act of providing medical care during a pandemic comes under the sovereign function of the State; hence the State of Indus is not liable for the lives lost due to the lack of oxygen supply as the Government had tried its best to fight against the pandemic in a country with such a large population.
23. Issues have been framed, and the case is posted for final hearing via video conference.

*(Note: The laws of Indus are in pari materia with that of the Union of India.)*