

MOOT PROBLEM

[1.] The Constitution of Indus establishes Indus as the 'Union of States' of which 'Federalism' is one of the basic features. The Constitution of Indus is considered and described as one of the most progressive Constitutions based on the principles of 'liberal democratic' governance. Its constitution guarantees several fundamental rights, broadly corresponding to those recognized in International Human Rights instruments. The Constitution further guarantees direct access to its Supreme Court for enforcement of those rights. The Republic of Indus's constitutional, legal, and policy framework are in pari materia to the Republic of India.

[2.] The capital city of Indus houses its parliament and Supreme Court of Indus also. It is referred to as the NCT of Indus in tune with the relevant constitutional provisions. The Parliament of Indus comprises the Lower House (House of Elected), Upper House (House of Representatives), and President of Indus. The term of House of Elected i.e. The Lower House is for 5 years and the election is held in a free and fair manner monitored by the Election Commission of Indus.

[3.] In January 2015, there was a general election in the Republic of Indus. The political party led by Mr. Robert stormed to power winning 300 seats out of 543 parliamentary seats. Mr. Robert became the Prime Minister of the Republic of Indus and brought many reforms in governance. However, when in the year 2020, the next general election took place, the political party led by Mr. Robert fell short of reaching the majority mark and could not form the government in the year 2020.

[4.] A coalition government, under the leadership of Mr. Ryan got formed and he was sworn in as the Prime Minister of Indus in 2020. The main reason as articulated and analysed by the political analyst for the defeat of the political party led by Mr. Robert was the mismanagement of the pandemic which forced an unprecedented lockdown across the globe and caused deaths. However, the pandemic and its impact continued and is continuing today also. The present-day government is also accused of their lackadaisical approach and nonpreparedness to tackle the new wave of pandemics.

[5.] Mr. Robert is a veteran legislator, who has the distinction of having been elected consecutively 6th times to the parliament of Indus. He had the distinction of serving as Prime Minister of the previous government and currently as Leader of Opposition in the Upper House of the Parliament.

[6.] The new Govt. in Indus decided to investigate the expenses claimed by Mr. Robert as Prime Minister (2015-2020) with respect to reimbursement claimed on account of expenses incurred by family members on traveling and IT services. The civil society, various NGOs, and other organizations seeking transparency and accountability in the expenditure of public money sought a judicial inquiry into the scandal.

[7.] Mr. Robert as a leader of opposition in the Upper House of the Parliament issued a statement on his social media account as under: - "As Prime Minister, I have not asked for this benefit nor been involved in deciding on it. When I took up my post, I was told that this includes living and staying at RCR and that this has also been the case for previous Prime Ministers." The system for payment of members of Parliament's allowances and expenses, as it existed at the relevant time, was created by the joint resolution of both the houses of parliament and overseen by the Public Accounts Committee. The individual members used to fill the claim

forms and the finance office of the respective Houses used to consider the same and make payments in relation to claims. The claim forms as submitted by the members contained a declaration, signed by the Member, confirming that the costs were exclusively incurred in course of the purpose of performing duties as a Member of the Parliament.

[8.] As the controversy did not settle immediately, the spokesperson of the political party to which Mr. Robert belonged in a press conference and stated as under: “That Mr. Robert as Ex-Prime Minister has not misused the public money nor involved in the wrong gain and willful loss to the exchequer. He, then as a Prime Minister of Indus has discharged his responsibilities and duties in tune with the constitutional ethos, values and law of the land. It is just to hide the failures of the present government; this controversy has been made out in the media. My party wants to seek an explanation from the present government that when Mr. Robert was Prime Minister, it was Mr. Ryan – who headed the Public Accounts Committee and his committee approved all the bills, expenditure, and appropriation-related issues of the Parliament of the year 2019. Then why this controversy now. Moreover, the audit has been done by the Comptroller and Auditor General of Indus and the report has been duly tabled, presented, and passed in terms of Rules of the respective House for the financial year of 2019-20.”

[9.] The Chairman of the Upper House of the Parliament taking note that Mr. Robert is a member of the Upper House in 2021, has referred the matter to the privilege committee to investigate whether there was any irregularity and illegality in the financial or not. Consequently, the matter got referred to the current Committee on Public Accounts which is headed by Mr. Robert only – as the Chairman of the Committee is headed by a member of the opposition party only, which is also a matter of constitutional convention.

[10.] Mr. Robert, citing the possible conflict of interest, referred the entire issue to a sub-committee composed of 5 distinguished members of the Upper House and requested them to submit directly to the Chairman of Upper House.

[11.] Surprisingly, the sub-committee in its report indicted Mr. Robert for financial irregularity and recommended FIR to be registered in the present case. The chairman of the Upper House accepted the recommendation and ordered an FIR to be registered at the Police Station at Parliament Street, Indus.

[12.] Mr. Robert immediately challenged the decision of the Chairman of the Upper House of the Parliament by way of a Writ Petition under Article 32 violative of his fundamental rights and other constitutional rights which he had as a member of parliament. He sought to claim immunity from investigation and quashing of FIR in the present case on strength of parliamentary privileges which are available under the constitutional scheme. He also sought to impress upon the argument that only Mr. Ryan (in 2019) as chairman of PAC and his committee approved the expenditure report of the Lower House of the Parliament in said year. Further, the expenditure and such financial issues of the Parliament has been audited by the Comptroller and Auditor General of Indus, which was duly approved as per rules of the business of the House. The Supreme Court had issued the notice in the writ petition filed by Mr. Robert and ordered no coercive action against Mr. Robert.

[13.] Mr. Ozan is another distinguished member of the Parliament in Lower House who belonged to the same political party to which Mr. Robert belongs. In order to protest the decision of the Chairman of the Upper House of Parliament to register FIR against Mr. Robert,

he stated that it is a clear violation of the privilege of the Parliament - which is so sacrosanct. He is one of the votaries of free speech and very keen to adopt the latest technology to support the reform in governance. Accordingly, he challenged the ruling party and establishment to order an FIR against him for any act or consequential act of his inside the Parliament. As a member of the lower house, he prepared a speech titled "Give Me Freedom".

[14] As Mr. Ozan during his speech criticized the action and decision of the Chairman of the Upper House of the Parliament, he sought the reclamation of parliamentary sovereignty and freedom to its members to raise their voice and conduct themselves without fear and favor. He highlighted the importance of parliamentary privileges, institutional autonomy & independence essential for constitutional democracy. The speech was such that two other first-time parliamentarians of the Lower House (one from the political party to which Mr. Robert belongs and another independent candidate) took out the paint spray from their respective pockets and scribbled "Give me Freedom" towards the end of Mr. Ozan's speech. Thereafter, there was a ruckus on the floor of the House and the Speaker adjourned the House for the day. As the speech of Mr. Ozan got live telecasted – as a response – there were several graffiti in the name and style of "Give me freedom" that came up at various public places and public spaces of the capital city. By the next morning, all the important public places and walls of the government buildings in the capital city had the writing "Give me Freedom". The media and newspapers reported it as the "Give Me Freedom" moment of the Indus. The Civil society hailed it as reclaiming basic civil and political liberty.

[15.] The Hon'ble Speaker of the Lower House of the Parliament received complaints from various parliamentarians (who belonged to the ruling political party) to take action against Mr. Ozan and disqualify those two members who painted and scribbled on the wall of Lower House with spray paints as "Give me Freedom". The Speaker got examined this incident also by the Ethics Committee of the house. On the recommendation of the Ethics Committee of the House, the Hon'ble Speaker suspended Mr. Ozan for six weeks to which he replied that he did not deface the property nor carried out any illegal activities as defined under any law rather he had all the right to make the speech on the floor of the House. He further submitted that as his 'speech got Live' through the official TV channel of the Lower House (which is run and managed by the authority of Speaker of this House) could have been censured if it was so inflammatory in nature. He also stated that the consequential reaction by the ordinary public on the streets of the capital city only shows the public anger against squeezing freedoms and over-regulation of basic rights of the citizenry in disguised mode by the present ruling Govt.

[16]. Mr. Ozan further stated that accidental and consequential reaction of the wider public due to making his speech live' enhances the 'open and responsive democracy', 'freedom of speech & expression', 'promotes the right of the citizenry to know' as constitutionally inscribed values and objectives in liberal democratic³ governance. He further sought a review of the decision of the Hon'ble Speaker i.e. 'suspension of Six weeks from Assembly' and disqualification of two other members (who scribbled inside the Lower House) and requested to revoke the same. The Hon'ble Speaker disposed of the review petition and retained his previous decision in the case of Mr. Ozan and the other two parliamentarians.

[17.] Mr. Ozan along with the other two parliamentarians challenged the decision of Hon'ble Speaker as violative of Fundamental Rights and constitutional norms in the modern governance in a Writ Petition before the Supreme Court of Indus and also sought the writ declaring the

entire State legislation which made unauthorized defacement of property as a punishable offense. The State legislation making defacement of property as an offense is *pari materia* to the Punjab Prevention of Defacement of Property Act, 1997. He also claimed legislative privilege for his speech and call to paint the walls of the capital city with the slogan “give me freedom” i.e. title of his speech. He also challenged the FIR and consequential actions against his fellow parliamentarians who painted inside the Lower House of Parliament with spray paint as “Give me Freedom”. The Hon’ble Supreme Court of Indus has issued a notice in the writ petition of Mr. Ozan.

[18.] An NGO named Civil Rights Society (CRS) filed a Writ Petition before the High Court of NCT of Indus challenging the constitutionality of applicable Act which sought to restrict and regulate the defacement of public property and public places on the ground of violative of the basic right enshrined under Part III of the Constitution of Indus. The NGO also contended that it violates the constitutional protection afforded to the members of the House in form of ‘Legislative Privileges’ beside the safeguards in part III of the Constitution of Indus.

[19.] The Hon’ble High Court dismissed the Writ Petition and opined that it is a valid piece of legislation and FIRs registered against unknown persons for painting the public space as “Give Me Freedom” does not violate any liberty and constitutional rights thereto.

[20.] The NGO i.e. Civil Rights Society (CRS) preferred a Special Leave Petition (SLP) against the same before the Supreme Court of Indus. The Hon’ble Supreme Court of Indus has issued notice and clubbed the matter along with the Writ Petition of Mr. Ozan and Mr. Robert.

[21.] The Supreme Court of Indus has clubbed the three petitions (Firstly the Writ Petition by Mr. Robert secondly the appeal by Mr. Oza & thirdly the PIL by NGO after framing the substantial question of law as to the interpretation of the Constitution of Indus It has framed the following issues for consideration:-

- (i) Whether the power of the legislature to punish for contempt including the breach of its privilege is essentially a judicial function or not? If yes, whether it is in tune with the modern constitutional principle to entrust such powers with respective legislatures or not?
- (ii) Whether the action of Speaker/ Chairman of the respective Houses against Mr. Ozan and Mr. Robert respectively is violative of constitutional rights namely legislative privileges, freedom of speech or not?
- (iii) Whether the Punjab Prevention of Defacement of Property Act, 1997 is constitutional or not? Whether the registration of FIRs against unknown and members of Parliament under the Act is legal or not?