

MOOT PROPOSITION

1. Avadh is a country in Asian continent. It is a Democratic, Republic and Secular Nation with a population over 100 billion. The country has the largest written Constitution in the world. The country follows a federal structure of governance with a Union Government at the Centre and State Governments at state level for each 29 states with capital at Selhi. The VIIth Schedule of the Constitution of Avadh contains Three Lists which catalogues the legislative competency between Union and State legislatures.
2. On 15th July, 2021 the Union Parliament passed the Citizenship (Amendment) Act, 2021 governing citizenship. The Act was heavily criticized by the opposition as it contains certain provisions which could tamper with the Secular nature of Awadh. The Government anticipating nationwide protest and agitation resorted to preemptory measures to handle the adverse situations which could arise in the context.
3. The Country witnessed massive protest and dharnas and movements against this law following its notification. Many prominent leaders from the opposition, various political organizations, and social activists took part in the protest. On 25th July, 2021 the Controller of Certifying Authorities issued an order to intercept information through any computer resource of some high level politicians, activists and journalists in consonance with Sec. 69 of the IT Act, 2000. Similar orders were issued by the telegraph authority to intercept information through telegraph devices also.
4. The order of the Controller of the Certifying Authorities dated 25th July, 2021 directed J K Technologies to intercept the information with aid of spyware named 'spygau' which is used to spy on users of Facebook's messaging platform, Whatsapp etc.. Accordingly, the company proceeded with the process of interception of communication of people as per the list forwarded by the Controller.
5. On 27th July, 2021 Mr. Jameer Ali, the editor in chief of People Today, a national daily and publishers of various magazines scheduled an interview with a notable Constitutional Law expert and social activist Dr. Sameer Chowdhary, discussing the constitutional aspects of the sensational enactment. Since, it was to be published the very next day Mr. Ali sent the questions to Dr. Chowdhary *via* Whatsapp, to which he responded in the form of voice messages. Both Mr. Ali and Dr. Chowdhary were supporters of the protest and found the Act, as an instrument for subscribing to the ideology of ruling party throughout the Nation. On the very next day at about 2:00 AM the local police arrested

Dr. Chowdhary from his house and Mr. Ali from his office at South Selhi, which is in the National Capital Territory of New Selhi.

6. Both of them were detained in judicial custody without giving any information as to why they were arrested. After a long time it was informed that, in the interview Dr. Chowdhary has allegedly criticized the Prime Minister and the Home Minister, citing instances of maladministration and the way in which the chaos in the country is been handled. Further, the statements given by Mr. Ali that “the master brains are trying to achieve their agenda of transforming the nation in accordance with their political agenda, and if the people remain silent today, they will achieve what our forefathers never wanted for this country” and that “They will erase the history” were found fault with as allegedly having a content of incitement. Both of them were charged under Sec. 124 A of Avadh Penal Code, 1860 and were produced before the Magistrate.
7. The Judicial First Class Magistrate of South Selhi, under Sec. 311A of Avadh Criminal Procedure Code, 1973, issued an order to collect voice samples of both the accused for digital analysis and accordingly their voice samples were collected. They were released on conditional bail. Both Mr. Ali and Dr. Chowdhary approached the High Court of New Selhi under Art. 226 of the Constitution of Avadh challenging the constitutionality of the order of interception issued by the Controller under Sec. 124A of the Avadh Penal Code and also the order of the Magistrate under Sec. 311A of Criminal Procedure Code. At the same time they filed a complaint before the Data Protection Authority of Avadh alleging that the interception of their data by the State was in violation of rights protected under The Protection of Personal Data Act, 2019. The Authority dismissed the complaint stating that the Whatsapp chat that was alleged to have been intercepted does not come within the meaning of Personal Data as defined under Sec. 2(29) of the Act. Further the Authority observed that even if considered otherwise the said interception is exempted under Sec. 42 and 43 of the Act. The Appellate Tribunal confirmed the order of the Authority.
8. The High Court of New Selhi upheld the constitutionality of the proceedings initiated by the Controller against the petitioner/Appellants and also the Order of the Magistrate under Section 311 A. In the same proceedings the High Court by invoking Sec. 482 of the Avadh Criminal Procedure Code formed a Special Investigation Team to probe into the data interception using spygaur by J K technologies and the involvement of the Union

Government in this regard. Aggrieved by the order of the High Court and the Appellate Tribunal, Mr. Ali and Dr. Chowdhary filed appeal before the Hon'ble Supreme Court of Avadh. The State also filed an appeal against the Order of the High Court forming SIT. All the three appeals came to be admitted by the Supreme Court, which decided to hear all the matters together on 06-11-2021 and framed the following questions for its consideration:

- I. Whether the Appellate Tribunal erred in not interfering with the decision of the Data Protection Authority justifying the interception of data and hence whether the same is sustainable in law?
- II. Whether the High Court erred in its decision approving the constitutionality of the proceedings initiated by the Controller of the Certifying Authorities under Sec. 69 of the IT Act, 2000?
- III. Whether the Order of the High Court endorsing the constitutionality of the decision of the Magistrate directing collection of voice samples of Dr. Chowdhary is legally sustainable in the backdrop of the right against self- incrimination guaranteed under Article 20(3) of the Constitution?
- IV. Whether the decision of the High Court to *suo motu* invoke the inherent jurisdiction under Sec. 482 of the Avadh Code of Criminal Procedure, 1973 to form a special investigation team to probe into a matter under investigation is sustainable in law and facts?

Note

- **The Constitution of Republic of Avadh is *pari materia* to the Constitution of India.**
- **All the legislations of Republic of Avadh is *pari materia* to the legislations of Republic of India.**
- **The Protection of Personal Data Act, 2019 of Avadh is *pari materia* to The Protection of Personal Data Bill, 2019.**
- **The Counsels will be having liberty to identify and raise additional issues apart from the issues suggested above.**