
1st SURANA & SURANA & KLE LAW COLLEGE
NATIONAL CONSTITUTIONAL LAW MOOT COURT
COMPETITION – 2017

TEAM CODE - 10

BEFORE THE HON'BLE SUPREME COURT OF INDIGO

S.L.P. NO. _____ Of 2017

(Special Leave Petition filed under Article 136 of the Indigo Constitution)

SOCIETY FOR CRICKET CONTROL IN INDIGO *... Appellant*

Vs

MR. DEV & OTHERS *... Respondent*

WRITTEN ON BEHALF OF THE APPELLANT

COUNSEL FOR THE APPELLANT

1st SURANA & SURANA & KLE LAW COLLEGE NATIONAL
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LIST OF ABBREVIATIONS

AIR	All India Reporter
Art	Article
Ed.	Edition
SC	Supreme Court
HC	High Court
u/a	Under Article
u/s	Under Section
SCJ	Supreme Court Journal
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
Hon'ble	Honourable
i.e.	that is
ILR	Indian Law reporter
No.	Number
PIL	Public Interest Litigation
Ors.	Others
SCCI	Society for Cricket Control in Indigo

INDEX OF AUTHORTIES

CASES

- Kusum Ingots & Alloys Ltd v Union of India, (2004) 6 SCC 254 : AIR 2004 SC 2321
- ONGC v Utpal Kumar Basu, (1994) 4 SCC 711
- Ajay Hasia and ors. v. Khalid Mujib Sehravardi and ors. (1981) 1 SCC 722
- Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. (2002) 5 SCC 111
- Zee Telefilms Ltd. and Anr. v. Union of India and Ors. (2005) 4 SCC 649.
- State of Kerala v. T.P. Roshana : [1979]2SCR974
- Bennet Coleman & Co. v. Union of India, AIR 1973 SC 106: (1972) 2 SCC 788:
- Smt. Damyanti Naranga v. the Union of India Ors., 1971 (1) SCC678
- O.K. Ghosh and another v. E.X. Joseph, AIR1963SC812
- AIR 1989 SC 2126: (1989) 4 SCC
- *Coop Societies (2005) 5 SCC 632*
- *Damyanti Narang v. UOI (1971) 1 SCC 678*
- *Union of India v. Deoki Nandan Aggarwal, AIR 1992 SC 96: 1991 AIR SCW 2754: (1991) 3 SCR 873*In District Mining Officer v. Tata Iron and Steel Co., (2001) 7 SCC 358: AIR 2001 SC 3134: 2001 AIR SCW 2927,
- *Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka, AIR 2007 SC 2531: 2007 AIR SCW 4513: 2007 (4) Supreme 329*
- *Indian Drugs and Pharmaceuticals Ltd. v. The Workman of Indian Drugs and Pharmaceuticals Ltd., (2007) 1 SCC 408.*
- *State of Jharkhand v. Govind Singh, AIR 2005 SC 294: 2004 AIR SCW 6799: (2005) 10 SCC 437.*¹ In *V.K. Reddy vs. State of Andhra Pradesh J.T. 2006(2) SC 361 (vide para 17) (Civil Appeal No. 1307/2001)* decided on 23 August, 2007
- Griswold vs. Connecticut 381 U.S. 479,
- The Supreme Court in *Bal Ram Bali v. Union of India, (2007) 6 SCC 805: AIR 2007 SC 3074: 2007 AIR SCW 5551*

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- *Indian Drugs & Pharmaceuticals Ltd. vs. The Workman of Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408 and S.C. Chandra and Ors. vs. State of Jharkhand and Ors. JT 2007 (10) 4 SC 272*
- *Divisional Manager, Aravalli Golf Course vs. Chander Haas (2008) 1 SCC 683:*
- *of State of Bihar v. Bal Mukund Shah, (2000) 4 SCC 640.*
- *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab, AIR 1955 SC 549,*
- *L. C. Golak Nath & Ors. v. State of Punjab & Anr., AIR 1967 SC 1643,*
- *Ram Jawaya vs. State of Punjab AIR 1955 SC 549 (vide paragraph 12)*
- *Asif Hameed vs. State of Jammu and Kashmir, AIR 1989 SC 1899*

BOOKS

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- V N Shukla, Constitution of India
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- the Constitution Makers by Keshav Dayal 2nd edition, 2014
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- Granville Austin, *The Indian Constitution: The Cornerstone of a Nation*, Oxford University Press, New Delhi, 1999.

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- Wharton's Law dictionary,(9th Ed. 2012)
- Aiyar, P Ramanatha, *The Law Lexicon*, (4thEd. 2014).
- Black's Law Dictionary(9th Ed. 2012)

STATUTES

- The Constitution of India, 1950
- Societies Registration Act,1860
- Bombay Public Trust Act 1950

STATEMENT OF JURISDICTION

The Hon'ble Supreme Court of Indigo has the jurisdiction to entertain the matter, since the Memorandum for the Petitioner "SOCIETY FOR CRICKET CONTROL IN INDIGO (SCCI)" is filed under **Article 136 (Special Leave Petition)** of the Constitution of Indigo.

Article 136 of Constitution of Indigo

136. Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of Indigo.

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SUMMARY OF FACTS

Indigo is a federal country with 30 states. Society for Cricket Control in Indigo (SCCI) was established in Indigo to control the sports of Cricket. It was formed in 1928 and was registered in 1940 under Societies Registration Act, 1860. SCCI is a self funded organisation. It selects Indigo cricket team to represent Indigo in International cricket matches. In 2009, SCCI started Indigo Premier League (IPL) a domestic 20-20 over cricket tournament. IPL gained huge popularity and brought lot of revenue to SCCI. Unfortunately, corruption made inroads into the great entertaining sport in the form of Match Fixing. The players who were involved in Match fixing were banned for lifetime. Meanwhile dispute arose over election to the Board of Directors (BOD) of SCCI and corruption was involved in the election as well. Aghast by the enormity of corruption and its impact on the quality of the game of Cricket, a former Cricketer of Indigo, Mr. Dev filed a PIL in the High Court of Maha Pradesh alleging that the top management of SCCI had involved in corruption in elections to BOD, match fixing ,betting and sought for appropriate directions to revive the credibility of the sports. SCCI appeared before the High Court and filed its counter affidavit denying the contentions of the petitioner. After considering both side's contentions, the Hon'ble High Court passed orders constituting a commission under Former High Court Judge Mr. Yodha to suggest reforms to bring out proper functioning of SCCI. As SCCI refused to accept the suggestions , the Hon'ble High Court issued interim directions to SCCI to conduct elections to its BOD as per the recommendations of Yodha Commission within two months. As SCCI did not comply with the interim direction, the High court was pleased to freeze the accounts of the society and also order for appointment of an administrator. Aggrieved by the orders of the High Court, the SCCI filed a special leave petition in Supreme Court of Indigo against the orders of the High Court. The Hon'ble Supreme court has granted leave and the civil appeal filed by the society was ordered to be placed before this constitutional bench for final hearing.

STATEMENT OF ISSUES

**1.WHETHER THE PUBLIC INTEREST LITIGATION FILED BY MR.DEV
BEFORE THE HIGH COURT OF MAHA PRADESH IS MAINTAINABLE?**

**2.WHETHER THE IMPUGNED ORDERS OF THE HIGH COURT OF MAHA
PRADESH VIOLATED THE FUNDAMENTAL RIGHTS GUARANTTED
UNDER THE CONSTITUTION?**

**3.WHETHER THE IMPUGNED ORDERS PASSED BY THE HIGH COURT
OF MAHA PRADESH IS VIOLATIVE OF THE CONSTITUTIONAL
PRINCIPLES?**

SUMMARY OF ISSUES

**1.WHETHER THE PUBLIC INTEREST LITIGATION FILED BY MR.DEV
BEFORE THE HIGH COURT OF MAHA PRADESH IS MAINTAINABLE?**

It is humbly submitted before this hon'ble supreme court of indigo that the writ petition filed by Mr.DEV in the form of public interest litigation is not maintainable as the High court of Maha Pradesh has no territorial jurisdiction in the present matter and also the respondent SCCI is not amenable to the jurisdiction of the High court as it is not a "STATE" under Article 12 of the Constitution of Indigo (herein after referred to as constitution).

**2.WHETHER THE IMPUGNED ORDERS OF THE HIGH COURT OF MAHA
PRADESH VIOLATED THE FUNDAMENTAL RIGHTS GUARANTTED UNDER
THE CONSTITUTION?**

It is humbly submitted before this hon'ble court that the impugned order of the High Court of Maha Pradesh has violated the fundamental right guaranteed under Article 19(c) of the constitution of Indigo because the recommendations of the Lodha committee if accepted then the rights of the members of SCCI to form an association freely would be violated as the recommendation alters the entire composition of the SCCI.

**3.WHETHER THE IMPUGNED ORDERS PASSED BY THE HIGH COURT OF
MAHA PRADESH IS VIOLATIVE OF THE CONSTITUTIONAL PRINCIPLES?**

It is humbly submitted that the impugned order is a judicial legislation which in accordance to the constitution of Indigo is unconstitutional as it violates the doctrine of rule of law and separation of power which are the basic features of the constitution and hence is liable to be squashed.

ARGUMENTS ADVANCED

**1.WHETHER THE PUBLIC INTEREST LITIGATION FILED BY MR.DEV
BEFORE THE HIGH COURT OF MAHA PRADESH IS MAINTAINABLE?**

It is humbly submitted before this hon'ble supreme court of indigo(herein after referred to as supreme court) that the writ petition filed by Mr.DEV in the form of public interest litigation is not maintainable as the High court of Maha Pradesh(herein after referred to as High Court) has no territorial jurisdiction in the present matter and also the respondent SCCI is not amenable to the jurisdiction of the High court as it is not a "STATE" under Article 12 of the Constitution of Indigo(herein after referred to as constitution).

1.1.TERRITORIAL JURISDITIOIN TO ISSUE WRITS

It is humbly submitted that according to Article 226(1) and 226(2), a high court exercises its writ jurisdiction throughout the territories in relation to which it exercises its jurisdiction.

The high court can use a writ –

1. to a person or authority having its location or residence within the Court's territorial jurisdiction; or,
2. if the cause of action either wholly or partly arises within the High Court's territorial jurisdiction.

With reference to this, it is humbly submitted that in the instant case the concerned authority i.e Society for Cricket Control in Indigo (herein after referred to as SCCI) doesnot

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fall under the territorial writ jurisdiction of the High court of Maha Pradesh according to the following justifications.

SCCI is not within the territorial jurisdiction of the the High court of Maha Pradesh as it is situated in the territory of the State of Tamil Pradesh; and,

In the case of **Kusum Ingots & Alloys Ltd v Union of India**,¹ where it was held that the facts pleaded in the writ petition must have a nexus on the basis where of a prayer can be granted. Those facts which have nothing to do with the the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

With reference to the above precedent, it is humbly submitted that the cause of actions in the instant case is the alleged involvement of the top management of SCCI in the corruption in the election of BOD, match fixing and betting and also it has nexus with the prayer.

Further it is submitted that all those cause of actions arose within the territory of the State of Tamil Pradesh as SCCI is situated in the territory of Tamil Pradeh.

In the case of **ONGC v Utpal Kumar Basu**,² on appeal by ONGC the Supreme Court quashed the High Court order on the ground of lack of jurisdiction in the High Court as no part of the cause of action arose within the territorial jurisdiction of the high court

With reference to the above precedent, under Art 226 , a high court can exercise its jurisdiction if a part of the cause of action arises within its territorial jurisdiction but ,in the instant case , no part of the cause of action arose within the territorial jutusdiction of the

¹ Kusum Ingots & Alloys Ltd v Union of India, (2004) 6 SCC 254 : AIR 2004 SC 2321

² ONGC v Utpal Kumar Basu, (1994) 4 SCC 711

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Maha Pradesh High court and hence the impugned order of the high court is liable to be squashed.

**1.2.WHETHER THE SCCI IS A STATE UNDER ARTICLE 12 OF THE
CONSTITUTION?**

It is humbly submitted before this hon'ble court that the SCCI is not a state under Article 12 and hence it is not amenable to the jurisdiction of the High court.

In *Ajay Hasia and ors. v. Khalid Mujib Sehravardi and ors.*,³ The Court went on to enunciate certain tests applicable for determining whether an entity is an “instrumentality or the agency of the State”, an expression that does not figure in Article 12 of the Constitution but which would constitute an authority under Article 12 of the Constitution.

In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.*⁴ a seven- Judge Bench of this Court was examining whether Council of Scientific and Industrial Research was a State within the meaning of Articles 12 and 13(2) of the Constitution. The Court decided by a majority of 5:2 that the tests formulated in *Ajay Hasia's* case⁵ were not a rigid set of principles so that if a body falls within any of them it must be considered to be a ‘State’.

The question whether the respondent-BCCI(similar to that of SCCI) is ‘State’ within the meaning of Article 12 fell directly for consideration of this Court in *Zee Telefilms Ltd. and Anr. v. Union of India and Ors.*⁶ By a majority of 3:2 this Court ruled that respondent-BCCI (similar to that of SCCI) was not ‘State’ within the meaning of Article 12. Relying

³ *Ajay Hasia and ors. v. Khalid Mujib Sehravardi and ors.* (1981) 1 SCC 722

⁴ *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.* (2002) 5 SCC 111

⁵ supra note 1

⁶ *Zee Telefilms Ltd. and Anr. v. Union of India and Ors.* (2005) 4 SCC 649.

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upon the tests laid down in *Pradeep Kumar Biswas's*⁷ case this Court held that the Board(similar to that of SCCI) was not financially, functionally or administratively dominated by or under the control of the Government so as to bring it within the expression 'State' appearing in Article 12 of the Constitution.

It is humbly submitted with reliance to the above precedents, the parameters or the guidelines for identifying a body as coming within the definition of 'other authorities' in Article 12. as extracted from the *Pradeep Kumar Biswas's*⁸ case are as follows :-

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. ⁹

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. ¹⁰

(3) It may also be a relevant factor ... whether the corporation enjoys; monopoly status which is State-conferred or State-protected. ¹¹

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. ¹²

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. ¹³

(6) Specifically, if a department of Government is transferred to a corporation, it

⁷ supra note 2

⁸ supra

⁹ supra(SCC p. 507, para 14)

¹⁰ supra(SCC p.508, para 15)

¹¹ supra (SCC p. 508, para 15)

¹² supra (SCC p. 508, para 15)

¹³ supra (SCC p.509, para 16)

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would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government .¹⁴

It is humbly submitted that The facts established in the instant case shows the following :-

- 1.SCCI is not created by a statute.
2. No part of the share capital of the SCCI is held by the Government.
3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the SCCI.
4. The SCCI does enjoy a monopoly status in the field of cricket but such status I not State conferred or State protected.
5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the SCCI. All functions of the SCCI are not public functions nor are they closely related to governmental functions.
6. The SCCI is not created by transfer of a Government owned corporation. It is an autonomous body.

To these facts if we apply the principles laid down by seven Judge Bench in **Pradeep Kumar Biswas case**¹⁵, it would be clear that the facts established do not cumulatively show that the SCCI is financially, functionally of administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the SCCI is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

¹⁴ supra (SCC p.510, para 18)'

¹⁵ supra note 2

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Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the parameters laid down by this Court in **Pradeep Kumar Biswas's case**. Even otherwise assuming that there is some element of public duty involved in the discharge of the SCCI's functions even then as per the judgment of this Court in **Pradeep Kumar Biswas**¹⁶ that by itself would not suffice for bringing the SCCI within the net of 'other authorities' for the purpose of Article 12.

It is further submitted that the said judgment being a judgment of Seven Judge Bench of this Court is binding on this Bench.

It is further submitted that the effect of treating the SCCI as State will have far reaching consequences in as much as all the other national sports federations as well as some other bodies which represent Indigo in the international forum in the field of art, culture, beauty pageants, cultural activities, music and dance, science and technology or other such competitions will also have to be treated as a 'State' within the meaning of Article 12, opening the flood gates of litigation under Article 32 and 226. We do find sufficient force in this argument. Many of the above mentioned federations or bodies do discharge functions and/ or exercise powers which if not identical are at least similar to the functions discharged by the SCCI. Many of the sport persons and others who represent their respective bodies make a livelihood out of it (for e.g. football, tennis, golf, beauty pageants etc.). Therefore, if the SCCI which controls the game of Cricket is to be held to be a State for the purpose of Article 12, there is absolutely no reason why other similarly placed bodies should not be treated as State. The fact that game of Cricket is very popular in Indigo also cannot be a ground to differentiate these bodies from the SCCI. Any such differentiation dependent upon popularity, finances and public opinion of the body concerned would definitely violate

¹⁶ supra

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Article 14 of the Constitution, as any discrimination to be valid must be based on hard facts and not mere surmises (See State of Kerala v. T.P. Roshana : [1979])¹⁷. Therefore, the SCCI in this case cannot be singly identified as 'other authority' for the purpose of Article 12.

It is humbly submitted in our opinion, for the reasons stated above SCCI can be considered as a 'State' for the purpose of Article 12.

With reliance to the above arguments presented and precedents cited, it is humbly submitted before this hon'ble court that SCCI is not a "state" under Article 12 of the constitution and hence SCCI is not amenable to the jurisdiction of the highcourt.

2. WHETHER THE IMPUGNED ORDERS OF THE HIGH COURT OF MAHA PRADESH VIOLATED THE FUNDAMENTAL RIGHTS GUARANTTED UNDER THE CONSTITUTION?

It is humbly submitted before this hon'ble court that the impugned order of the High Court of Maha Pradesh has violated the fundamental right guaranteed under Article 19(c) of the constitution of Indigo.

It is submitted that while the report seems to have achieved a very laudable objective the same is only recommendatory and ought not to be imposed on a society formed by private individuals who enjoy constitutional protection under Article 19(c) of the Constitution of Indigo.

"19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right—

(c) to form associations or unions or cooperative societies "

¹⁷ State of Kerala v. T.P. Roshana : [1979]2SCR974

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It is humbly submitted that the proposed change in the composition of SCCI would adversely affect the interest of those who had been members of the SCCI since the beginning. such reforms will cause any injustice either to the cause of the game or to those citizens who have been associated in promoting the same.

It is submitted that even when the provisions of Article 19(1)(c) may not be available to the SCCI , yet the recommendations made by the Committee, if accepted, would prejudicially affect the citizens who have come together to form such association.

It is submitted that this court in its discretion lift the veil to determine whether any citizen/citizens was affected and grant suitable relief if the answer was in the affirmative.

It is submitted that once this Court decides to do so it will find that citizens comprising the State Cricket Associations are the ones actually affected by the recommendations in question.

It is further submitted that the right of a citizen to carry on trade or business which is contemplated by Article 19(1)(g) Is linked with right to form associations or unions contemplated by Article 19(1)(c). that Article 19(1) (c) enables the citizens to choose their instruments or agents for carrying on the business which it is their fundamental right to carry on . If citizens decide to set up a corporation or a company as their agent for the purpose of carrying on trade or business, that is a right which is guaranteed to them under Article 19(1)(c). Basing on this distinction between the two rights guaranteed by Article 19(1)(g) and (c) respectively it is humbly submitted that we should not hesitate to lift the veil, because by looking at the substance of the matter, we would really be giving effect to the two fundamental rights guaranteed by Article 19(1).

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In the **Bennet Coleman** case,¹⁸ the Newsprint Control Order was challenged under Arts.19(a) and 14 in writ petitions filed by several newspaper companies and several readers, newspaper editors and shareholders. the petitions were held maintainable as the rights not only of the newspapers companies but also of the editors, readers and shareholders were also involved . These individuals exercised their right of freedom of speech through “their newspapers through which they speak.”

In the instant case, as the fundamental right of all the citizens associated to form the SCCI as well as the citizens of the state associations are involved and as such this hon’ble court should not hesitate to invoke the doctrine of piercing of veil and protect their right.

In **Smt. Damyanti Naranga v. the Union of India Ors**¹⁹ a Constitution Bench of this Court clearly held that the right to form an association implied that the person forming the association/Union had the right to continue to be associated with only those whom they voluntarily admit in the Association. This Court declared that the right under Article 19(1)(c) was not confined to the initial stage of forming of an association for any such restricted interpretation of that provision would render the right meaningless in a situation where no sooner the association is formed, a law is passed interfering with its composition so that the association formed may not be able to function at all. This Court, in that view, held that the right will be rendered ineffective until it is held to include the right to continue the association/union with its composition as voluntarily agreed upon by the persons forming the association. This Court affirmed the view taken in its earlier decision in **O.K. Ghosh and another v. E.X. Joseph**²⁰ and observed

¹⁸ Bennet Coleman & Co. v. Union of India, AIR 1973 SC 106: (1972) 2 SCC 788:

¹⁹ **Smt. Damyanti Naranga v. the Union of India Ors.**, 1971 (1) SCC678

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6. It was argued that the right guaranteed by Article 19(1)(c) is only to form an association and, consequently, any regulation of the affairs of the Association, after it has been formed, will not amount to a breach of that right. It is true that it has been held by this Court that, after an Association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the

²⁰ O.K. Ghosh and another v. E.X. Joseph, AIR1963SC812

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Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association.

Aslo in **Asom Rastrabhasa Prachar Samiti v. State of Assam**,²¹ the same principle was observed.

With reference to the above judgment ,in the instant case , the impugned orders of the highcourt of Maha Pradesh passed is interfering with its composition of the SCCI that may lead the association .

The recommendations of the high court does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association involuntarily which violates Article 19(1)(c) of the Constitution of Indigo.

Thus in reliance with the above judgment, it is humbly submitted that the impugned orders of the high court has clearly violated the fundamental right of the citizens who had associated to form SCCI in the present case.

Article 19(1)(c) of the Constitution of Indigo guarantees the fundamental right to form associations or unions; and as held by this Hon[“]ble Court in a catena of cases including **Zoroastrian Cooperative Housing Society Ltd. v. District Registrar, Coop Societies**²²and **Damyanti Narang v. UOI**²³, which said that even a legislation by which members are

²¹ AIR 1989 SC 2126: (1989) 4 SCC

²² *Coop Societies (2005) 5 SCC 632*

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introduced in a voluntary association without any option of being given to the existing members to keep out the persons whom they don't wish to associate with, or any law which takes away the membership of those who have voluntarily joined it, would violate Article 19(1)(c). As such the impugned orders of the high court by interfering in the composition of the SCCI would violate Article 19(c).

It is therefore submitted that in reliance with the above arguments and judgments cited, the impugned orders of the high court has clearly violated the fundamental right of the members of the SCCI and thus the order should be declared *void ab initio*.

3.WHETHER THE IMPUGNED ORDERS PASSED BY THE HIGH COURT OF MAHA PRADESH IS VIOLATIVE OF THE CONSTITUTIONAL PRINCIPLES?

It is humbly submitted before this hon'ble court that the impugned orders passed by the high court of maha Pradesh is a judicial legislation and it violates the doctrine of separation of powers and rule of law and hence it has violated the basic structure of the constitution.

3.1.JUDICIAL LEGISLATION IS UNCONSTITUTIONAL

The impugned order of the high court is nothing but an unwarranted attempt by the Court at the behest of the Yodha Committee at enacting legislation which tramples upon the rights of citizens and associations and seriously impinges on the legislative functions of not only Parliament but also respective State Assemblies.

²³ *Damyanti Narang v. UOI (1971) 1 SCC 678*

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It is humbly submitted that The Yodha Committee has made a new constitution of SCCI which were matters pertaining exclusively to the legislative domain. If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it.

In *Union of India v. Deoki Nandan Aggarwal*,²⁴ the Apex Court similarly observed: “It is not the duty of the Court either to enlarge the scope of the legislation.....The Court cannot re-write, re-cast or re-frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Court.”

In *District Mining Officer v. Tata Iron and Steel Co.*,²⁵ the Supreme Court held that function of the Court is only to expound the law and not to legislate.

The Supreme Court in *Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka*,²⁶ held that the Court cannot legislate or amend the law. There is broad separation of powers under the Constitution and the Supreme Court must not ordinarily encroach into the legislative or executive domain. Reference in this regard can be made to *Indian Drugs and Pharmaceuticals Ltd. v. The Workman of Indian Drugs and Pharmaceuticals Ltd.*,²⁷

In *State of Jharkhand v. Govind Singh*²⁸, the court held that It is for the legislature to amend the law and not the Court. While interpreting a provision, the Court only interprets the law and cannot legislate it.

²⁴ *Union of India v. Deoki Nandan Aggarwal*, AIR 1992 SC 96: 1991 AIR SCW 2754: (1991) 3 SCR 873

²⁵ *In District Mining Officer v. Tata Iron and Steel Co.*, (2001) 7 SCC 358: AIR 2001 SC 3134: 2001 AIR SCW 2927,

²⁶ *Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka*, AIR 2007 SC 2531: 2007 AIR SCW 4513: 2007 (4) Supreme 329

²⁷ *Indian Drugs and Pharmaceuticals Ltd. v. The Workman of Indian Drugs and Pharmaceuticals Ltd.*, (2007) 1 SCC 408.

²⁸ *State of Jharkhand v. Govind Singh*, AIR 2005 SC 294: 2004 AIR SCW 6799: (2005) 10 SCC 437).

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In *V.K. Reddy vs. State of Andhra Pradesh J.T.*,²⁹ this Court observed: "The Judges should not proclaim that they are playing the role of law maker merely for an exhibition of judicial valour."

The justification often given for judicial encroachment into the domain of the executive or legislature is that the other two organs are not doing their jobs properly and fail to perform its duties. Even assuming this is so, the same allegation can then be made against the judiciary too because there are cases pending in Courts for half-a-century as pointed out by the Supreme Court in *Rajindera Singh vs. Prem Mai & others*.³⁰ Should then the executive say to the judges that since you are not doing your duty properly as you often take an inordinate time to decide cases yourselves, we will decide cases? Justice Thakur's argument cuts both ways.³¹

In his dissenting judgment in *Griswold vs. Connecticut* 381 U.S. 479,³² Mr. Justice Hugo Black of the U.S Supreme Court warned that '*unbounded judicial creativity would make the Court a day-to-day Constitutional Convention*'.

It is humbly submitted that this impugned order is legislative in nature, and could not have been validly passed by the Court, as it has been held in several decisions of the Supreme Court that there is broad separation of powers in the Constitution, and it is not for one organ of the state to encroach into the domain of another. The High Court could have no doubt forwarded the Yodha Committee recommendations to Parliament with their own recommendation that the Yodha Committee recommendations be enacted as law by

²⁹ In *V.K. Reddy vs. State of Andhra Pradesh J.T.* 2006(2) SC 361 (vide para 17)

³⁰ (Civil Appeal No. 1307/2001) decided on 23 August, 2007

³¹ <http://indianexpress.com/Article/india/india-news-india/chief-justice-of-india-ts-thakur-says-judiciary-intervenens-only-when-executive-fails-2838105/>

³² *Griswold vs. Connecticut* 381 U.S. 479,

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Parliament, but to direct itself that the recommendations be implemented is clearly a legislative act not within the Court's domain.

In the name of judicial activism, Judges cannot cross their limits and try to take over functions which belong to another organ of the State.

It is therefore submitted on the arguments presented and precedents cited, that the judiciary has no power to legislate a law and thus the impugned orders of the high court is unconstitutional and hence liable to be squashed.

3.2.JUDICIAL RESTRAINT

Thus, it is very clear that the Court has a very limited role and in exercise of that, it is not open to do judicial legislation. Neither the Court can legislate, nor has it has any competence to issue directions to the legislature to enact the law in a particular manner.

The Supreme Court in *Bal Ram Bali v. Union of India*,³³ observed as under: “It is not within the domain of the Court to issue a direction for ban on slaughter of cows, buffaloes and horses as it is a matter of policy on which decision has to be taken by the Government. That apart, a complete ban on slaughter of cows, buffaloes and horses, can only be imposed by legislation enacted by the appropriate legislature. Courts cannot issue any direction to the Parliament or to the State legislature to enact a particular kind of law.” and thus exercised judicial restraint.

³³ The Supreme Court in *Bal Ram Bali v. Union of India*, (2007) 6 SCC 805: AIR 2007 SC 3074: 2007 AIR SCW 5551

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Judges must exercise judicial restraint and must not encroach into the executive or legislative domain.³⁴

Likewise, the highcourt should have limited itself to the principle of judicial restraint.

3.3.SEPARATION OF POWERS

The theory of separation of powers first propounded by the French thinker Montesquieu (in his book „*The Spirit of Laws*“) broadly holds the field in Indigo too. *There is no liberty where judicial power is not separated from both legislative and executive power. If judicial and legislative powers are not separated, power over the life and liberty of citizens would be arbitrary, because the judge would also be a legislator. If it were not separated from executive power, the judge would have the strength of an oppressor.*” Thus argued Montesquieu, the great political philosopher of the Enlightenment, in favour of a system of governance in which different branches of government exercise different powers to avoid concentration of powers and preserve human liberty—the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the law. This is the doctrine of separation of powers.

As observed by the Supreme Court in *Divisional Manager, Aravalli Golf Course vs. Chander Haas*³⁵, "Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State, the legislature, the

³⁴ *Indian Drugs & Pharmaceuticals Ltd. vs. The Workman of Indian Drugs & Pharmaceuticals Ltd.* (2007) 1 SCC 408 and *S.C. Chandra and Ors. vs. State of Jharkhand and Ors.* JT 2007 (10) 4 SC 272

³⁵ *Divisional Manager, Aravalli Golf Course vs. Chander Haas* (2008) 1 SCC 683:

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executive and the judiciary must have respect for the others and must not encroach into each other's domains."

In the Indian Context, 'Separation of Power' is one of the basic features of the Indian Constitution, which has been rightly declared by the Supreme Court of India in the matter of *State of Bihar v. Bal Mukund Shah*.³⁶

The cases, *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab*,³⁷ *L. C. Golak Nath & Ors. v. State of Punjab & Anr.*,³⁸ *Ram Jawaya vs. State of Punjab*,³⁹ a Constitution Bench (5 Judge Bench) of the Supreme Court, *Asif Hameed vs. State of Jammu and Kashmir*,⁴⁰ a three Judge bench of this Court also recognizes the doctrine of separation of powers.

3.4.COMPETENT AUTHORITY

It may be noted that the SCCI is a society registered under the Societies Registration Act, 1860. Neither the said Act nor rules framed therein mandate that the SCCI shall have to carry out the above recommendations. In fact it is for the SCCI itself, or the State Legislature or Parliament to impose such restrictions on the functioning of an autonomous private society.

Hence if there was any complaint about the constitution or functioning or financial condition of SCCI, there is a remedy prescribed in the Act itself. The court or the committee appointed by it cannot take over the said function of the Registrar and cannot pass orders in that connection.

³⁶ of *State of Bihar v. Bal Mukund Shah*, (2000) 4 SCC 640.

³⁷ *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab*, AIR 1955 SC 549,

³⁸ *L. C. Golak Nath & Ors. v. State of Punjab & Anr.*, AIR 1967 SC 1643,

³⁹ *Ram Jawaya vs. State of Punjab* AIR 1955 SC 549 (vide paragraph 12)

⁴⁰ *Asif Hameed vs. State of Jammu and Kashmir*, AIR 1989 SC 1899

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The framing of rules for SCCI are all matters covered by the Societies Registration, Act, 1860 and the Rules and bye laws of SCCI, and any decision in these matters has to be consistent with and not violative of the provisions of the said Act.

They have lost sight of the fact that the field is completely occupied by legislative enactments. It is wholly illegal and invalid for any Court or local commission appointed by a Court to pass orders or directions contrary to the statute or rules/ bye laws made thereunder.

If the statute permits the SCCI and the affiliated State units to have their independent and present system of management and functioning, neither the Supreme Court nor any committee appointed by it can interfere with the same, and the said acts will be wholly illegal and contrary to the rule of law which is a basic principle of democracy as declared by the Supreme Court itself as well as contrary to constitutional principles.

3.5.RULE OF LAW

If this impugned order is upheld, such a precedent of the Supreme Court as this case would enable all judges be it in the Supreme Court or the High Court to completely disregard statutory enactments and constitutional provisions and pass orders and direction at their whims and fancies completely unsupported by law. Such direction would be flagrantly illegal, null and void ab-initio But does the **rule of law** justify throwing to the winds all constitutional principles, statutes like the Societies Registration Act, and rules/bye laws of the SCCI.

This trend started by the Supreme Court, may next result in issuing directions to regulate and control media, Bollywood, functioning of political parties etc. which also involve substantial public interest, on the allegation that there is lot of malaise in those fields.

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No one is above law is the basic principle of the rule of law , as such the act of the high court denying all the principles of constitution and laws in the state would therefore be violative of the rule of law.

3.6.BASIC STRUCTUE OF THE CONSTITUTION

The doctrine of separation of powers and the rule of law were both the basic structure of the constitution. Violating those principle would therefore be regarded as the violation of basic structure of the constitution.

on relying upon the above arguments and judgments cited, it is submitted that the impugned orders of the High Court is a judicial legislation and it violates the basic principles of the constitution and hence the impugned order is unconstitutional and declared void ab initio.

PRAYER

In the light of the above, the petitioners pray that this Hon'ble Court may be pleased to

1. Declare the SLP is maintainable and the same to be heard.
2. Declare the PIL filed by Mr. Dev is not maintainable.
3. Declare that impugned orders of the High Court is unconstitutional and thus set aside the orders of the high Court.

And further pass such orders that may this Hon'ble court deem fit and proper and thus kindly render justice.

For this act of kindness, the Appellant shall duty bound forever pray.

All of which is humbly prayed,

(Counsel for Appellant)