

Moot Proposition

1. Asgard is positioned on the Panasiatic subcontinent in south-central Panasia and is located in both the southern and northern hemisphere; Asgard is among the most populated countries of the world. Having gained independence a mere 70 years back, Asgard is among the largest and youngest democracies of the world. Though an independent and sovereign country, the Asgardian Constitution draws its inspiration from various countries and is the lengthiest Constitution in the world. The population of Asgard is residing in 30 different states. It is predominantly an agricultural state having more than 70 percent of the population working in agricultural sector relying on the traditional methods of irrigation.
2. During the freedom struggle, the Asgardian freedom fighters and political leaders came to the realization that the general public should have inherent fundamental rights in order to live life truly as a free person. Hence, while the Constitution was being framed, an entire part, namely PART III of the Constitution, was devoted to fundamental rights and the concerned safeguards thereof.
3. Over the coming years, the judiciary through a plethora of decisions paved way for several legal rights to attain the status of fundamental rights with a view of affording the citizens, a better standard of living. Thus, the Supreme Court became the guardian of these rights.
4. Being a democracy, the fundamental rights possessed by the citizen were cherished even more and as such various fundamentals rights were derived from the ones already pronounced.
5. Asgard was a French colony till the year 1952. And due to the crippled economy, Asgard imposed several trade restrictions on its global trade. In 1997, Asgard introduced Liberalisation, Globalisation, and Privatisation (LPG) Policy welcoming Multi National Companies to set up their shops in the country.
6. Chilcott Pharmaceutical International (herein referred to as “CPI”) is an international pharmaceutical company specialising in Drugs related to Respiratory as well as Skin disorders. However, over the years, CPI expanded its business in almost all kinds of medicines. It was incorporated in 1908 in the United State of America and within the period of 60 years, it expanded its operations in the whole world. CPI had 150+ subsidiaries in over 40 countries by the year 1985. It has more than 700 production units and more than 1 Lac employees.

7. Chilcott Pharma-Asgard (P) Ltd. (herein referred to as “CPAL”) was formed as a subsidiary company of the Chilcott Pharmaceutical International. CPAL was incorporated under Companies Act, 1956 in the year 1998. It was one of the first pharmaceutical companies to be established post liberalisation period. It initiated its operations by the production of medicines for Skin infections. CPI was a major shareholder with 50.9% of the share holdings in the CPAL. The balance of 49.1% was owned by various Asgardian investors. CPI was allowed a majority ownership, despite Asgardian limitation of Foreign Investment due to technological sophistication of its operations. CPI chose all plant designs and production processes and designated operational procedures. CPI also conducted safety audits.
8. CPAL established its first fully operational production unit in Hogun, a Northern state of Asgard in the year 1999. By the year 2002, it started production of Respiratory infections’ medicines. And by 2005, it matched the benchmark set by its parent company and started producing almost the whole range of medicines.
9. In the year 2009, Asgard was hit by a deadly tsunami killing over a million people in the state of Agathia alone. This led to the spread of various diseases such as Malaria and Aspiration pneumonia at a large scale. To tackle the widespread epidemic, the State Government of Agathia requested the Doctors to work overtime to treat the patients. Besides requesting the pharmaceutical companies to increase the supply of medicines to help the Tsunami victims, the Central Government also created a Special Economic Zone (SEZ), in and around the village Kamalpur (in the state of Agathia), for pharmaceutical companies inviting numerous pharmaceutical companies to set up their production units in Agathia.
10. Eying this as an opportunity to sell more medicines, CPI directed its subsidiary CPAL to step up the production facility in Agathia’s Pharmaceutical cluster and meet up with the soaring demand for the medicines to cure Malaria and Pneumonia.
11. In 2010, CPAL acquired 22.7 acres of land (mostly paddy fields) in order to set up a manufacturing plant at Kamalpur. On February 27, 2010, the Shahgarh District Collector (whose constituency includes Kamalpur) granted permission to begin building the plant. In June 2010, its operations began. The State Pollution Control Board (SPCB) granted the company a permit to use about 1 million litres of water per day for production of the medicines. The source of water was primarily groundwater from about six bore wells and two open ponds from which water was to be extracted.

12. In order to treat the water effluent discharging out of the manufacturing unit, a Chemical Treatment plant was also set up on the site of the manufacturing unit. The Treatment plant was set up to deactivate the liquid waste coming out of the facility. This treatment plant was subject to regular inspection by Independent engineers as well as government engineers. They noted that the chemical treatment was designed in such a way that it will decontaminate or deactivate certain wastes on site itself.
13. However, after two years of increased production, local residents began to complain about polluted water and extreme water shortages. Protests by local residents became common scenario and fearing their lives and livelihood, various leaders of different local communities approached the Village council challenging the operations undertaken by the CPAL. They claimed that the water table was receded by the excessive water usage by the Pharmaceutical Company while producing the medicines.
14. The issue of revocation of the licence of the CPAL to manufacture its medicines in the Kamalpur facility was up for consideration before the Village Council. The residents furious over the excessive water usage by the company claimed that it is necessary that the operations of the CPAL Kamalpur facility be enjoined in order to protect the interests of local people. However, after days of lengthy discussions on the issue, the council decided that the licence of the CPAL Kamalpur facility will stay intact.
15. Angered by the decision of the village council, the peaceful protests by the Kamalpur residents turned violent. This incident attracted various big media houses to report the issue. Interviews, Debates and Prime time coverage became a common sight.
16. Dr. Abdullah Mufti, a renowned hydrologist associated with the NGO *SaveJal* working on gamut of environmental issues, conducted an independent research and found that there were high levels of calcium and magnesium in the water, caused by excessive extraction of water. The report concluded by chalking out that there was indeed a decline in the ground water table in and around the village. It reported that the villagers faced numerous problems such as lack of irrigation of crops, lack of potable water in the village because of which the women had to walk for more than 20 kms to get drinking water for their families.
17. Central Government of Asgard filed a claim in the court of Boston, Massachusetts against the CPI. Claiming that the parent company will be liable for the shrinkage of the water table in the Kamalpur region, the Central government filed a petition asserting that the company should be held accountable for the reduction in the water resource and hardship faced by the residents.

18. Meanwhile, amidst the violent protests by the Kamalpur residents, death toll of people dying from Malaria reached a soaring 300 number mark. Such a significant rise in the number of deaths of the patients suffering from Malaria within a span of 2-3 years appalled the Doctors of the region.
19. A study carried out by Dr. Cecilia Vermaelen, a Professor of environmental sciences at Sweden's University of Gothenburg found that the industrial effluent entered the village wells, along with ditches, lakes and rivers around the pharmaceutical cluster, receives large doses of antibiotics, along with the traditionally monitored pollutants. When these antibiotics come in contact with pathogenic bacteria (which cause disease in humans), the latter learn to resist the former, making human infections by these pathogens extremely hard to treat.
20. The study quoted a research from Delhi's (India) Moolchand hospital found that between 2002 and 2008, among patients infected by *Klebsiella pneumoniae* (a pneumonia-causing bacterium), the percentage of these pathogens that were resistant to carbapenems grew from 2% to 52%. Carbapenems are a class of last-resort antibiotics which doctors use only when others have failed. Thus, Dr. Vermaelen noted that it was due to the industrial effluent draining out of the CPAL's production facility that had caused the deaths of hundreds of people in a single village.
21. As a welfare state and acting as the guardian of people's lives, Central Government of Asgard filed a Mass Tort suit against CPI in the district court of Shahgarh attributing the reduction in water table along with the sudden deaths of the people to the operations of the Kamalpur production facility. Learned District judge held CPI liable for the water table reduction as well as the environmental pollution leading to the deaths of hundreds of people and decided to revoke the licence of CPAL Kamalpur facility.
22. In February 2013, decision was challenged in the High Court by the CPI. It was pleaded that its subsidiary had the day to day control of the plant and was in a better position to ascertain the viability of the plant and thus, they should not be dragged into this legal battle. It also pleaded that the reduction in water table in the area cannot be attributed to the lawful operations carried out by its production facility. It pleaded that the operations carried out by the production unit is within the bounds of the directions given by State Pollution Control Board and the Shahgarh District Collector's decision. The respondent on the other hand claimed that the water which is being used for commercial purposes belongs to the village residents and the company's responsibility towards them restricts them to use the public water in such a way which deprives

the general public their right to a basic necessity. It also contended that such large scale damage can only be rectified by the parent company and it cannot escape liability under the garb of parent-subsiary relationship.

23. In 2015, the High Court noting that the water table receded, passed an Interim order directing the Pharmaceutical giant to pay an amount of Rs. 115 Crores /-.
24. During the pendency of the appeal before the High Court, the Pharmaceutical Company filed an SLP before the Apex Court challenging the interim relief granted by the High Court. It was claimed by the Respondent that the Hon'ble Supreme Court lacks jurisdiction. It was further asserted by the Responding party that the Company is liable for the shrinkage of the water table along with the environmental pollution caused due to the discharge of the industrial effluent in the water bodies adjacent to the cluster. Now all the issues are to be finally discussed by the Supreme Court of Asgard on 8th April, 2018.

Note: Parties may raise issues in accordance with the facts stated in the Moot Proposition. Laws of Asgard are *Pari Materia* with laws of India.

Disclaimer: This case is purely fictional. Any resemblance to names, properties and associations is purely co-incidental.