

MOOT PROPOSITION

1. Union of Parkview is a democratic country located in Northwing continent. From past 1000 years, many invaders tried their luck to colonise Parkview but eventually it were the Unitedworld Kingdom (UK) that eventually established its supremacy over Parkview in 1750 and converted her into their colony for next 200 years. During their rule, UK unified Parkview economically and politically, scrapped off its traditional legal system and made various laws for governing Parkview and its people. After independence from foreign rule in 1947, Parkview continued to govern itself with various colonial laws that were made by Unitedworld Kingdom.

2. After independence, Union of Parkview began to draft a Constitution of their own through their Constituent Assembly. The Constitution framers incorporated a chapter on Fundamental Rights under Part III of their Constitution. The intent of the Constitution makers was very clear that they wish to create a progressive nation with strong foundational values in favour of individual's life and liberty. The debates that took place in the Constituent Assembly always led to a unanimous conclusion that Union of Parkview must be a nation where State's powers are limited and there must be a perpetual and inalienable obligation on State to ensure that rule of law prevails and every action of State is for public welfare. Abolition of draconian and anarchic laws along with ensuring transparency and accountability were set to be the key objectives of Union of Parkview.

3. The Preventive Detention Act (hereinafter referred to as PD Act), was passed by legislature of Unitedworld Kingdom in 1935 to curb the revolts that were taking root in Parkview. The legislation was then considered to be one of the most barbaric and regressive law that muzzles the civic liberties of people and rampantly violates their rights. The legislation served as a tool to silence all voices that were raised against the colonial government and was always labelled as anti-democratic. The people of colonial Parkview revolted against the law and the legal proceedings that were taken under it. After independence, Union of Parkview allowed the Preventive detention Act to continue into existence. It was cited by the interim Government of Parkview that current situation of Parkview is politically instable and therefore any attempt to disassociate the country can be curbed by the said Act. It was agreed in the constituent Assembly that once the purpose of the aforesaid Act is fulfilled then it would be repealed.

4. Immediately after the commencement of the Constitution in 1950, Union of Parkview witnessed revolts and movements in various parts relating to secession from the country. The leadership of Parkview National Congress (PNC) was determined to maintain political unity of the country and therefore announced that all those involved in seperationist movements and inciting violence would be strictly made liable under various laws. After this representation, from Union Government of Parkview various State Governments invoked PD Act citing law and order problems. Consequently, various revolutionary leaders and head of unions were kept under Preventive Detention. State Government enforced the PD Act with heavy hands and began to detain almost everyone on whom

there was a suspicion. When the matter was taken for judicial interference, State contended before Hon'ble Supreme Court the extraordinary situation related to national security and integrity and argued that resorting to PD Act is inevitable. Supreme Court endorsed the view of the State and allowed the proceedings. However, it made a specific caution that legislations like PD Act are regressive and symbolic of tyranny and therefore advised the Union of Parkview to work in the direction of scrapping away this law.

5. PD Act has two most controversial sections which read as:

Section 6: Power to make orders detaining certain persons.--(1) The Central Government or the State Government may---

(a) if satisfied with respect to any person or having a suspicion against any person and with a view to preventing him from acting in any manner prejudicial to—

(i) the defence of India, the relations of India with foreign power, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services to the community, or

(b) if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946 (XXXI of 1946), that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India it is necessary so to do, make an order directing that such person be detained

Section 7: Grounds of order of detention to be disclosed to persons affected by the order.--(1) When a person is detained in pursuance of a detention order, the authority making the order shall, make an endeavour to, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order, in a case where such order has been made by the Central Government, to that Government, and in a case where it has been made by a State Government or an officer subordinate thereto, to the State Government.

The said provisions were often criticised but Government continued to invoke these sections whenever required.

6. On 10th April, 2010 Election Commission of Parkview announced elections in the State of Whiteland to be held in three phases starting from 10th December to 17th December, 2010. All the political parties began to prepare for campaigning and promotion. The State was currently ruled by PNC and Sociminist Party offered a strong challenge to PNC during this election. Sociminist leader Grey Harris has been in limelight as he has been very critical of PNC leadership in State and has often highlighted issues of corruption, maladministration and other illegal undertakings in administration. Though Grey Harris was a vibrant leader but he was facing investigations on various charges that included hate speech, inciting public, community hatred etc. His name has been associated with various violent outbreaks and communal outrages and investigations were pending in all such matters. There was a wave that Sociminist party under leadership of Grey Harris would sweep the elections. On 15th April, 2020 Grey Harris along with his party members and around 2000 protestors was protesting against PNC in Virakulam district on some issue of

corruption. Although the protest was peaceful but it became a heavy time for PNC control the protest. The event was labelled as a law and order situation and unprecedented media attention to this further tarnished image of PNC.

7. On 18th April, 2020 Grey Harris was travelling to one of the adjoining district named Rochhinpuram. On his way, he was interrupted by Police Officers asking him to show Id's and other documents. Later, police officers presented before him orders issued by Home Department of Whiteland to take Grey Harris into detention under the PD Act. When Grey Harris protested he was asked to cooperate and was later taken to preventive detention prison where the orders were executed. When Sociminist party workers got to know about this detention, they immediately approached the detention centre and demanded release of their leader. However, police administration declined their request and asked them to wait till Home department decides about the same.

8. Meanwhile, Grey Harris inquired reasons about his detention but nothing was told to him despite his repeated requests in this regard. After, expiry of three months he was not released and his detention was extended even further. This decision was taken with wrath from everyone. The matter attained a national attention and Government of Whiteland gave a public statement that Grey Harris was going to incite hatred among residents of Rochhinpuram by giving a communal address and was intending to reap political benefits out of such hatred. Such an address of Grey Harris would have resulted in severe law and order problems and might result in violence that could disrupt public order. Therefore, anticipating this threat to society at large, internal stability within the state and past antecedent of Grey Harris in such activities, he was detained and consequently his detention has been extended.

9. The Sociminist party made a public declaration that the order of preventive detention is nothing but a mechanism to settle political vendetta by PNC against Grey Harris. They stated that Grey Harris has been intentionally detained so that Sociminist party is unable to set up its election agenda and offer a staunch political opposition to PNC. They said that there is no concrete basis that enables a ground to detain Grey Harris. Consequently, they decided to approach Supreme Court of Parkview for immediate release of Grey Harris by filing the writ of Habeus Corpus U/A 32 of the Constitution of Parkview. Grey Harris also challenged the validity of the PD Act, 1935 stating it to be violative of Article 19(1)(d), Article 22 and Article 21.

10. Supreme Court admitted the writ petition and asked the parties to argue case on merits. Petitioner took a view that as per the provisions of Article 13(1) the provisions Preventive Detention Act are unconstitutional as they violate Article 21 of the Constitution and it is not in tune with the provisions of Article 22. He reiterated that during debates in Constituent Assembly, framers of Constitution promised that a draconian law like PD Act would soon be repealed. Moreover, Supreme Court has often observed the need to replace this law and Government is using this law to silence voices of citizens against Government. Grey Harris also argued that through the detention his right u/a 19(1)(d) has also been

violated. Therefore, his detention order must be quashed and the corresponding provisions of PD Act must be set aside.

11. Union of India joined the petition to defend the validity of Act. Government defended validity of legislation stating that on ground that List I of VII Schedule contains entries specifying items in respect of which the Parliament has exclusive legislative powers. Entry 9 is in these terms provides: "Preventive Detention for reasons connected with Defence, Foreign Affairs or the Security of India; persons subjected to such detention." List III of that Schedule VII enumerates topics on which both the Union and the States have concurrent legislative powers. Entry 3 of that List is in these terms: "Preventive detention for reasons connected with the security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community; persons subjected to such detention." Therefore, in terms of these entries, Parliament and State Legislative Assembly have the power to make such a law and if this law is argued to be a pre-constitutional law, even then it could be justified under above entries. It also argued that section 6 provides power to Central and State Governments for initiating detention of persons and Section 7 does not provide any timeline on stating of reasons and opportunity of hearing, therefore; such matters have to be decided by Government based upon facts and circumstances of the case before it. Moreover, said Act is not violative of 19(1)(d) as the Act is a reasonable restriction under 19(4). After preliminary hearing on the matter Hon'ble Court framed the following issues:

- I. Whether the impugned provisions of Preventive Detention Act, 1935 are violative of Article 22 and 21 as per provisions of Article 13(1)?
- II. Whether the order passed against Grey Harris for preventive detention is valid in terms of Article 19(1)(d) and whether Article 19(1)(4) can save the detention order despite an express provision under Article 22 related to detention?

NOTE:

- Laws of Parkview are pari-materia with laws of India
- The provisions mentioned in the moot proposition may not be exactly similar to the actual law related to Preventive Detention. Therefore, participants must stick to the relevant provisions as mentioned in the proposition.
- One additional issue may be framed subject to page limit. Sub-issues may be framed as required.