

4th INDRAPRASTHA
NATIONAL MOOT COURT COMPETITION, 2015
MOOT PROBLEM

1. 'Aryavarta' is a country of continental dimensions whose politico-legal and socio-economic system resemble India's politico-legal environment, including the constitutional structure and prevalence of various personal laws that provide a very interesting backdrop for a multi-cultural, multi-ethnic and multi-lingual system in a federal form of governance. It is a huge country, with huger problems. Indeed it is microcosm of the world. A thousand and quarter million plus population, spread over 3.28 million sq. kms of landmass with every imaginable kind of a weather pattern from minus 40 degree Celsius in its vast hilly region to 50 degree Celsius temperature in the deserts lying to the west of this colossal country, and temperate weather of coastal regions. 20 official languages written in 15 different scripts, around 2000 dialects, 16 well-demarcated agro-climatic zones and almost all religions of the world well and adequately represented. The variety of 'Aryavarta' is mind boggling and all this has a bearing on its liberal and 'secular', republican politico-legal system. The country has a hoary past and a very vibrant continuous culture of more than 5000 years of recorded history.

2. Country's social structuring consists of Aryans, Hodos and Hotos, which are the three dominant communities in the country. Aryans consists of roughly 80 percent of the population, hodos around 14 percent and hotos three percent. Remaining three percent are some smaller groups essentially indigenous communities. Mostly the communities are all indigenous communities, and even hodos and hotos are basically the converts from the local communities, nevertheless Aryavarta Rastra Sangh(ARS), a socio-cultural formation has been accusing the minorities, specially hodos that their loyalty lies somewhere else, not to the motherland to which they belong. There are several symbolical ceremonies of the State system that Aryavarta has borrowed from the traditions and conventions of local communities, majorly of Aryans some of which are opposed by the minorities, specially hodos that these borrowings are essentially a project that seeks to impose the majority culture on the minorities, much against the scheme of things under the Constitution of Aryavarta.

3. Like any other democratic system of governance, Aryavarta too has its own right and left wing of political ideologies but due to a very sound and special protection available to the minorities of this country within the constitutional framework, the liberal democracy has found its roots and its example as a very successful experiment in liberal democracy is quoted all over the developing world. The country got independence during 1947 and right since then the left leaning parties had their sway in the political realm. Two of the founding fathers of Aryavarta Constitution, Mr. Haru, who later became the First Prime Minister of the Country and Mr. Natsu who was credited as the main architect of Aryavarta Constitution intensely believed in the system of economic democracy and favoured socialistic pattern of society. Responding to a question on objective resolution Mr. Haru had said, 'the greatest and most important question in the country today is the problem of the poor and starving people.....he said he stood for socialism and hoped that the country too would stand for socialism. Mr. Natsu claimed that his draft established state socialism by the law of the constitution and thus makes it unalterable by any act of the legislature and the executive.....we do not want to lay down a mechanism to enable people to come and capture power....while we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy.....democracy was obviously not understood as merely a procedure for selecting a government; nor they worked for majoritarian form of democracy, they obviously had a more substantial view of democracy i.e. of economic democracy.....as such both 'secularism' and economic democracy were necessary to establish equality as one of the tenets of the Indian constitution. Granville Austin, a wonderful commentator of the Constitution of Aryavarta has wrote later, "What was of greatest importance to most Assembly members, however, was not that socialism be embodied in the Constitution, but that a democratic Constitution, with a socialist bias be framed so as to allow the nation in the future to become as socialist as its citizens desired or as its needs demanded. Being, in general, imbued with the goals, the humanitarian bases, and some of the techniques of social democratic thought, such was the type of Constitution that Constituent Assembly members created. This apparent leaning of the founding fathers of Aryavarta Constitution has persisted in the system and most political formations in the post-independence phase had left of the center ideologies.
4. It is only during 2014 that a right wing party, the Aryavarta Awam Party (AAP) has achieved absolute majority in the central legislature and formed the government on its own for the first time in the History of independent Aryavarta. This has created a heartburn amongst a whole range of left leaning parties and they have been trying to corner the new government on variety of

issues. Artyavarta Rastra Sangh (ARS) is the socio-cultural organization created during early 20th Century, which is said to be the ideological parent of AAP. ARS has always been claiming that the erstwhile left leaning parties, including the dominant force Rastriya Congress Party (RCP) have been copying the west in all their politico-legal endeavours, including the economic and social organization/rejuvenation of the country. Bolstered by the success of its progeny ARS has become vocal in criticizing the old ways of doing politics and seeks better indulgence of the newly formed government of AAP in moulding the socio-cultural system in the pattern they feel better represents the face of the country as a single unified force across the globe.

5. Mr. Totoro, one of a very senior leader of ARS has demanded that the Preamble to the Aryavarta Constitution be restored to its original form which did not have the expression “secular” and ‘socialist’ to begin with and that these expressions which were added later into the Preamble of the Constitution unduly put the majority Aryans in a bad light. His contention is that Aryavarta is a democratic and ‘secular’ nation not merely because of its constitution but due to the fact we have inherited the ‘secular’ ethos of this ageless civilization. There are systems across the globe whose constitutions were designed on ‘secular’ lines, but they have receded into medievalism and have become representative of this or that religious formation. Aryavarta is essentially a country of tolerant people and its ancient ethos support its ‘secular’ character. The mention of the same in the Preamble of the constitution is a slur on the face of the majority community, as it smacks of lack of faith in the majority community and creates an environment of suspicion, inherently inimical to ‘secular’ politics. Mr. Totoro avers that the word ‘secular’ was purposely avoided in the original constitution and its preamble, but undoubtedly, the politics of ‘secularism’, in the sense of what role to allow for religion in a democracy, was one of the dominant motifs of the deliberations of the Constituent assembly. Religious riots were taking place and partition was imminent when the meetings of the assembly began in December 1946. It is ironic that when the word ‘secular’ was not used specifically in the constitution that was passed immediately after independence by them, the members of the Constituent Assembly demonstrated a strong commitment to ‘secularism’ as an essential prerequisite for the democracy of Aryavarta. In fact, after the inclusion of the word “secular” the commitment to ‘secularism’ has apparently weakened the ‘secular’ system as it creates a sense of lack of faith amongst variety of communities specially in the majority community. Therefore, Mr. Totoro demands that the Preamble of the Constitution of Aryavarta be restored in its original form which means removal of the expression “secular” from the existing Preamble in the Constitution of Aryavarta.

6. One of the contentions of Mr. Totoro is that in the garb of “secular” practices both Hodos and Hotos being proselytizing religions have been converting Aryans to their faith and as such the percentage of Aryans has been going down consistently almost proportionate to the increase in the population of Hodos and Hotos. He alleges that the freedom of speech and expression and freedom of practicing and propagating religion has been used by Hodos and Hotos to openly persuade Aryans to join their faith. His contention is that the democratic space that has been provided to the minority communities has been misused by Hodos and Hotos in increasingly resorting to conversions and therefore Mr. Totoro also demands that a strong anti-conversion law be brought to stop this.

7. Mr. Sonaka, a member of the Central Legislature of Artyavarta and admittedly one of an admirer of Mr. Totoro has made a scathing attack on the duplicity of the erstwhile ruling parties at the center accusing them of practicing a politics of negativity. He contended that a system of governance which is inimical to the ancient ethos of this country has been perpetrated by now which need to be corrected. On the floor of the Central Legislature he has made a long presentation to the effect that the expression “secular” and ‘socialist’ are an anachronism in the Constitution of the Aryavarta and need to be removed from the Preamble of the Constitution of Aryavarta. He claimed that the words ‘socialist’ and “secular” have associations which are inconsistent with the enacting provisions of our constitution. The words ‘equality’, ‘fraternity’ and ‘liberty’, ‘justice’ etc have historically been associated with the struggle for freedom, which is not the case with words like “secular” and ‘socialist’. He informed the House of the Central Legislature that an attempt by way of 45th amendment of the constitution was made to insert definition of words ‘secular’ and socialist in article 366 of the constitution which was rejected by the Central Legislature at that point of time. He reminded the house that the debate on ‘secularism’ has so far shied away from all hard institutional issues, the forms in which the ideal of ‘secularism’ need to concretize and manifest itself. It has also created a whole penumbral area where important issues relating to ‘secularism’ have got frozen and not many people debate the issues relating to some complex and tough questions of our day today existence, viz, should state take over temples? Should affirmative action programme transcend the religion and caste both? Should minority education be exempted from RTE? Should Citizenship rights be detached from the compulsory identities? What should be the shape of common civil code?

8. This has created consternation amongst the minorities who believe that this entire political movement has been purposely planned and executed at the instance of AAP. Several leaders of Hodos community have made statements in and out of central legislature that this entire scenario created by AAP in connivance with ARS, is inherently inimical to the interest of the minorities and they oppose it tooth and nail. Apart from some ideological, essentially opportunistic support that Hodos receive from several political formations, some extremist organisations have been emerging from within the hodos communities which claim to represent Hodos in a better way. They demand in the Central Legislature of Aryavarta through some of their representatives that the government of the day must make its stand clear on the statements made by Mr. Totoro and his admirers, they threaten to block the proceedings of the Central Legislature. Several smaller political parties too support the demand of Hodos in asking the government of the day to make its stand clear.
9. In the meanwhile several places of worship of Hotos have been vandalized and though there are no evidences to the effect that it has happened at the instance of AAP or ARS, Hotos too demand through their leaders that the current spate of hatemongering against minorities be stopped. The Prime Minister of the Country has gone on record in saying that the government runs on its own dynamic, that the government has nothing to do with the statements made by Mr. Totoro and his colleagues. The prime minister has promised that all citizens, irrespective of their faith, would be treated as equals in the country. He went philosophical while defending the ancient ethos and ethos of current governance mechanism, claiming that there are no contradictions between the two. He averred that psychological impulses that drive an anti-'secular' politics are complex, some are pure and simple hate driven, they are fed by a politics of anxiety, an un-compensated yearning for our failures as a nation and therefore he appealed to all the countrymen that the salvation lies in sublimation of these psychological complexes and engage ourselves in the nation building process. He made a fervent plea on the floor of the central legislature that instead of fighting amongst ourselves let us unitedly fight the common enemy, the poverty and destitution of a large section of our population. But this apparently has not convinced the hodos.
10. Murakami, a supporter of ARS and elected to the central legislature of Aryavarta recently, too makes a statement in the house that the expressions "secular" and 'socialist' are vague expressions lacking clear definition and also present a situation of contradictions within the

constitutional system of Aryavarta. He observed that the word 'socialist' cannot be defined categorically. It is a word of many meanings and its appropriation by the Soviet Union would seem to suggest that a socialist form of government can be a dictatorship which is foreign to our constitution. In fact an amendment to the preamble moved by one of a nationalist member of Hodos Community namely " we the people of Aryavarta having solemnly resolved to constitute Aryavarta into a union of Aryavarta socialist republics to be called UASR" was rejected in the Constituent Assembly. The word 'secular' is also not precise and cannot be defined precisely. 'secular' may be opposed to religious in the sense that a 'secular' state can be anti-religious state. In this sense the constitution of Aryavarta is not 'secular', because the right to the freedom of religion is a guaranteed fundamental right. Common sense would require that a document like constitution should not contain words which are ambiguous and lack precise meaning. As to the expression 'socialist', there is a huge private sector owned and operated by the private entrepreneurs, if the expression socialist taken in its literal and historical sense then the existence of such enterprises would be an inconsistency. In fact from the very beginning Aryavarta system has been talking in terms of ushering into a mixed economy having public and private sector, both having their own place in their own right, in the scheme of things under Aryavarta Constitution. The opening of economic sector for foreign investment would essentially go against the very spirit of socialism that way. Therefore the expression socialism is an anachronism in the constitution.....as long as the private ownership of industries was recognized and governed an overwhelmingly large proportion of our economic structure the principles of socialism and social justice could not be pushed to such an extent as to ignore completely or to a large extent the interest of another section of the population..i.e. the private owners of the economic undertakings.

11. Yet another influential member of ARS, who is nominated to the upper house of the Central Legislature, Mr. Matsukama, made another statement, claiming that an amendment made in the Preamble by way of 42nd Constitutional Amendment is unconstitutional and that the Central Legislature of the Union of Aryavarta has an implied limitation on its powers of amendment. According to him the Preamble sets out the objectives of the Constitution and, therefore, any tampering with these objectives would destroy the identity of the Constitution. And since an amendment of the Constitution, howsoever made, must preserve the identity of the Constitution the objectives of the Preamble should be treated as permanent and unamendable. On that basis he further contends that since the fundamental rights are mostly an elaboration of the objectives of the Preamble, it was implied that the fundamental rights or, at least, the essence of them was not

liable to be damaged or destroyed by an amendment. As such the contention of Mr. Matsukama is that the amendment that inserted the expressions “secular” and ‘socialist’ in the preamble is unconstitutional and should be challenged as such in the Central High Court of the Union of Aryavarta.

12. Mr.Matsukama further contends that our Preamble is more akin in nature to the American Declaration of Independence (July 4, 1776) then to the preamble to the Constitution of the United States. It does not make any grant of power but it gives a direction and purpose to the Constitution which is reflected in Parts III and IV. Is it to be imagined that a two-thirds majority of the two Houses at any time is all that is necessary to alter it without even consulting the constituent parts of the Union of Aryavarta? After all the preamble has promulated a solemn and dignified promise, which is a statement of a new social compact between the people of Aryavarta and the ruling establishment and which appears to be an epitome of the basic features of the Constitution. Can it not be said that these are indications of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution?

13. If one takes care of looking at the history of shaping of the Preamble, Mr. Matsukama says, it would show that the Preamble was in conformity with the Constitution as it was finally accepted. Not only was the Constitution framed in the light of the Preamble but the Preamble was ultimately settled in the light of the Constitution. And therefore the change in the language of the Preamble by way of inserting the expression, socialist and ‘secular’, is against the very spirit of the whole constitutional process. Therefore he makes a fervent plea that the Preamble be restored to its original position. He wondered that the stand taken by the erstwhile political formations that preamble can be varied, altered or repealed, is an extraordinary one. It may be true about ordinary statutes but it cannot possibly be sustained in the light of the historical background, the Objectives Resolution which formed the basis of the preamble and the fundamental position which the preamble occupies in our Constitution. It constitutes a land-mark in India's history and sets out as a matter of historical fact what the people of India resolved to do for moulding their future destiny. It is unthinkable that the Constitution makers ever conceived of a stage when it would be claimed that even the preamble could be abrogated or wiped out? The nature and the contents of the Preamble are such that it is incapable of being amended and therefore the 42nd

Constitutional Amendment amending the preamble hits at the very foundation of the Constitution of Aryavarta and therefore is unconstitutional.

14. Where the people express themselves in careful and measured terms in framing the Constitution and they leave as little as possible to implications, amendments or changes in the existing order or conditions cannot be left to inserting implications by reference to the Preamble which is an expression of the intention at the time of the framing of the Constitution. We need to bear in mind that the preamble is not of the common rule such as is to be found in an Act of a legislature. It has the stamp of deep deliberation and is marked by precision. Would this not suggest that the framers of the Constitution attached special significance to it? Therefore the changes introduced in the Preamble are unconstitutional and the preamble should be restored to its original position.
15. Infuriated by this un-called for demand several political formations, led by Rastriya Congress Party are now planning to take on the AAP government, accusing it of conspiring to change the basic structure of the Constitution and the politico-legal system established under it, destroy the age-old tradition of tolerance and respect for all religions and ushering into a totalitarian system of governance. They now plan to take the matter to the Central High Court of Aryavarta, the Highest Court of the Land, which has the power of judicial review of legislative and executive action. Hodos and Hotos too express their willingness to contribute their efforts in saving the democratic and republican form of governance and the age-old traditions of this ancient land, the tradition of 'Sarva Dharma Sambhav & Vasundhaiva Kutumbakam'.

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