



MOOT PROBLEM

MS. SMITH V. PEOPLE'S REPUBLIC OF HARRSIA

BACKGROUND OF PEOPLE'S REPUBLIC OF HARRSIA

The People's Republic of Harsia is a sovereign, socialist, secular & democratic republic and it is situated at the western coast of continent Zobia. This portion of continent Zobia comprises of four countries. People's Republic of Harsia is one among them. The other three countries of the region are Karvi, Munnesia and Rabia. People's Republic of Harsia is the biggest country of the region in respect of area and population. People's Republic of Harsia is surrounded by Karvi in the North, Munnesia in the West and Rabia in the South.

The Constitution of Harsia has secured to all its citizens: justice, social, economic & political rights. It has also focused on the individual's liberty of thought, expressions, belief, faith and worship. It further provided equality of status & opportunity and to promote among them all Fraternity assuring the dignity of the individual & the unity & integrity of Nation. It has guaranteed Fundamental Rights including women rights under Part-III of its Constitution.

FACTS OF THE CASE

1. Ms. Smith is a very famous TV Reporter. She resides in the city of 'Parla', located in the Country of Munnesia at the western border of People's Republic of Harsia. Ms. Smith happened to come to Harsia in connection with the shooting of a National Cultural Programme. She was residing in a five star hotel "The Palace" in Dabia, the Capital of People's Republic of Harsia. She has been given protection by the Government of Harsia with a police team consists of 3 to 4 policemen in uniform. She was influenced by the sincerity of the Police persons and one day she invited them to the bar and took a couple of drinks with them and started chatting with them.
2. After finishing the drinks, Ms. Smith expressed her desire to go outside for smoking. They went to the shop for buying cigarette along with the police person. Later they came out from the shop and moved to the parking area and continued chatting with the police persons. They police persons suggested going for a drive to a nearby sea beach namely "Snow Beach", which is a very popular spot in the city of Dabia. Initially she hesitated but ultimately she got into the car. While driving the policemen kept Ms. Smith engaged in conversation.

3. However, after some time, she became suspicious about the direction but could not resist as she was heavily drunk. Two policemen grabbed her and removed her clothes and threatened her with dire consequences in case she made any noise.
4. Even as she was resisting they drove for another ten to fifteen minutes and the vehicle stopped at an isolated place. By that time, Ms. Smith was unconscious the policemen raped her one by one. Then they put some of the clothes back on her body, left her there and ran away.
5. After some time, Ms. Smith gained consciousness of whole thing and in a state of hysteria started yelling for help. Her scream awakened people residing nearby and they ultimately took her to the police station. Next day, the whole episode became big news. An investigation was initiated on filing of the FIR by her under Section 375(5) of Penal Code of People's Republic of Harsia against the police officers.
6. Upon the medical examination of Miss Smith, it was confirmed that she was gang raped. On the basis of her description of the rapists, police prepared the sketches of the culprits and the same were televised on all the popular news channels of Harsia. After a rigorous manhunt, police ultimately were able to nab the culprits.
7. Upon the identification parade, Ms. Smith identified the policemen who accompanied her. During the investigation, it also became clear that, the culprits were posted on duty in the hotel for providing security to the VIPs and had finished their duty hours around 15 minutes prior to meeting Ms. Smith in the Bar of the hotel 'The Palace'. The Commissioner of Dabia, referred this case to the special court for trying the culprits.
8. The policemen names were Tom, George, Dan and Wane. One of them i.e. Tom had alleged that Ms. Smith had not denied and she herself offered them such favour. They denied her and yet she was not getting convinced as she was heavily intoxicated. She was forcing herself on them and that is why they ran away leaving her at the beach. The rest of the culprits agreed with the statement of Tom.
9. The court found these policemen statement false and having found them guilty of gang rape, sentenced them for life imprisonment under Section 376 of Penal Code of People's Republic of Harsia. Their appeal to High Court is pending.
10. Ms. Smith later on filed a petition in High Court of Dabia for recovering damages for legal injuries caused to her, by arguing inter alia that her brutal gang rape by policemen has resulted in the gross violation of her rights to life, dignity, bodily integrity and modesty. She contends that the said rights are guaranteed to her by Constitution of Harsia under Part- III read with relevant provisions of Convention on Elimination of All forms of Discrimination against Women [CEDAW] and Universal Declaration of Human Rights (UDHR), even if she is a foreigner. On the basis of CEDAW the Government of Harsia formulated National commission for Women Act, 1990 to protect the rights of Women.

11. She also contends that Government of Haryana has to be held vicariously liable under Article 300 of Constitutional law of Haryana and Tort law of Haryana for having failed in its duty to provide secured and safe life to foreigners like her. She therefore claimed monetary compensation of Rs 10 crores as exemplary damages towards legal injuries caused to her owing to violations of her basic human rights and fundamental freedoms.

12. On the other hand, Government of Haryana by way of counter inter alia contends that it is not maintainable for recovering monetary compensation. It further contends that offences were committed by the policemen in their private capacity and for the same State cannot be held vicariously liable. It is also argued in the light of relevant provision that a judgment rendered by criminal court cannot be relied upon as a conclusive proof of either violations of fundamental rights under Constitution of Haryana or civil wrong under Tort laws so as to claim monetary compensation. Government further contends that, it has already brought to justice the culprits and the same is adequate redressal to the violations of her rights. It also contends that, it has expressly entered reservations to relevant provisions of International Convention on Civil and Political Rights [ICCPR] with regard to remedy of compensation for violation of Civil and Political Rights. The provisions of ICCPR are embedded under the Preamble and Part III of Constitution of Haryana.

13. The High Court has clubbed both the matters and listed for hearing on 29-30 November 2019.

14. Instructions-

1. Constitution and other laws of Haryana are analogous to that of Constitution and Laws of India.
2. Reservations entered into by India are to be assumed to be the reservations by Haryana to ICCPR/CEDAW.
3. Reports of Law commissions of Haryana are analogous to that of Law Commission reports of India.

15. Related Provisions-

- I. **Article 3 of CEDAW** States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

ii. The provisions of UDHR are as under-

- (a) Article-3- Everyone has the right to life, liberty and security of person.
- (b) Article-8- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
- (c) Article-22- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
- (d) Article-28- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

These all provisions are embodied under the Constitution of Haryana and the Protection of Human Rights Act, 1993.

iii. Article 2 of ICCPR provides for-

- (a) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (b) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
- (c) Each State Party to the present Covenant undertakes:
 - To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - To ensure that the competent authorities shall enforce such remedies when granted.

- iv. As per Sections 40 - 44 of Harsia's Evidence Act that a judgment rendered by criminal court cannot be relied upon as a conclusive proof of either violations of fundamental rights under Constitution of Harsia or civil wrong under Tort laws so as to claim monetary compensation.
- v. Vicariously liability under Article 300 of Constitutional law of Harsia.
- (a) The Government of Harsia may sue or be sued by the name of the People's Republic of Harsia and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the People's Republic of Harsia and the corresponding Provinces or the corresponding Harsian States might have sued or been sued if this Constitution had not been enacted.
- (b). If at the commencement of this Constitution-
- any legal proceedings are pending to which the People's Republic of Harsia is a party, the People's Republic of Harsia shall be deemed to be substituted for the Dominion in those proceedings; and
 - any legal proceedings are pending to which a Province or an Harsian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Harsian State in those proceedings