

# 1<sup>st</sup> MNLU, NAGPUR NATIONAL MOOT COURT COMPETITION, 2022

July 29 - 31, 2022

## MOOT PROPOSITION



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1. Indica is a sovereign, socialist, secular, democratic and republic country situated in the South – Asian region. It is a culturally, linguistically and ethnically diverse country with approximately 80% Hindus, 15% Muslims and the remaining 5% from other minorities. It was an erstwhile British colony and gained independence from Britain in 1947. Upon independence, the people of Indica adopted a common law system and a Constitution. The laws of Indica and the Constitution of Indica are *pari materia* to the laws of India and the Constitution of India, respectively.
2. Part III of the Constitution of Indica provided certain basic freedoms and fundamental rights to its citizens which *inter alia* included the right to freedom of speech and expression. Furthermore, the Constitution of Indica also provided certain specific fundamental rights to protect and promote cultural and linguistic minorities.
3. Post its independence, various sectors of the economy in the Republic of Indica showed immense potential for growth and development. The film and movie industry was one such sector. The actors were widely loved and had a huge mass following across the country. Specifically, given the diversity in its population, the films were not only produced and exhibited in the Hindi language but were also produced in various regional languages to cater to the large population which resided in the hinterland. By 1950, the Indican film industry was officially producing 100 cinematographic films, in Hindi and vernacular languages, in a year.
4. In 1952, the Parliament enacted the Cinematograph Act, 1952 which *inter alia* constituted the Central Board of Film Certification as nodal authority for certification of cinematograph films. Pertinently, all films mandatorily required the said certification for exhibiting their films. The preamble of the Cinematograph Act, 1952 is as under-

*“An Act to make provision for the certification of the cinematograph films for exhibition and for regulating exhibitions by means of cinematograph”*
5. From 1952 till 2014, the Indican Film Industry grew immensely, from 100 movies to more than 1000 movies in a year. Furthermore, with the advent of television, the Indican Film Industry also started producing serials, reality shows and other content for television. In 2014, the Indican Film Industry was valued approximately at USD 1 Billion and was contributing 3% to the national GDP.
6. Around this time, the Ministry of Telecommunications announced the launch of spectrum to enable 4G services in the country. The said auction witnessed tremendous enthusiasm and participation from all quarters and a larger number of companies, including private telecom service providers. Pursuant to the auction, 4G services were rolled out in the country resulting in faster internet services and an increase in digital outreach in Indica. Simultaneously, the telecom companies reduced their prices to increase their subscribers. Thus, the overall number of users of the smartphones and 4G services increased exponentially within a period of 2 years. Notably, in 2016, as per an independent survey conducted, it was estimated that there were approximately 50 million mobile / internet subscribers in Indica.

7. The roll-out of the 4G services and a drastic improvement in the internet services and telecom services resulted in the development of new media *viz.* digital media. Digital media applications and platforms mushroomed across the country. Particularly, applications such as Influx, Inzon etc., were in the nature of over-the-top [“OTT”] platforms which allowed the streaming of audio-visual content on its platforms for its subscribers, in lieu of payment of a fee.
8. Looking at the huge upside potential and large viewership, a large number of film producers of the Indican Film Industry started developing and producing content in the nature of web series, anthology series, short movies and feature films with an intent to exhibit and telecast it on OTT platforms operating in the country. Simultaneously, the OTT platforms were also keen and interested in hosting the Indican content as it allowed them to tap into the Indican market, which had 50 million viewers. Notably, the content released on the OTT platforms did not obtain any certification from the Central Board of Film Certification.
9. M/s. Johri Cine Films Limited [“JCFL”] is a renowned film production company in Indica which has produced more than 100 cinematographic films over 3 decades. In 2018, JCFL expressed its intent to foray into production/development of content for OTT Platforms. In this regard, it announced a Rs. 30 million deal with Influx to produce/develop web series / feature films, as may be agreed between them, solely and exclusively for the Influx platform. Pursuant thereto, JCFL produced a web series titled *Indica Games* which was scheduled to be released on Influx on May 5, 2022. However, on May 1, 2022, the Central Board of Film Certification issued a notice to JCFL and Influx directing them to cease and desist from releasing *Indica Games* unless a certificate has been issued by the Central Board of Film Certification.
10. Regardless, JCFL and Influx released *Indica Games* on the scheduled date *i.e.*, May 5, 2022. The said series was widely appreciated by the audience and critics alike. However, the Central Board of Film Certification issued a notice imposing a penalty under Section 7 of the Cinematograph Act, 1952 *inter alia* for exhibiting a cinematograph film without film certification. Aggrieved by the actions of the Central Board of Film Certification, JCFL and Influx, on May 15, 2022, filed a Writ Petition under Article 226 of the Constitution of Indica before the High Court of Bambil *inter alia* seeking quashing of the notice issued by the Central Board of Film Certification.
11. Meanwhile, Blockbuster Films, another prominent Indican film production company, released a feature film titled *Political Heist* on Inzon. *Political Heist* is a satirical political drama based on the rise of MHP, the current political dispensation ruling the country. There was a huge uproar against the release of the said film, with widespread protests by certain sections of the society against Blockbuster Films. On May 6, 2022, the extensive protests took a tragic turn when the protests turned violent resulting in damage to public property and injuries to a large number of protesters, ensuing in chaos. In fact, one Mr. Supriyo Gaikwad, a Member of Parliament belonging to MHP, lodged an FIR against Blockbuster Films and Mr. Amit Dewan, its managing director, for causing public unrest and hurting the sentiments of the people at large. Meanwhile, on May 16, 2022, Inzon issued a press release declaring that it had received approximately 1,000 complaints and grievances from various individuals and each complaint had been examined and assessed *vis-à-vis Political Heist* by an independent committee which included – (a) Mr. Inquilab Mehra, a renowned film critic, Mr. Vijay Johar, a renowned film producer and 10% shareholder in Inzon, and (b) Mr. Zorawar Malik, a reputed film director. Furthermore, the said committee had concluded that no part of *Political Heist* is violating any religious sentiment and therefore, the *Political Heist* shall neither be

blocked nor censored. Blockbuster Films and Mr. Amit Dewan filed a Petition under Section 482 of the Code of Criminal Procedure, 1973 before the Awadh High Court.

12. Based on the public outrage and uproar against *Political Heist*, on June 1, 2022, the Government of Indica issued the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2022 [**“Rules”**] under the Information Technology Act, 2000. The Rules provided a code of conduct for hosting of information on social and digital media and directly affected the manner in which the content was and is being hosted on the OTT platforms. It is clarified that Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2022 are *pari materia* to the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021 published by the Ministry of Information and Technology, Government of India.
13. The Rules were met with staunch opposition by various sections of the society. Various social media influencers and pages which hosted content were now within the purview of the said Rules. Similarly, various content hosted/streamed on the OTT platforms was also subjected to scrutiny. The Association of Film Producers, an organisation of filmmakers and producers across the country, also protested against the said Rules primarily on the premise that the said Rules violated the freedom of speech and expression of the filmmakers and producers.
14. On the contrary, *Hind Swaraj*, an NGO working for the preservation and conservation of Hindu culture supported the said Rules. As per *Hind Swaraj*, the OTT platforms are corrupting the Indican culture by spreading westernisation. Accordingly, there is a need for regulating the content which is displayed, released and/or exhibited in society.
15. Accordingly, on June 03, 2022, the Association of Film Producers filed a separate writ petition under Article 226 of the Constitution of Indica before the High Court of Deli challenging the constitutional validity of the said Rules. Simultaneously, *Hind Swaraj* filed an Intervention Application supporting the constitutional validity of the said Rules.
16. On June 05, 2022, Influx and Inzon jointly filed a writ petition before the Supreme Court of Indica under Article 32 of the Constitution of Indica *inter alia* alleging that OTT platforms cannot be regulated by the Ministry of Information Technology and hence, the said Rules have been promulgated without any jurisdiction. The said Writ Petition was listed before the Supreme Court on June 10, 2022 at which time the Hon’ble Supreme Court of Indica took cognisance of the proceedings pending before the various high courts involving similar questions of law *viz.* the writ petitions filed by JCFL and Influx before the High Court of Bambil, Section 482 Petition filed by M/s. Blockbuster Films and Mr. Amit Dewan before the Awadh High Court and the writ petitions filed by the Association of Film Producers and *Hind Swaraj* before the High Court of Deli. The Supreme Court of Indica passed an order transferring all the said proceedings from various high courts to itself and constituted a 5-Judge Constitution Bench to decide all questions of law arising out of the said proceedings.
17. The petitions are now listed before the Constitution Bench of the Supreme Court of Indica on July 30, 2022 for a final hearing on all questions of law including the maintainability of the petitions filed by various parties.



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