

## **CAIL 1st DR. N.R. MADHAVA MENON MEMORIAL NATIONAL MOOT COURT COMPETITION 2021**

### **MOOT PROPOSITION**

1. Hodu, a State located in Southern Asia, bordered by the Arabian Sea, Laccadive Sea, and the Bay of Bengal to the south; to the north by Duars Valley, Kingdom of Licchavis, Yellow River Valley; and Gano and Irawaddy valley to the east, attained its freedom in 1947 through legislative enactment, Hodun Independence Act 1947, of the Albion Parliament. This Act had the effect of granting independence to the erstwhile Albion territory of Hodu resulting in creation of one large independent State comprising the Albion Hodun territory.
2. After independence, the Constitution of Hodu was drawn up by the Constituent Assembly of Hodu initially summoned in August 1947 and a draft Constitution was published in February 1948. The Constitution was finally adopted in 1949 and came into full force from January 1950. The Constitution of Hodu is federal in as much as it establishes what may be called a 'dual polity' which consists of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. During the drafting of the Constitution, the Constituent Assembly was aware of various regional and international developments that were taking place in the area of human rights, like the adoption of the Universal Declaration of Human Rights, 1948 (UDHR). The fact that the framers of the Constitution of Hodu did get influenced by the UDHR, 1948 could not be denied, as it can be seen from the text of the Constitution in which the drafters included most of the provisions of the UDHR.
3. In the Hodun Constitution, however, a critical distinction was made from what was categorized as civil and political rights in the UDHR. These rights were included as enforceable rights in Part C of the Constitution as 'Fundamental Rights' and most of the economic, social, and cultural rights were included in the judicially non-enforceable but cognizable Part D, the 'Directive Principles of Social Policy'. Part C, consisting of fundamental rights, sought to give a practical shape to the vision of safeguarding rights, civil and political values as proclaimed in the preamble through justiciable provisions.
4. Inspired by the Irish Constitution, the Hodun Constitution incorporated a new vision of socio-economic order and set up programs for attaining it. The Directive Principles of Social Policy incorporated in the Constitution constitute an essential basis of a welfare state and together with the Preamble and Fundamental Rights stand identified as part of the basic structure of the Constitution. Unlike the Irish inspiration, the directives are only judicially non-enforceable, but not non-cognizable.
5. These positive obligations of the State, enumerated by the Constitution, were drafted as an 'instrument of instruction' and they provide justification for the constitutional exercise of policy making power. These directives are quantified in the respective provisions themselves, allowing for the requisite room for expansion in devising and timing goals to accomplish the constitutionally required socio-economic order. One such provision is Article XLV which states:

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all.

6. This was to be attained within 10 years from the commencement of the Constitution. It, however, was not achieved until the Supreme Court of Hodu in its two significant decisions held the right to education as a fundamental right. The Court observed that “*Right to education is the essence of the right to life and directly flows and is interlinked with it, and life living with dignity can only be assured when there is a significant role of education*”.

7. Education was valued in ancient Hodun jurisprudence as a fundamental value for a dignified life and a way of ensuring happiness. One of the ancient slokas provided (Translated as):

*Education imparts intellectual culture; intellectual culture secures capacity and stability. Capacity and stability enable us to secure wealth. Wealth so secured enables confirmation to Dharma which in turns secures Happiness.*

8. In the ancient Hodun context, knowledge acquisition and distribution were seen as part of religious duty and its significance can be understood from the yet another sloka which provided (Translated as):

*Every individual should discharge ‘five pious obligations’ of Devaruna (towards God), Pituruna (towards parents and ancestors), Rishiruna (towards teachers), Manavaruna (towards humanity) and Bhutaruna (towards the nature).*

9. As a result, everybody had a responsibility to acquire knowledge and return it to society by making useful additions to it and by using it for securing the happiness of fellow human beings. It is pertinent to note that it was the responsibility of the State to assist Gurukulas, established by the Rishis, to ensure the right to education for all. Much earlier, before the drafting of the Constitution, the first expressed demand for securing fundamental rights appeared in the Constitution of Hodu Bill, 1895 which emphasized "free State education". The next major development was Albion Hodu Bill of 1925 which provided that "free elementary education" is one of the basic rights that the state shall protect. These Bills have been instrumental in drafting Part C and Part D of the Constitution.

10. Following Hodu’s independence in 1947, several committees and commissions drew up a blueprint for the country’s educational growth and carried various reports on *different programs and stages of educational development for all States and Provinces*. The Education Commission Report of 1948 suggested that:

“The State should aim at introducing universal compulsory education for all.”

11. The Central Advisory Board of Education (CABE) established by the Government of Hodu in January 1950 recommended that there shall be:

- a. Provision for universal, affordable, and compulsory basic education for all school-aged children;

- b. Adult education provision to eradicate the masses' massive illiteracy; and
- c. From a national perspective, restructuring and advancement of the educational system.

12. To accelerate the pace of universalization of education and to fulfil the directive of Article XLV of the Constitution, an All-Hodu Council of Education (AHCE) was established in 1957. It served as an advisory body to the Union and State Governments. The Council prepared, examined, and appraised proposals referred to it which stressed the role of the State in ensuring equitable education, "Education for All".

13. Towards 1964 an equitable education movement gained acceleration and the Education Commission was appointed to look into the problems in the Hodu education system. In 1964, the Commission recommended achieving universality in education. The year 1968 was set as the deadline for the States to provide free and compulsory education for all. Moreover, the Commission strongly recommended steps to be taken by the Central and State governments that would help remove or minimize inequality in educational opportunities.

14. Towards the end of 1968, the National Policy on Education (NEP) was adopted by the government. It stressed on the "*elimination of disparities in the education system and the improvement in the quality of the schools.*" The emphasis was more on "*retention rather than merely on enrolment*". NEP was revised every five years and dealt with the issues of *equalization of educational opportunity and retention*. It sought to adopt a common school system to promote social cohesion and national integration. The recommendations of other State commissions also stressed the adoption of "*programs to promote education among the poor, eliminate its dual character in which 'haves' receive one type of education and 'have nots' another, and create a socially cohesive and egalitarian society*".

15. Despite the specific provision in the Constitution, the Hon'ble Supreme Court's directive to the State to endeavour to provide free and compulsory education, and the recommendations of several Committees and Commissions, progress in this sector was far short of the target.

16. On the other hand, at the international level, according to General Comment No. XIII of 1999 on the Right to Education, the Committee on Economic, Social and Cultural Rights (CESCR) observed that there are three types of obligations on State vis-a-vis the right to education which are, the right to respect, protect and fulfil. The obligation to respect requires States to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires State Parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil incorporates both an obligation to provide and to facilitate and requires States to take positive measures to enable and assist individuals and communities to enjoy the right to education. Also the CESCR observed that the right to education implies that national education systems of States must provide minimum educational institutions and facilities like buildings, sanitation and training teachers; educational institutions have to be accessible to everyone, without discrimination, in

law and fact; education has to be flexible, adaptable to the needs of changing societies and responding to the needs of students within their diverse social and cultural settings.

17. Also, the 1989 Convention on the Rights of the Child refers to education under Article 28 and 29, which has been ratified by Hodu. It is to be noted that global education summits, initiated by various international committees and commissions on “Innovation in Education”, in their respective reports on the impact of digital technologies on teaching and learning, and the role of digital skills, stressed that the States must frame policies and strategies to foster innovation in education. It was also recommended that education policies need to reflect the fact that computers and the internet are increasingly ubiquitous in everyday lives. It was emphasized that the education policies must ensure that educational institutions and students are equipped for using e-mail; browsing the internet for schoolwork; downloading, uploading, or browsing material from the school’s website; posting work on the school’s website; using school computers for group work and to communicate with other students. It was required that governments invest heavily in information and communications technology (ICT) in schools; the quality of schools’ educational resources, including ICT and connectivity, has to be increased.
18. UNESCO recognized education as a human right. The roadmap to achieve this was laid down in the Education Framework for Action (EFFA). One of the aspects of this program initiated by UNESCO was dedicated to the use of the internet in education. The aim was to investigate the role of the internet as a tool for imparting education. It was realized, in the report of the UNESCO, that the internet in this sphere provided for quickness of information retrieval, a platform for online lecture or presentation of teaching material, which can be accessed by many learners. The Human Rights Council of the United Nations has also found that the right of access to internet is a fundamental freedom and a tool to ensure the right to education, as adopted and declared in various international treaties and conventions. Hodu has been a member of both Global Education Industry Summit GEIS and EFFA programs and has also agreed to the recommendations.
19. All these developments created tremendous pressure on the parliament which finally established the Commission on the Right to Education (CRTE) which had to recommend the steps to be taken by the Government of Hodu to ensure availability, accessibility, acceptability, and adaptability in providing education thereby ensuring ‘universality of education’.

20. During 2007, the CRTE established by the Central Government submitted the following:

The Constitution of Hodu should be amended to make the right to free education a fundamental right. Simultaneously, an explicit provision should be made in the Constitution to make it a Fundamental Duty of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age. Consequential law on the Directive Principles of Social Policy as enunciated in Article XLV of the Constitution should also be made.

21. Accordingly, and in the light of Article XLV and LI (c), which makes it obligatory for the Government of Hudu to respect international law, treaty obligations, the Commission on the Right to Education (CRTE) recommended that the Constitution be amended to expressly provide the right to education as a fundamental right. The Commission also found that digital technologies have not been fully integrated into teaching and learning and that the introduction of digital technologies in schools has not yet delivered the promised improvements of better results at a lower cost. This is exacerbating pre-existing education disparities by reducing the opportunities for many of the most vulnerable children, youth, and those living in poor or rural areas to continue their learning.

22. As a result, the Eighty-Sixth Amendment Act to the Constitution was adopted in 2002, thereby conferring on education the status of a fundamental right. Through the 86th constitutional amendment, Article XXI-A was inserted in Part C of the Constitution. Article XXI-A reads as:

The State shall provide free and compulsory education to all children in such manner as the state may, by law, determine.

23. In August 2009, the Children's Right to Free and Compulsory Education Act 2009 (CRFCE Act) was notified. Chapter V (B) of the said Act of 2009 has tried to explore the movement discourse on the right to free and compulsory education from directive principle to fundamental right. The CRFCE Act, and Article XXI-A of the Constitution, make it obligatory for the State to ensure that every child has a fair chance and access to education.

24. The use of Internet technology to solve various educational challenges, such as teaching and learning, is referred to as "internet in education". In this regard, the CRFCE Act 2009 has provided in section III that the State shall take steps to ensure maximum exposure of students to the use of the internet as a tool of teaching-learning and as a means of accessibility to the right to education. Also, under the said Act, the appropriate government was entrusted with the duty to carry out the objectives and purpose of this Act. Section III reads as:

- a. The State shall strive to promote the welfare of the people by securing and ensuring the right to access public educational institutions on a non-discriminatory basis.
- b. The State shall provide Information and Communication Technologies (ICT) facilities and necessary accessories both to the students and teachers to facilitate online teaching and learning.
- c. The State shall ensure through technological advancement that education becomes accessible to all and that no person shall be deprived of education because of economic conditions.
- d. The State shall strive to take steps to train teachers to adopt new technologies and innovations in teaching-learning by using ICT.
- e. The State shall provide economic assistance both to the teachers and students for the above-mentioned purposes.

25. On January 30, 2020, the World Health Organization (WHO) Director-General declared the COVID-19 pandemic a Public Health Emergency of International Concern and published a set of interim guidelines to combat the virus' spread. Globally, as of 22<sup>nd</sup> December 2020, there have been 76,250,431 confirmed cases of COVID-19, including 1,699,230 deaths, reported to WHO and 10 million cases, and 146 thousand deaths in Hodu alone.
26. Given the exceptional situation, countries adopted extraordinary measures, including lockdown, to slow the transmission of the virus. Such measures inadvertently affected people's livelihoods, access to health care, food, work, and education. The COVID-19 pandemic led to an unprecedented situation whereby schooling of children and youth was disrupted as Governments enforced total closure of schools to contain the spread of the virus.
27. The Governments around the world, including Hodu, began to introduce distance learning using online learning programs to engage the students in teaching-learning. The 2020 Online Learning Ordinance, issued by the Central Government, dated April 2020, required the educational institutions to create e-contents and e-notes for the students so that they could have access to e-readers for online learning. Also, educational institutions were required to switch to online platforms like WHIZZ, CLASSMEET, etc.
28. The pandemic had a profound impact on education due to the closing down of schools which resulted in *a decline in learning and an increase in dropouts*. These were the observations made by the Committee to assess the impact of COVID -19 on the education sector. The said Committee, in its report, had indicated that "*...the closing down of schools and switch to the online learning platforms had led to learning loss, increased dropouts and higher inequalities due to the lack of access to mobile/laptop/computer and internet facilities and consequently for many children, academic learning has come to a halt.*"
29. Pursuant to this report of the Committee, two separate writ petitions were filed in the Supreme Court in January 2021. In one of the petitions it was contended that, if online teaching-learning is the new norm, then the states must be directed to provide facilities to each student to have access to the use of internet and other tools of learning, as also required under CRFCE Act. The petition also contends that in the absence of any such facilities provided to each student, education and foundational learning is likely to be negatively impacted. The petition also challenges the 2020 Online Learning Ordinance as depriving the disadvantaged students of access to the right to education and further contends that without an aggressive policy, this will have an immediate adverse impact on both learning and health of children. In the petition, it is also pointed out that the State has failed to provide economic assistance and digital accessories necessary for online teaching-learning and thus, the Ordinance is a constitutional fraud depriving students of their basic human right to education and also inconsistent with various international conventions, recommendations and agreements to which Hodu is a party. It is also contended that the State shall be liable in the same manner and to the same extent as a private individual under the law of torts.

30. One of the petitions is filed by an NGO (Education Rights for You) and is based on an All Hodu Survey conducted by the Socio-Economic Institution of Excellence, an aided Institution, headed by Mr. Zyno, a reformist and an educationist. The aim of the survey was to study the effects of COVID-19 on education and to recommend the organizational and structural changes required to be adopted to best ensure realization of the right to education during such a pandemic. The survey has been, broadly speaking, divided into three parts, General Observations, Role of the State, and Impact of Online Learning.

**Part A: General Observations:**

- a) In a democratic society, learning opportunities must be open to anyone who bears the privilege and obligation of citizenship, not only the elite. Education is a human right, not a luxury enjoyed by a select few.
- b) Within households, girls may be more likely to lose out on education because parents may use their resources preferentially towards boys as a future investment over girls.

**Part B: Role of the State:**

It has been observed that the State has not fulfilled the objectives of Article XXI-A read with Section III of CRFCE Act to accelerate the pace of expansion of the right to education, and observed the following:

- a) The State has failed to prepare a plan to ensure the establishment of ICT centres in educational institutions to enable the largest possible number of children to have access to e-readers for online learning.
- b) The State has failed to provide adequate training for teachers to equip them with the knowledge of using various online teaching methodologies including the use of platforms such as WHIZZ, LINEAPP, CLASSMEET, etc.
- c) The State failed to provide any adequate economic support to the disadvantaged students to have access to education.
- d) The State has not equipped both the students and teachers with adequate e-infrastructure to facilitate online learning.
- e) The State has not adequately reduced the cost of taking short online courses or provide financial support to students pursuing education.

**Part C: Impact of Online Learning:**

The Committee also observed that:

- a) This crisis has revealed many flaws and inequities in our educational system, varying from a lack of access to broadband and computers for online education, to a safe atmosphere for learning, to a mismatch of resources and needs.
- b) Students from affluent backgrounds may be able to pursue alternative learning options outside of closed school doors. Those from disadvantaged backgrounds often found themselves deprived of such opportunities when their schools shut down. Learners from these disadvantaged communities

lack access to digital learning opportunities or the resilience and engagement to learn on their own, and thus are particularly vulnerable to falling behind.

- c) Teachers also had to adapt to new pedagogical methods and modes of delivery of teaching, for which they have not been exposed and trained.
- d) Also, the closure of educational institutions hampered the provision of essential services provided to children and communities, including access to nutritious food or food at a minimal cost.

31. Another writ petition is filed by an independent activist, philosopher, and educationist, Dr. Omprakash, who has received *Hodu Ratna*, the highest civilian award conferred for the work done in the field of education. According to Dr. Omprakash, humans are the only living beings who require education; and by education we must understand care, discipline and teaching of a human being. Man is an infant who requires nursing, a child who requires discipline, and a scholar who requires education. Education is the only way for a man to become a man. He is merely what education makes him/her. He makes the following argument against online teaching-learning:

“A careful review of the teacher-student relationship at every stage, within or outside the classroom, in online mode exposes its fundamentally narrative nature. A narrating subject, the teacher, and patient, listening subjects, the students, are involved in this relationship. The contents appear to become lifeless and petrified as they are narrated and there is no active participation in the learning. Thus, such imparting of education is resulting in ‘narration sickness’, depriving a student to think critically.”

32. He goes on to say that in online education, the instructor communicates about a fact as though it were lifeless, stagnant, compartmentalized, and predictable. The job of the instructor is to “fill” the students with the contents of his narration which are disconnected from fact, detached from the totality that spawned them, and yet have the potential to give them meaning. Words are emptied of their concreteness and become a hollow, alienated, and alienating verbosity. Education thus has become an act of depositing, in which the students are the depositories and the teacher is the depositor. Instead of communicating, the teacher issues communiqués and makes deposits which the students patiently receive, memorize, and repeat, thus defeating the very purpose of ‘education’. He further makes an argument that this type of teaching-learning is detrimental to the core objective of the right to education which is to develop an environment in which students and teachers would communicate and collaborate to create knowledge that would allow them to change their situations and the world, for without communication there can be no true education. The petition also contends that such a method of teaching-learning has reduced students’ critical curiosity and interest in learning. The Ordinance, it is contended, is unconstitutional as it deprives students to grow and develop in a holistic environment and have an adverse effect on their health. Also, it contends that regulation of online classes is difficult and children are highly vulnerable to various online abuses and exposed to adult content through pop-ups and ads.

The two petitions filed are clubbed by the Supreme Court and posted for final hearing.



**Tentative Issues:**

1. Whether the 2020 Online Learning Ordinance is constitutional?
2. Whether a State can be held tortuously liable for its failure to act according to the CRFCE Act read with Article XXI-A of the Constitution.
  - 2a. Whether the State is liable to provide financial assistance and free digital accessories for ensuring the universality of education?
3. Whether the policies of the State of Hodu are in violation of international treaties and agreements?

**Note:**

1. In addition to the above-mentioned issues, teams can raise one additional issue, if any.
2. The laws, reports and recommendations of State of Hodu are in *parimateria* with the laws of India.

