



### MOOT PROPOSITION

1. The Republic of Irestan is a landlocked nation situated between the under developing nations of Domino and Easeland. As per the latest survey of DataSol, Irestan is the most populated nation in the world. The nation is infamous for the high rate of crime against women and an alarming rise in its hate crimes. The State of Moolangana is the most prosperous province of Irestan by virtue of the fact that trade bloomed in Moolangana even before Irestan achieved independence.
2. The Republic of Irestan is governed by the Constitution of Irestan which is considered to be the governing law of the land. The Constitution of Irestan guarantees basic freedoms and rights to all its citizens. The Apex Court of Irestan is the final interpreter of the Constitution and is admired by Human Right activists across the globe for its ‘right-based’ approach so much so that the Apex Court has often been termed, in the recent years, as ‘Apex Court for the Nation’ in contrast to ‘Apex Court of the Nation’.
3. On 15th of July 2019, the media houses published reports of a horrific rape incident in the State of Moolangana. The newspaper reports gave details of the events that unfolded on the previous night as follows:

*“At around 8:30 pm, two men (Sam and Mahesh) abducted the victim ‘N’ at gunpoint and took her to an abandoned storehouse by the sides of the ‘Circular Road’ where they took turns to rape her. After hearing some noises from the storehouse, two locals (Raju and Manu) turned up to see as to what was going on and upon finding an unconscious girl, aged around 26, the duo raped her (again) and set the body on fire.”*

4. The same day, Asha, the sister of the victim approached the Police to lodge FIR against one Sam, who, according to the sister, raped the victim. It was found that the victim had called her sister while she was being abducted. She told the police that on call, she heard the victim screaming and shouting ‘Sam, no...please...Sam’ amid the abuses of male voices and then, the phone of “N” got switched off. Based on the same, the police arrested Sam, who was then convicted by the Learned Trial Court along with three others. They were awarded the death penalty considering the gravity of the case as the crime was committed

with extreme brutality and shook the collective conscience of the society. The Court also observed, while convicting them, that it sounds like a story from a different world where humanity is treated with irreverence. The case was widely reported in the media as the ‘Circular Road Rape Case’.

5. The three accused, i.e., Mahesh, Raju and Manu, filed an appeal before the High Court of Moolangana stating that the trial court erred in its judgment as the evidences upon which the conviction was based, were unsustainable. It was found that the trial court based the conviction on the following evidences:
  - a. media reports that were published on 16th July’ 2019 narrating the incidents through interviewing by-passers and local people who were around the area on the night of the incident;
  - b. the scanned copy of some excerpts of the diary of Sam dated 16.07.19, 18.07.2019 and 22.07.2019 which was published by the media houses on 17th October 2019, along with the updates of the case;
  - c. call record of the victim produced by Asha, particularly the call made at 8:40 p.m. on the date of the incident based on which FIR was lodged.
6. The trial Court had also noted that no autopsy report or other such pieces of evidences were available as the body of the victim was completely burnt. Furthermore, it was observed by the trial Court that none of the witnesses examined by the Prosecution were present on the crime scene or are even reliable.
7. Upon further inquiry, it was found that one of the Police Officers investigating the case, clicked pictures of Sam’s diary on his phone and e-mailed the same to some media houses on the eve of 16th October.
8. On the next day, i.e. 17th October 2019, Sam was reported dead in a Police encounter. It was reported that Sam was transferred from Khatarnaak Jail to the Sambhav Jail. While being taken from the Khatarnaak Jail to the Sambhav Jail, Sam managed to snatch the gun from the Constable accompanying him, while getting down in front of the Sambhav Jail and open-fired and in retaliation, the Police fired shots which resulted in his death. His diary has been missing ever since, however, Sam’s family has admitted that he was in a habit of maintaining a diary. It was also found that the three subsequent arrests that were made by the Police were a result of the information contained in this diary only.

9. The High Court, however, noted that in light of the procedural requirement of raising objection concerning admissibility or reliability of any evidence at the earliest, it was not open to the accused to raise such grounds at the time of appeal since no such objection was raised at the time of trial. The Court also observed that considering the gravity of the case and in light of the alarming rise in such incidents of crime against women in the state of Moolangana, the accused(s) should be given the highest possible punishment and thus upheld the trial court's decision.
10. Meanwhile, in light of the Circular Road Rape case, the Irestan Government passed the Offenders of Heinous Crimes (Abolishment of Appeal) Act, 2019 [hereinafter referred to as 'OHC Act, 2019'] relevant part of which is as follows:

**“1. Title and extent of operation of this act:**

This Act shall be called the 'Offenders of Heinous Crimes (Abolishment of Appeal) Act, 2019' and shall extend to the Republic of Irestan.

**2. Definitions:**

(d) 'Heinous Crimes' means and includes all sexual offences.

(h) 'Special Court' means the fast track courts constituted under this Act.

**3. Constitution of Special Court and it's functions:**

(1) The Central Government shall appoint a sitting judge of any High Court or retired judge of any High Court or Supreme Court for the Special Court.

(2) The decision taken by the Special Court shall be the final authority in deciding any appeal arising out of the award of the death penalty in case of heinous crimes.

**4. Appeal:**

No Court shall entertain any appeal preferred from the decision of the special court in cases where the death penalty has been awarded to the convicts provided that the same has been upheld by the Judge of the Special Court.”

11. Masoom, an NGO actively fighting on the Human rights front for the past two decades, along with the three convicts, moved to the Apex Court under Article 32 of the Constitution of Irestan challenging the OHC Act, 2019, asserting the fundamental rights guaranteed

under Article 21 of the people including prisoners of rape and other heinous offences. The petition also prayed for guidelines to be formulated for Police encounters and demanded an independent inquiry by Central Bureau of Investigation of Irestan (CBII) into the alleged fake-encounter of one of the convicts, Sam.

12. The sister of the victim, Asha, along with a group of Women activists, filed a Public Interest Litigation demanding 'Instant Justice' policy formulation by ensuring time-bound speedy investigation followed by stringent punishments in cases of rape. The petitioners claimed that the right to appeal of offenders of sexual crimes should be taken away and no procedure for mercy plea should exist in cases of heinous crime wherein, the death penalty has been awarded.
13. The Apex Court, suo moto, also took notice of the High Court of Moolangana's judgment in the Circular Road Rape case and decided to settle the law with respect to the admissibility of secondary evidence in cases where objection to its admissibility is not raised at the first instance.
14. The Apex Court tagged the matters together and the same is due to be heard on the following substantial issues:
  - a. The Constitutionality of the OHC Act, 2019;
  - b. Admissibility and degree of reliability of secondary evidence in cases where objection at first instance is not raised (particularly, in circumstances like the Circular Road Rape case);
  - c. Formulation of Guidelines for fake encounters;
  - d. Right to Reform as a fundamental right.
15. The participants are free to raise any other issue based on the facts mentioned. It may, however, be noted that the Apex Court would hear only the substantial questions of law and any procedural issue (except the issue of jurisdiction), would not be entertained in light of the established rules and jurisprudence.
16. The laws of Irestan are *pari materia* to the laws of India, but the judgment of the Supreme Court of India in *PUCL v. State of Maharashtra (2014)* is not binding upon the Courts of Irestan.