

Moot problem -5

Niroon and Another v. Union of Indiana

Sargasthan is a State in the country of Indiana. The State is having a very high level of literacy rate compared with the national averages. The majority of the schools in the state have co-education system. The syllabi and the curriculum in the Schools are fairly advanced and in the IX and X standards classes, the life sciences curriculum has incorporated sex education. The curriculum also incorporates awareness of basic legal knowledge on Constitution and rights and duties of citizens.

V.J.M. Higher Secondary School in the Capital city of Dishpur is an unaided school run by a minority sect having co-education system. The school has an excellent track record in the Secondary and Higher Secondary Examinations and there has always been a rush for admission to the school. The school undertakes many Socially Useful Productive Work (SUPW), and conducts surveys and awareness programmes among community and the girls and boy students actively take part in such programmes. The A division of the XI Standard Class has a strength of 35 students and the girls outnumber boys and is one of the best classes in terms of performance in curricular and extracurricular activities. Soumi, Niroon and Shanty were students of that class and were close friends and more often in the same House during Sports and Arts Competitions as well as in their curricular programmes. Niroon and Shanty hailed from a higher middle class family and Soumi was from a middle class family. Both Niroon and Shanty used to come to their school in their respective battery charged bikes and Soumi commutes by bus. On 15th January, 2016 while Soumi was waiting for bus in the beach bus stop at 8.30 pm after her dance class, she saw Niroon and Shanty coming that way in their bikes. Niroon offered her a lift and Soumi accepted the offer and Shanty followed

them in his bike. When they were about to enter a deserted area of the beach road there was heavy downpour and all the three got drenched and took shelter in a dilapidated bus waiting shelter. While so suddenly Shanty made advances to her and threatened her and forced her to have sexual intercourse, followed by Niroon.

On 18th January, 2016, an FIS was registered by Soumi with Dharampur police station within whose jurisdiction the offence was committed. On the basis of the statement filed by Soumi, the police registered an FIR under section 376 of the Indian Penal Code (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter POCSO Act, 2012) and the girl was subjected to medical examination. Niroon and Shanty were apprehended by the police and were handed over to Special Juvenile Police Unit (SJP) and subsequently were produced before the JJ Board on 19th January, 2016. Later they were released on the bond executed by the parents. The Special Juvenile Police Unit reported the matter to the Child Welfare Committee and the Special Court trying offences against Children.

The Special Juvenile Police Unit started the investigation. The birth certificates of the victim and the children in conflict with law obtained from the concerned local body authorities reveal that the date of birth of Soumi is 7th February 1999 and that of Niroon is 3rd May, 1999 and that of Shanty is 13th May, 1999. On the basis of medical, forensic and the oral evidence, SJP filed the final investigation report. The Report categorically indicts both the children in conflict with law of committing the offences under Section 375 of IPC, and Section 5 (g) of the POCSO Act, 2012 and hence charged under Section 376 and Section 376D of the Indian Penal Code and Section 6 of the POCSO Act and the matter is pending before the JJ Board for Preliminary Assessment according to Section 15 of the

Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter JJ Act, 2015).

On 28th January, 2016, Niroon and Shanty represented by their parents filed a writ petition before the Sargasthan High Court challenging the constitutionality of Section 15 of the JJ Act, 2015 and Sections 29, 30, 42 and 42A of the POCSO Act, 2012 *inter alia* on the following grounds

1. Section 15 of the JJ Act, 2015 violates Arts.14 and 21 of the Constitution of India
2. Classification of offences as petty, serious and heinous is arbitrary and hence violates Art. 14 of the Constitution of India
3. The impugned provisions of the JJ Act, 2015 violate Art 15(3) of the Constitution of India
4. Sections 29, 30, 42 and 42A of the POCSO Act, 2012 violates Article 14 and 21 of the Constitution of India.
5. The impugned provisions of the JJ Act, 2015 and POCSO Act, 2012 violate United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 and other international instruments relating to rights of child