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XIV K.K. LUTHRA MEMORIAL MOOT COURT, 2018

Before

THE FEDERAL COURT OF HALLBACH

JUPITER HESTIA.....*APPELLANT*

v.

THE STATE OF HALLBACH…..……..……*RESPONDENT*

&

MILITIA MEMBERS.....*APPELLANT*

v.

THE STATE OF HALLBACH…….……*RESPONDENT*

&

THE STATE OF HALLBACH…….....*APPELLANT*

v.

DR. ARES.……...…….……*RESPONDENT*

[MEMORIAL ON BEHALF OF THE APPELLANT]

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STATEMENT OF FACTS

BACKGROUND

Hallbach is a Federal Republic sharing its western territorial border with Hoko. Both the countries have long standing dispute over two of the cities situated in Halbach i.e. **X & Y**. During the 'Weer War', the Hoko King was killed, and his son Nicholas VI was crowned, on his anointment, he 'gifted' the famous emerald "Covfefe" to the Hallbach crown. However, Hoko has maintained a historical claim over the emerald.

Since 1975, Hoko had a succession of military dictators. In 1999, after constitutional changes and internationally overseen elections, the former dictator, General Rouge was democratically elected as the President of Hoko.

ROLE OF DR. ARES

Dr. Ares was the curator of the state museum at X was a decorated Hallbachian Special Forces officer and now a renowned scholar. He too believed that though Hallbach now legitimately held Covfefe, Hoko also had a legitimate historical claim.

ROLE OF JUPITER HESTIA

One, Jupiter Hestia, who had the following of almost 68% of the Hokian Population, on 15th March 2010, remarked on her podcast '*My people-pulse tells me that we need a distraction. Something, anything. Come on Hoko, lets do something else for a change. There are issues more important than bread'* further changed her social handle to @getmecovfefe, and sent a tweet saying 'Been there too long #getmecovfefe. The tweet went viral.

RESOLUTION FOR COVFEFE

On 25 March 2010, General Rogue wanted to send a personal message to his son, but accidentally sent it as a tweet instead; the message read 'Son, still at the national sec. meeting, looks like #getmecovfefe'. The Senate Assembly (Legislature) of Hoko passed a binding resolution, authorizing its military to take all necessary steps to protect the Hoko people and its culture. The spokesperson of the Defence Minister, while decrying the leaking of government documents, denied the official order and also famously remarked, 'Controlling the imagination of the media is an impossible mission!'

CLASHES IN X AND Y

A high intensity campaign began at the border, both countries broke ceasefire accords Hoko claimed that X and Y were under the control of a local militia that had been raised by Hallbachian government to suppress local dissent in X and Y. Further, Hoko promised to cooperate with Hallbach and reduce border tensions. A ceasefire agreement was entered into between the two countries on 05 May 2010, which was honoured by both countries.

POST THE CLASHES

The Hallbachian forces had arrested a number of militia members, The Hoko government disavowed these individuals. On 29 May 2010, Jupiter Hestia was reported missing in London; It was suspected that persons of Hallbachian origin, with possible links to the Hallbachain Army, had abducted her. Hoko had lodged official protests with both the United Kingdom and Hallbach. On 04 June 2010, the Hallbachian Central Police announced that a mysterious donor had given them someone who appeared to be one Jupiter Hestia. The authorities were verifying her credentials and if found to be in order, would ensure that she reaches her rightful historical home. On 01 August 2010, the Hallbach Federal Court passed an order in 'Re: X and Y,' directing that a Special Court be set up for the trial of all matters pertaining to the events in X and Y.

FINDINGS OF THE COURT

On 01 August 2010, the Hallbach Federal Court passed an order in 'Re: X and Y,' directing that a Special Court be set up for the trial of all matters pertaining to the events in X and Y. The investigation and trial before the Special Court was concluded within 23 months, the special court convicted Seventeen militia members, for murder, waging war against Halbach, Theft, Violation of the Foreigners Act and miscellaneous offences to property. Jupiter Hestia was convicted of incitement and conspiracy to commit murder, Waging War against Hallbach; Dr. Ares was acquitted for theft. The Hallbachian Government and the convicted militia both preferred appeals before the Federal Court of Hallbach. Jupiter Hestia filed a separate appeal challenging her conviction which was clubbed with these appeals.

ISSUE RAISED

I.

WHETHER THE FEDERAL COURT IS PERMITTED TO EXERCISE JURISDICTION OVER THE LOCAL MILITIA FOR THE OFFENCES COMMITTED IN THE CITIES OF X AND Y

II.

WHETHER THE INVESTIGATION AND TRIAL PURSUANT TO ORDERS PASSED BY THE HALLBACH FEDERAL COURT WAS CONTRARY TO LAW AND THE CONVICTIONS MUST BE SET ASIDE.

III.

WHETHER THE ARREST AND SUBSEQUENT PROSECUTION OF THE HOKIAN OFFICER JUPITER HESTIA WAS CONTRARY TO THE PROCESS OF LAW

IV.

WHETHER THE ACQUITTAL OF DR. ARES AND JUPITER HESTIA FOR ALLEGATIONS OF THEFT WAS CONTRARY TO LAW AND FACT.

SUMMARY OF ARGUMENTS

[1]HALLBACH FEDERAL COURT CANNOT EXERCISE JURISDICTION.

It is humbly submitted by the counsel on behalf of the Appellants that the Hallbach Federal Court is not permitted to exercise jurisdiction over the offences committed by the local militia in the cities of X and Y, on the basis of absence of powers of jurisdiction under municipal laws due to the inapplicability of Section 3 of the Hallbach Criminal Procedure Code. Section 3 recognizes jurisdiction on the basis of citizenship (nationality) or territoriality, both of which are absent in the present scenario. Additionally, the Federal Court is not permitted to exercise jurisdiction even under the principles of International Law since, to apply such principles Hallbach would need to expressly incorporate the principles of international law in their domestic laws.

[2]THE INVESTIGATION AND TRIAL PURSUANT TO ORDERS OF FEDERAL COURT WAS CONTRARY TO LAW

It is humbly submitted that the investigation and trial pursuant to the order passed by the Hallbach Court was contrary to law and fact. The establishment of the Special Court was arbitrary and violates the doctrine of 'Equality before law and equal protection of laws'.

Furthermore, the constitution of the Special Court was procedurally defective since a Special Court can only be constituted by the Senate vide a notification in the Official Gazette, according to Section 10 of the Special Courts Act, 2010. The Special Court is also not permitted to 'oversee' the investigation on the basis of the doctrine of 'separation of powers'. The direction by the Federal Court to the Special Court to pass a judgment within 24 months violates the rule of audi alteram partem and fair trial rights. Lastly, the appointment of a Special Public Prosecutor by the Federal Court is contrary to the provisions of Section 24 of the Criminal Procedure Code of India. Thus, for all the aforementioned reasons, the investigation and trial in Re X and Y was contrary to law and fact and thus, the convictions must be set aside.

[3]. THE EXERCISE OF JURISDICTION OVER JUPITER HESTIA WAS CONTRARY TO LAW

It is submitted that the arrest and prosecution of Jupiter Hestia, leading to her conviction was contrary to the process of law, the Principle Male Captus Bene Detentus meaning wrongly captured, but properly detained as a practice has been subjected to express rejection by various Common Law Countries, such practice not only is void of due process of law, but also results in violating the Territorial Sovereignty of the offended state, moreover such practice devoids the victim of its basic human rights which has been recognized both Internationally and in Various other Common Law Countries such as India, United Kingdom & U.S.A etc. Further the Principles of International Law, guide the offending state to return the appellant back to the offended state, and to divest itself from exercising jurisdiction over the Victim.

[4]. DR. ARES AND JUPITER HESTIA ARE GUILTY OF THE OFFENCE OF THEFT

It is submitted that the offence of theft is made out against the accused Dr.Ares and Jupiter Hestia as the ingredients of the offence are fulfilled; further, the Petitioners acted dishonestly. In the instant case, the circumstances indicate that the petitioners have dishonestly appropriated property from the museum and the same can be proved with the help of chain of circumstantial evidence. Furthermore, the threefold test to prove Jupiter Hestia dishonestly received stolen property hold good in the instant matter. Moreover, acquisition of property by way of an unjustifiable gift leads to a presumption that the person from whom property is recovered is presumed to have either stolen it or received it knowing it was stolen.

WRITTEN PLEADINGS

ISSUE 1: WHETHER THE HALLBACH FEDERAL COURT IS PERMITTED TO EXERCISE JURISDICTION OVER THE OFFENCES COMMITTED BY THE LOCAL MILITIA IN THE CITIES OF X AND Y.

1. It is humbly submitted before this Hon'ble court that the Hallbach Federal Court is restricted from exercising jurisdiction to initiate investigation and trial proceedings against the local militia with regard to **[1.1]** Restriction imposed by the municipal law and**[1.2]** Restriction imposed by the International law**[1.3]** Local Militia to be tried by Court Martial.

[1.1] THE FEDERAL COURT IS RESTRICTED FROM EXERCISING JURISDICTION UNDER MUNICIPAL LAWS.

2. It is humbly contended that the Hallbach Federal Court does not possess jurisdiction to try the offences committed by the local militia. The Hallbach Criminal Procedure Code is applicable to a citizen who commits an offence beyond the territory of Hallbach and a non-citizen only in the circumstance wherein the offence committed by a non-citizen, against any citizen of Hallbach is on a ship or aircraft registered at Hallbach.[1] Thus, it implies that the basis for liability under Section 3 of this Code is either citizenship or territoriality. In the case of *Reg.* v. *Pirtai*[2]a foreign national who was residing in a foreign country instigated the commission of an offence which in consequence was committed on Indian territory. It was held that he could not be held responsible for the same, since neither was he a citizen of India nor was the instigation given on Indian territory. The requirements for this section are threefold, firstly there must be commission of an offence; secondly by an Indian citizen; and thirdly, it should have been committed outside the country.[3]

3. However, in the instant matter, the offences are committed by the local militia who are not citizens of Hallbach.[4] Furthermore, Hallbach ceased to be in control of the cities X and Y, where the offences were committed.[5] Thereby, it cannot be said that the

[1]Section 3, Hallbach Criminal Procedure Code, Page 9, STATEMENT OF FACTS, K.K. Luthra Memorial Moot Court, 2018.
[2]Reg. v. Pirtai, (1873) 10 Bom. H.C.R. 356.
[3]Ajay Agarwal v. Union of India, 1993 AIR 1637
[4]¶25(a), Page 7, STATEMENT OF FACTS, K.K. Luthra Memorial Moot Court, 2018.
[5]¶15, Page 4, STATEMENT OF FACTS, K.K. Luthra Memorial Moot Court, 2018.

disputed territory was the territory of Hallbach. Thus, invalidating Section 3 of the Hallbach Criminal Procedure Code.

[1.2] RESTRICTION UNDER INTERNATIONAL LAW

4. It is contended that principles of International Law cannot be resorted to assert jurisdiction since international law does not form a part of the law of the land unless expressly made so by the legislative authority.[6]Recently, the Supreme Court of India in *State of West Bengal* v. *Kesoram Industries*[7] reiterated that India follows the "doctrine of dualism". Now, according to Justice Krishna Iyer, in the case of *Jolly George Verghesev. Bank of Cochin*[8], to bind a court to an international treaty or principal, the municipal law must be changed to that effect[9]. Since Hallbach is a common law country, adhering to the criminal justice structure of India, it may be presumed that it, too, follows a dualist approach. Thereby invalidating the applicability of the Protective principle and the Passive Personality principle.

[1.3] LOCAL MILITIA MEMBER CAN BE TRIED BY COURT MARTIAL.

5. Plenary jurisdiction has been conferred on a court martial to try a person subject to the Army Act who has committed civil offences, if the conditions mentioned in section 49 of the act are satisfied. Section 2 provides that any person who may be attached to the armed forces come under the ambit of this act. It is humbly submitted that the Local Militia do under the purview of this act. Section 50 provides or exclusive jurisdiction if Murder is committed while being on active service. Hence, it is submitted that in the present case Local Militia members to be tried by the Court Martial. In a case pending before the Special Judge in which persons subject to military law and persons not so subject are together as accused, it was held that, cases should not be disposed of by the Special Judge but the accused persons subject to military law should be referred to the military authorities under Rules 3 and 4 of the Rules framed under Section 549 of Cr PC for trial by Court Martial. Bar imposed by section 50 in respect of trial of military personnel is removed with on active service[10]. Personnel on leave also deemed to be

[6]R. v. Keyn, (1876) 2 Ex D 63.
[7]State of West Bengal v. Kesoram Industries, (2004) 1 SCC 10.
[8]Jolly George Verghese v. Bank of Cochin, 1980 AIR 470
[9]Xavier v. Canara Bank Ltd, 1969 Ker LT 927.
[10] State v. Ram Lakhan, AIR 1971 J&K54; 1971 Cri LJ 470 (FB); Khazan Singh v. State of Rajasthan, AIR 1967 Raj 221; 1967 Cri LJ 1190; Bimla Devi v. Bakshi GL, Capt, AIR 1960 J&K 145: 1960 Cri LJ 1593; Gopinathan, Maj v. State of Madhya Pradesh, AIR 1963 MP 249; Ramaswamy IA Lawrence

on active service. The criminal court have inherent jurisdiction to inquire into offence by a person falling under section 70. However, when such courts are moved by the military authorities, the court have no option but to deliver the person to the authorities for the trial by Court Martial.

ISSUE 2: WHETHER THE INVESTIGATION AND TRIAL WAS CONTRARY TO LAW AND THE CONVICTIONS MUST BE SET ASIDE.

6. It is contended that the entire investigation and trial pursuant to orders passed by the Hallbach Federal Court in *Re X and Y* was contrary to the process of law and thus, the convictions must be set aside. **[2.1]** The constitution of the Special Court is contrary to law and the Special Court cannot 'oversee' investigation **[2.2]** The Federal Court is not permitted to direct the Special Court to pass a final judgment within 24 months **[2.3]** The Federal Court cannot appoint a Special Public Prosecutor to direct investigations on the basis of the rule against bias.

[2.1] THE CONSTITUTION OF THE SPECIAL COURT IS CONTRARY TO LAW AND IT CANNOT 'OVERSEE' INVESTIGATION

7. It is contended that the Federal Court cannot direct the constitution of a Special Court under Section 10 of the Special Courts Act, 2010[11]. It follows that a Special Court may be set up only under a notification by the Senate. Furthermore, even under the Special Courts Act, 1979 of India, Section 3 provides for the constitution of a Special Court only vide a notification in the Official Gazette by the Central Government. For instance, Special Courts to try offences arising out of violations of the Companies Act, 2013.[12]

8. Furthermore, the constitution of a Special Court to try the offences committed by the local militia is contrary to the Rule of Law which requires that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.[13] In the case of, *State of West*

Gopalan v. Union of India, AIR 1963 Bom 21; Madan Lal v. Union of India, Supreme Court Criminal Appeal NO 889of 1996; Som Setti Lakshmi Narsimayya v. Union of India, 1972 Cri LJ 558: ILR (1970) 2 Del 402; Mil L J 2003 AP 151 Sep (DS) GM Rao v. UOI

[11]Section 10, Special Courts Act, 2010, Page 11, STATEMENT OF FACTS, K.K. Luthra Memorial Moot Court, 2018.

[12]Notification No 2147, dated September 2nd, 2016, published in the Official Gazette.

[13]Rubinder Singh v. Union of India, AIR 1983 SC 65.

Bengal v. *Anwar Ali Sarkar*[14], a Bengal law permitted setting up of special courts for the 'speedier trial' of such 'offence', or 'classes of offences' or 'cases', or 'classes of cases', as the State Government might direct. The Act was held invalid as it gave 'uncontrolled authority' to the executive 'to discriminate'. The necessity of 'speedier trial' was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

9. Further, the Special Court is not permitted to oversee the investigations conducted by the Special Investigation Team since it violates the doctrine of separation of powers and is also contrary to the provisions of Section 156 of the Code of Criminal Procedure of India. Section 156 of the Code provides for the investigation in cases of cognizable offences. It has been held, in the case of *Emperor* v. *Nazir Ahmed*[15], that the courts have no control in such cases over the investigations or over the action of the police in holding such investigation. There exists a clear demarcation of functions between judiciary and the police department, and as such the power of the police to investigate is not to be interfered with by the judiciary.[16]Thereby, the constitution of a Special Court for the trial of offences committed by the local militia is arbitrary since the rights of the accused are compromised with respect to investigations, free trial rights, etc.

10. Further, the procedure resorted to for the establishment of the Special Court was contrary to law and thus, must be struck down and the judiciary is not permitted to oversee the investigations conducted by the Special Investigation Team and such oversight is contrary to law and the doctrine of separation of powers.

[2.2] THE FEDERAL COURT CANNOT DIRECT THE SPECIAL COURT TO PASS A JUDGMENT WITHIN A PERIOD OF 24 MONTHS

11. It is submitted that the direction of the Federal Court to the Special Court to pass a judgment within a period of 24 months is contrary to the rule of *audi alteram partem*.Further, one of the fundamental principles of the doctrine isthe principle of

[14]State of West Bengal v. Anwar Ali Sarkar, 1952 AIR 75; Chiranjit Lal Chowdhuri vs. The Union of India (UOI) and Ors. AIR 1951 SC 41; Dr. N.B. Khare vs. The State of Delhi AIR 1950 SC 211; Romesh Thappar vs. The State of Madras AIR 1950 SC 124; Chintaman Rao vs. The State of Madhya Pradesh AIR 1951 SC 118; The State of Bombay and Anr. vs. F.N. Balsara AIR 1951 SC 318; In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, AIR 1951 SC 332; A.K. Gopalan vs. The State of Madras AIR 1950 SC 27

[15]Emperor v. Nazir Ahmed, (1944) 47 Bom LR 245.

[16]State of Bihar .v J.A.C Saldana, AIR 1980 SC 326; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 177; State of West Bengal v. Swapan Kumar Guha,1982 CriLJ 819 .

decision post haste, which requires that decisions must not be taken hastily[17]. The Apex Court in the case of *S.P. Kapoor* v. *State of H.P*[18], directed the mater to be considered afresh due to the hastiness in arriving at the decision. By spelling out a time frame within which the investigation must be concluded and the Special Court must arrive at a decision, risks the violation of the doctrine of *audi alteram partem* and the right to fair trial.

12. Furthermore, Section 309[19], provides for the proceedings to be conducted on a day to day basis so as to afford the right of a speedy and expeditious trial to the accused.[20] However, this does not spell out a time limit within which investigation and trial must be completed. Moreover, Section 309 relates to adjournment of proceedings in trials and has nothing to do with police investigations.[21] In the case of *ChapalamedguBollayyav.State of A.P.*[22], it has been observed that the Magistrate is entitled to adjourn the case from time to time under Section 309, provided the conditions for adjournment are satisfied. Now, such reasonable and valid adjournments may cause the trial to be extended beyond the period of 24 months prescribed by the Federal Court and thus, the setting of a time limit is contrary to law.[23] Thereby in light of the aforementioned argument, a prescribed limit of 24 months for the conclusion of investigation and trial is contrary to law since the rights of the accused are adversely affected.

[2.3] THE SPECIAL COURT CANNOT DIRECT THE APPOINTMENT OF A SPECIAL PUBLIC PROSECUTOR

13. Section 24(8) of the Code of Criminal Procedure of India, empowers the Central or the State Government, as the case may, to appoint a Special Public Prosecutor. The Public Prosecutor is an important officer of the State Government and is appointed by the State Government under the provisions of the Code. He is not a part of the investigating agency but is an independent, statutory authority.[24]

[17] R v. Jordon,1 S.C.R. 631 (SCC 2016), Cromwell J in his dissenting opinion.
[18] S.P. Kapoor v. State of H.P, 1981 AIR 2181.
[19] Hallbach Criminal Procedure Code
[20] Ramchandra Rao v. State of Karnataka, AIR 2000 SC 1856.
[21] Ajay Kumar Singh v. State of Jharkhand, 2002 CrLJ NOC 306 (Jhar).
[22] ChapalamedguBollayya v. State of A.P., 1978 CrLJ 1347.
[23] ValerianoBarretto v. State of Goa , 2006 Cr LJ (NOC) 133; A.R. Antulay v. Avdhesh Kumar, AIR 1992 SC 1701
[24] Hitendra Vishnu Thakur v. State of Maharashtra, AIR 1994 SC 2623; M.C. Mehta v. Union of India, (2007) 1 SCC 110.

14. Further, in the case of *Triloknath Pandey* v. *State of U.P.,*[25]it has been held that the relationship between the Public Prosecutor and the State is that of a counsel and client. Thus, it logically flows that the State or Central Government, as the case may beis empowered to appoint a Public Prosecutor.[26] In the case of *JonnakutiMokshanandam*v. *State of A.P.*[27]the appointment of a Special Public prosecutor in Special Courts set up under SC & ST Act was not in accordance to the provisions of the Act and Section 24 of the Code, the appointment was not valid and was rightly not acted upon by the Government. It is also noteworthy to throw light upon the fact that in the case of appointment of a Special Public Prosecutor by the Central or State Government, for the trial of a case or a class of cases, the Government does not have to consult with any authority under Section 24.[28]

15. Furthermore, it is contended that the doctrine of separation of powers provided by Article 50 of the Indian Constitution, has gained recognition as a part of the basic structure of the constitution which cannot be amended[29] This scheme of the Constitution cannot be changed. The Constitution demarcates the jurisdiction of the 3 organs minutely and expects them to exercise their respective powers without overstepping their limits. They should function with the spheres allotted to them.[30]Therefore, the Federal Court cannot interfere in the sphere of the Executive to appoint a Special Public Prosecutor and such appointment, rendering it contrary to law, and in violation with the principle of separation of power.

ISSUE 3: WHETHER THE ARREST AND SUBSEQUENT PROSECUTION OF THE HOKIAN OFFICER JUPITER HESTIA CONTRARY TO THE PROCESS OF LAW

16. It is humbly contended before this Hon'ble Federal Court that the conviction based on arrest and prosecution of the Hokian officer Jupiter Hestia is liable to be set aside as **[3.1]**the principle of *male captus bene detentus* is not applicable; **[3.2]** Arrest and prosecution is in contravention to International Law.

[25]Triloknath Pandey v. State of U.P, AIR 1990 All 143; State of Uttar Pradesh v. Audh Narain Singh, AIR 1965 SC 360; State of Gujarat v. Raman Lal Keshav Lal Soni, AIR 1984 SC 161; Mohammad Matteen Qidwai v. The Governor General in Council, AIR 1953 All 17.
[26]R.N Tiwari v. State of M.P.,1990 CrLJ 2468.
[27]JonnakutiMokshanandam v. State of A.P, 2006 CrLJ 3034 (3038).
[28]Shankar Sinha v. State of Bihar, 1995 CrLJ 3143.
[29]Kesavananda Bharti v. State of Kerala, 1973 4 SCC 225.
[30]I.C.GolakNath v. State of Punjab, AIR 1967 SC 1643.

[3.1] MALE CAPTUS BENE DETENTUS IS NOT APPLICABLE

17. It is contended that the principle of Male Captus Bene Detentus has been expressly refuted by various common law countries. That such practice is in contravention to the prevailing practice of International Law. In the case of *Bennett v. Horseferry Road Magistrate's Court and another*[31]held that while exercising jurisdiction over a person brought before the courts of the United kingdom would result in the abuse of process of law[32] as the manner in which the accused had been brought was in violation to the international law and the rule of law. The House of Lords further held that to turn a blind eye to the executive lawlessness is insular and unacceptable. In *R v. Hartley*[33]when by way of request from the New Zealand police, the Australian police seized the accused by force in Australia and placed him on a plane to face a murder charge in New Zealand, it was held that because the accused was brought to New Zealand in an unlawful manner, by means of abduction, it lacked jurisdiction.

18. The Supreme Court of South Africa in the case of *State v. Ebrahim*[34]held that it lacked jurisdiction to try the accused who was abducted from Swaziland and brought to South-Africa on the charges of treason on the grounds that such exercise of jurisdiction was in violation of the territorial sovereignty of Swaziland. That the individual must be protected against illegal detention and abduction[35]. Furthermore when a state is party to in criminal case, it must come with clean hands; however when state itself is involved in the process of abduction across international borders it's hands cannot be said to be clean.

19. The Supreme Court of Zimbabve in *State v. Beahan*[36] to balance the American precedent set in *United States v. Alvarez Machain*[37],held that in order to promote confidence in and respect for the administration of Justice and preserve the judicial process from contamination, a court should decline to compel an accused person to undergo trial in circumstances where his appearance before it has been facilitated by an act of abduction undertaken by the prosecuting state. It is an inherent objection to such a course both on grounds of public policy pertaining to international ethical norms, and

[31] Bennett v. Horseferry Road Magistrate's Court and Another [1993] 3 All ER 138.
[32]Regina v Bow Street Magistrates (Ex parte Mackeson), 75 Crim App 24 (1981).
33R v. Hartley [1978] 2 NZLR 199
34State v. Ebrahim 31 ILM 888 (1992).
[35]State v Wellem 1993 (2) SACR 18 (A); State v Mabena.1993 (2) SACR 295 (A).
[36]State v. Beahan 1992 (1) SACR 307 (A).
[37]United States v. Alvarez Machain 31 ILM 902 (1992)

because it imperils and corrodes the peaceful coexistence and mutual respect for sovereign nations. A contrary opinion would encourage states to become law breakers in order to secure the conviction of Private individuals.[38] Moreover in cases of treaty violation the courts in U.S have also refuted the validity of such an act.[39]

20. That while deciding the case of *Levinge v.* Director of Custodial Services[40] the High Court of Australia held that although it is the court's discretion to as to whether the jurisdiction is exercisable over the accused unlawfully brought before the court, nonetheless a forcible unilateral abduction would suffice in staying the criminal proceedings against the accused in order to prevent the abuse of process of law. Further the Zurich Higher Court of Switzerland was of the opinion[41] that the defendant's apprehension was in violation with the National due process of law, and thereby declined to exercise jurisdiction over the defendant.[42]

[3.2] PRINCIPLES OF INTERNATIONAL LAW ARE VIOLATED.

[3.2.1] VIOLATION OF TERRITORIAL SOVEREIGNITY.

21. It is contended that the concept of "territorial sovereignty of states" is a long standing and well-established rule as has been affirmed in Art 2(4) of the Charter of the United Nations[43]. Further, the persons who abducted the appellant, were suspected to be from Halbachain Origin, and had possible links with the Halbachain Army[44], and any exercise of law enforcement or police power, without permission on the territory of another is thus considered a violation of latter's sovereignty.[45]

22. Furthermore, when a British minesweeping operation was done in the Albanian Territory, without their permission, the International Court of Justice held that such operation was in violation with the Albanian Sovereignty.[46] This Principle was first reflected in *The S.S. Lotus Case*[47], where the world court declared that the first and

[38] State v. Beahan 1992 (1) SACR 317 (A).
[39] United States v Rauscher 119 US 407, 430 (1886); Cook v United States288 US 102 (1933; United States v Ferris, 19 F2d 925 (N D Cal 1927); United States v Schouweiler, 19 F2d 38 (S D Cal 1927).
[40] Levinge v. Director of Custodial Services 9 NSWR 546 (Ct App 1987).
[41] Hans Schultz, Male Captus Bene Iudicatus?, 24 SchweizerischesJahrbuch fir InternationalesRecht 67 (1967)
[42] 66 Blitter fir ZiircherischeRspr 248 (1967).
[43] Art.2(4) United Nations Charter; *A state may not in any form exercise its powers in the territory of another state* Lotus Case, (1927) PCIL Series A, No 10.
[44] ¶ 22, Page 5, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2018.
[45] Mann, FA, Future Studies in International Law, 1990 at p 339.
[46] The Corfu Channel case (1949) ICJ Rep 4.
[47] The Lotus case *(1927)* PCIJ Series A, No 10.

foremost restriction imposed by International law upon a State is that it may not exercise its power in any form in the territory of another State. Thus conviction of the Appellant is on the aforementioned grounds liable to be set aside.

[3.2.2] VIOLATION OF THE INTERNATIONAL HUMAN RIGHTS LAW

23. It is contended that forcible abduction from the territory of the foreign state deprives a person of its basic human rights, The Universal Declaration of Human Rights[48] (hereinafter referred to as UDHR) states that "no one shall be subjected to arbitrary arrest, detention or exile".[49] Furthermore Art 9(1) of the International Covenant on Civil and Political Rights(hereinafter referred to as ICCPR) 1966, solemnly provides that everyone has a right to liberty and security of person, and that no one can be subjected to arbitrary arrest and detention[50].

24. Furthermore, when a Uruguayan refugee was abducted from Argentina, by Uruguayan security and intelligence forces, it constituted a violation of Art 9 of the ICCPR. It held that the state was under a legal obligation to provide for effective remedies, including immediate release and permission to leave the country.[51] In the instant matter, the Appellant was forcibly abducted from the territory of the United Kingdom[52], the courts in Halbach by virtue of exercising jurisdiction over the Appellant[53], has denied the Appellant basic fundamental human rights.

[3.2.3] DUTY OF THE OFFENDING STATE TO RETURN THE APPELLANT

25. It is contended that in the instant matter it is the responsibility of the offending state return the Appellant back to the offended state. As already established, abduction of a person from the territory of another state is a violation of International Law and hence an internationally wrongful act[54], that the offending state must cease the wrongful act

[48]General Assembly Resolution 217A (III), 1948. The United States was a principal sponsor of the Universal Declaration.
[49]Art 9 Universal Declaration on Human Rights; Art 3 (right to security of person) and Art 5 (no one shall be subjected to torture or to cruel, inhuman or degrading treatment). (Adopted on December 10, 1948)
[50]Art 9(1) International Covenant on Civil and Political Rights; Art 9(4) (right to challenge lawfulness of detention before a court). 999 UNTS 171 (Adopted on December 16, 1966).
[51]Human Right Committee on Complaint of Lopez, 29 July 1981, 36 UN GAOR Supp (No 40) at pp 176-84, UN Doc A/36/40 (1981).
[52] ¶ 22, Page 5, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2018.
[53] ¶ 25, Page 7 STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2018.
[54]Art 1 of the ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, (Doc A/CN.4/L.602/Rev 1).

and must offer assurances and guarantees of non-repetition.[55] Furthermore, if the state carries out an unauthorized action in the territory of another state, and that such unauthorized act includes abduction of a person, the state from which the person was abducted may demand the return of the person, and the law requires that person to be returned.[56] That the order of the U.S district court affirmed by the U.S Appellate Court in the *Alvarez-Machain trial*[57]rightfully awarded the return of Dr. Alvarez-Machain to Mexico.[58]In the instant matter, it thus is the responsibility of the offending state to provide for reparation to the offended state, further the appellant should be rightfully returned, thereby necessitating her conviction to be set aside.

26. In the instant matter, even if the acts of the person abducting the appellant cannot be directly attributable to the state, it is the responsibility of the offending state to return or order to return the abducted individual to his country of refuge or residence[59]. Thus, it is the duty of the offending state in both the state sponsored and non-state sponsored abduction to return the abducted individual or order the return.

27. It is contended that as has already been established, it is the duty of the offending state to order the return of the abducted individual, they must also refrain from exercising jurisdiction over such abducted individual.[60] Furthermore, when the abduction is made across international boundaries, exercising jurisdiction over such person would result in the committing of further wrongful act i.e. the act of Denial of Justice.[61] Furthermore, no state can prosecute or punish any person who has been brought within its territory or a place subject without first obtaining the consent of the State or States whose rights have been violated by such measures.[62] It is further contended that no such prior permission was taken from the Offended states, and thus the conviction is vitiated on such afore-mentioned grounds.

28. It is humbly contended before this Hon'ble court that by virtue of long established principle *ex injuria jus non oritur* an illegal act does not give rise to any right. That since the act of abduction is in itself an illegal and invalid act. Further the abducting

[55]Art 30 of the ILC's Draft Articles on Responsibility of States, 2001. (Doc A/CN.4/L.602/Rev 1).
[56]Restatement (Third) of the Foreign Relations Law of the United States, 1987. .
[57]United States v. Alvarez Machain 31 ILM 902 (1992)
[58]; O' Higgins, P, "Unlawful Seizures and Irregular Extraditions" (1960) 36 *BYIL* 279; Lord McNair, *International Law Opinions*, Vol 1 (1956) at p. 80-82.
[59] Journal of Malaysian and Comparative Law, *Jurisdiction over a person abducted from a foreign country: Alvarez Machain case revisited*
[60]O' Connell, DP, *International Law* (London: Stevens, 2nd ed, 1970) at p 833.
[61]*Ibid*
[62]The Harvard Research Draft Convention on Jurisdiction with Respect to Crime, (1935) 29 *AJIL* 623.

state thus does not have any right to subject the abducted individual to its laws and proceedings.

29. Furthermore, where persons and things are brought within the territorial jurisdiction of a particular State by means constituting a violation of international law, or by means offensive to an extradition treaty or to the municipal law of another State, such instances shall be governed by the application of the maxim *ex injuria jus non oritur*[63]

30. That where the abduction of Toscanino from Uruguay did not violate the extradition treaty between Uruguay and the United States, the abduction violated two other treaties; the United Nations Charter and the Organization of American States Charter, which require the United States to respect the territorial sovereignty of Uruguay. It was also held that the court must divest[64] itself of jurisdiction over the person of a defendant.[65]

31. It is therefore humbly submitted that the act of abducting the appellant was in itself an illegal act, invading the accused's constitutional rights[66] and that the appellant cannot be subjected to the laws and proceedings of it, and thus the conviction stands vitiated and that the Appellant must be returned as a measure of providing reparation to the offended state.

ISSUE IV. WHETHER ACQUITTAL OF DR. ARES AND JUPITER HESTIA FROM ALLEGATION OF THEFT WAS CONTRARY TO LAW AND FACT.

32. It is humbly contended that by virtue of the facts and circumstances of the case, Dr. Ares and Jupiter Hestia are to be convicted for the allegation of theft of emerald covfefe. A *prima facie* case can be clearly made out in respect of the following offences *viz.* theft **[4.1]**and dishonestly receiving stolen property **[4.2].**

[4.1] THEFT

33. The definition of "theft" in the HPC (Hallbach Penal Code) is in *para materia* with the definition given in the Theft Act, 1968 of the United Kingdom. It is well settled that

[63]O' Connell, *supra*, n 58 at pp 831-832; See to the same effect, Morgenstern, "Jurisdiction in Seizures Effected in Violation of International Law" (1952) 29 *BYIL* 265 at p 268.
[64]Lujan v Gengler, 510 F2d 62, 65-66 (2d Cir 1975). This case limited United States v Toscanino, 500 F2d 267 (2d Cir 1974), by declaring that mere forcible kidnapping, without evidence of torture or other such barbarous conduct, does not rise to thelevel of "shocking the conscience."
[65]United States v Toscanino500 F 2d 267
[66] Art 21& 22, CONSTITUTION OF INDIA (Adopted on January 26, 1950).

any assumption of any rights of an owner constitutes "appropriation"[67]. Section 1 of the Theft Act introduces the offence of theft[68]. This identifies five elements to the offence, all of which need to be present for the offence to be made out. These five elements are; dishonesty, an appropriation (i.e. taking), there must be property, it must belong to another person and there must be an intention to permanently deprive the owner of it[69].

34. It is submitted that the emerald Covfefe recovered from the petitioners[70] comes within the definition of property. Admittedly, it is necessary to establish that the act was done dishonestly. The Theft Act labels any act not falling within the following cases as being done dishonestly[71]. *First*, if a person believes he or she has a right to do so in law, or *secondly*, if a person believes that the owner would consent if they knew of the circumstances, or *thirdly*, if a person believes that the true owner cannot be identified. The IPC provides a slightly wider definition by describing any act that results in "*…wrongful gain or…wrongful loss…*"[72] as being dishonest. It is submitted that the petitioners acted dishonestly. In the instant case, the circumstances indicate that the petitioners have dishonestly appropriated property from the museum and the same can be proved with the help of chain of circumstantial evidence.

[4.1.A] CIRCUMSTANTIAL EVIDENCE SUGGESTS THAT DR. ARES AND JUPITER HESTIA ARE GUILTY OF THEFT.

35. To prove the mens rea levels of "purposely" or "knowingly," the prosecution must usually resort to circumstantial evidence. As pointed out by Fazal Ali, J, in V.C. Shukla vs. State[73] in most cases it will be difficult to get direct evidence of the agreement, but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence[74].

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[67] Section 3(1), Theft Act, 1968; DPP v. Gomez, 1993 AC 442.
[68] Theft Act 1968 s1
[69] Theft Act 1968 s1
[70] 21, Page 12, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2018
[71] Section 2, Theft Act, 1968.
[72] Section 24, The Indian Penal Code, 1860; *Halsbury's Laws of India*, Criminal Law-II, 296 Vol. 5(2) (2006).
[73] V.C. Shukla v. State 1980 AIR 1382; C. Magesh v. State of Karnataka, AIR 2010 SC 2768; Suraj Singh v. State of Uttar Pradesh, 2008 (11) SCR 286.
[74] P.K. Narayanan v. State of Kerala (1995) 1 SCC 142; Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors AIR 1988 SC 709; State of Kerala v. P. Sugathan& Another

36. It is humbly submitted that Dr. Ares, believed that though Hallbach now legitimately held Covfefe, Hoko also had a legitimate historical claim[75]. He reiterated the same in Jupiter Hestia's Podcast. Secondly, Jupiter Hestia's tweet[76] regarding covfefe further clarifies her intentions towards the emerald. Thirdly, when the State Museum in X was attacked Dr. Ares was held hostage in it by the militia for several days and he managed to escape from the museum with a truck filled with priceless exhibits from the museum in what was later described as an impossible feat and lastly Hestia revealing that a mysterious donor had given her what appeared to be the Covfefe emerald. All this form a chain to suggest that Dr. Ares and Jupiter Hestia were definitely involved in the theft.

37. In the famous case of Bodh Raj V. State of Jammu & Kashmir[77], Court held that circumstantial evidence can be a sole basis for conviction provided the following conditions are fully satisfied. Them being: The circumstances from which guilt is established must be fully proved[78]; That all the facts must be consistent with the hypothesis of the guilt of the accused[79]; That the circumstances must be of a conclusive nature and tendency.[80] It is not necessary that proof beyond reasonable doubt should be perfect in all criminal cases[81]. Circumstantial evidence consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed[82]. A single circumstance when strong, weighty and conclusive if not explained may be sufficient to record the conviction of the accused[83].

(2000) 8 SCC 203; Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 SCC 512; Sherimon v. State of Kerala AIR 2012 SC 493.

[75] 21, Page 12, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2018

[76] 21, Page 12, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2018

[77]Bodh Raj V. State of Jammu & Kashmir, (2002) 8 SCC 45.

[78] Rivera v. United States, 57 F.2d 816 (lst Cir. 1932); Commonwealth v. Shea,

[79] Christen v. State, 228 Ind. 30, 89 N.E.2d 445 (1950); Commonwealth v. Shea, 324 Mass. 710, 88 N.E.2d 645 (1949); People v. Asta, 337 Mich. 590, 60 N.W.2d 472 ('1953); Thomas v. State, 148 Tex. Crim. 526, 189 S.W.2d 621 (1945); State v. Bradley, 267 Wis. 871 64 N.W.2d 187 (1954); People v. Foley, 307 N.Y. 490, 121 N.E.2d 516 (1954);

[80]S D Soni v. State of Gujarat, A 1991 SC 917; Padala Veera Reddy v. state of A P, A 1990 SC 79; Chandmal v. S, A 1976 SC 917; Charan Singh v, S, A 1967 SC 520; Hanumant v. S, 1952 SCR 1091 A 1952 SC 343; Govinda Reddy v. S, A 1960 SC 29.

[81]Inder Singh v. S, A 1978 SC 1091.

[82]G. Parshwanath v. State of Karnataka, AIR 2010 SC 2914 : (2010) 8 SCC 593; Liyakat v. State of Uttaranchal, AIR 2008 SC 1537; Abubucker Siddique v. state, AIR 2011 SC 91 (2011) 2 SCC 121.

[83]Mohammad Mil v. state, 2009 Cr LJ (NOC) 424.

[4.2] DISHONESTLY RECEIVING STOLEN PROPERTY

38. A threefold test needs to be satisfied to prove that the offence of dishonestly receiving stolen property was committed[84]. *First*, that the stolen property was in the possession of the accused. *Secondly*, that some person other than the accused had possession of the property before the accused got possession of it. *Thirdly*, that the accused had knowledge that the property was stolen property. It is submitted that all the three prongs of the test are met in this case. It cannot be disputed that Covfefe was obtained from the possession of the petitioners[85]. The petitioners have also admitted that she obtained the emerald from a stranger[86].

[4.2.A.] ACQUISITION OF PROPERTY BY INDEFEASIBLE (UNJUSTIFIABLE) GIFT CONSTITUTES THEFT

39. The House of Lords in R, v. Hinks[87], held that acquisition of property by indefeasible (unjustifiable) gift constitute appropriation within the definition of section 1(1) of Theft Act, 1968. The House of Lords, by a majority of three to two held that for the purposes of section 1(1) of the 1968 Act, a person could appropriate property belonging to another even though that other person had made him an indefeasible (unjustifiable) gift of property, retaining no proprietary interest or any right to resume or recover any proprietary interest in the property.

40. It is submitted that the petitioners were clearly aware of the fact that the emerald she received was stolen. Moreover, the position in common law is that recent possession of stolen property raises a presumption of knowledge[88]. Such a presumption can also be found in Indian laws[89]. The presumption operates such that the person from whom property is recovered is presumed to have either stolen it or received it knowing it was stolen[90].Thereby the circumstantial evidence and facts of the present case necessitate Dr. Area and Jupiter Hestia to be held liable for the allegation of theft and the decision of the trail court must be reversed.

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[84] Trimbak v. State of Madhya Pradesh, AIR 1954 SC 39.
[85] ¶2, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[86] ¶2, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[87] (2000) 4 All ER 833 (HL)
[88] Phillip Bruce v. The Queen, (1987) 74 ALR 219.
[89] Section 114, The Indian Evidence Act, 1872.
[90] Mohan Energy Corporation Limited v. State, 2015 Indlaw DEL 4496.

PRAYER

WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED,

1. **To Declare**, the orders passed by the Federal Court being contrary to the process of law, liable to be struck down
2. **To Hold**, the conviction of Jupiter Hestia being contrary to the process of law and must be set aside.
3. **To Declare**, acquittal of Dr Ares and Jupiter Hestia from allegations of theft contrary to law and to reverse the decision of the Special Court.
4. **To Hold**, that the Members of the Local Militia are not subjected to the Jurisdiction of the Special Court.

AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT THIS HON'BLE COURT MAY DEEM FIT IN THE INTERESTS OF *justice, equity and good conscience*.

All of which is humbly prayed,

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Counsels for the Appellants