

THE K.K. LUTHRA MEMORIAL MOOT COURT, 2023

BEFORE THE HON'BLE SUPREME

COURT OF STAN

Writ Petition arising out of Article 32 of Constitution of Stan

IN THE MATTER OF

W.P. No. __/ 2023

VARSHA

...PETITIONER

versus

REPUBLIC OF STAN

...RESPONDENT

MEMORIAL ON BEHALF OF THE PETITIONER

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I. LIST OF ABBREVIATIONS

Abbreviation	Corresponding Expansion
&	And
¶	Paragraph
AC	Appeal Cases
AIR	All India Reporter
Anr.	Another
Art.	Article
Bom	Bombay
Const.	Constitution
Cal	Calcutta
CBI	Central Bureau of Investigation
Cri	Criminal
CrPC	Code of Criminal Procedure
Edn.	Edition
FIR	First Information Report
FR	Fundamental Right
FC	Family Court
HC	High Court
ICJ	International Court of Justice
ILR	Indian Law Reports
LJ	Lords Justice
MP	Madhya Pradesh
Ors.	Others
Ori	Orissa
Prop	Proposition
Q.B.	Queen's Bench division of the High Court
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases Online

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III. STATEMENT OF JURISDICTION

The Petitioners have approached the Hon'ble Supreme Court of Stan by the means of a Writ Petition, under Article 32 of the Constitution¹ to seek to enforce their Fundamental Rights under the ambit of Articles 19² and 21³ of the Constitution of Stan.

¹ Article 32 of the Constitution of Stan:

“Remedies for enforcement of rights conferred by this Part,

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed;*
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part*
- (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may bylaw empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)*
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution”*

² Article 19 of the Constitution of Stan:

“(1) All citizens shall have the right—(a) to freedom of speech and expression;(b) to assemble peaceably and without arms;(c) to form associations or unions;(d) to move freely throughout the territory of India;(e) to reside and settle in any part of the territory of India; (g) to practise any profession, or to carry on any occupation, trade or business.”

³ Article 21 of the Constitution of Stan:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

IV. STATEMENT OF FACTS

Republic of Stan, a developing democratic economy, enjoys enormous international respect. It has six provinces namely, Province A, Province B, Province C, Province D and Province E and Eastern Province. The Eastern Province was acceded to the Republic of Stan ten years after Stan's independence. The Eastern Province, one of the most developed states, has a lower population density, and is dependent for water supplies on Province A and Province D. As a part of the Accession Agreement, apart from refusing to be called Province F, Eastern Province was permitted to continue to levy a local tax called 'Old Fee' on all products coming into or leaving Eastern Province that is for the exclusive use of Eastern Province. In 2015 exploratory talks began for the Republic of Stan to join the Continental market.

Varsha T. and the Sedition Novels

Stan author and journalist Varsha T. Surya, Varsha's husband, manages the Snoopy chemical firm. Varsha has written various books, including the Sedition Novels with Shavar as the main character in March 2020. Shavar, the protagonist, mobilizes a restive region of a fictitious kingdom, Nod, in a distant universe by making Ethereum from the territory's methane oceans. She also poisoned Province's Ethereum source for 10,000 years. Shavar's words inciting her region against the Kingdom of Nod have spawned novels and reprints.

These seditious novels have been adapted into movies, serials, and graphic novels in several languages. Varsha was a visionary and future Eastern Province leader. Singswell recorded a stirring speech as a song for Varsha in June 2021. Soon bootlegged, the song got widespread online. Based on its popularity in 2021, the Republic of Stan debated the Accession Agreement and the Old Fee, drawing clear comparisons between Nod and Stan.

The Chronicles of Shavar and Snoopy

In 2022, 'The Chronicles of Shavar' was announced. Varsha informed a film reviewer that 'The Chronicles of Shavar' was the closest film to her books' ideology. In 2022, she said she sold the rights to the Sedition Novels in April 2021. Snoopy announced on 23 June 2022 that it has identified an economically feasible technology to desalinate sea water off the coast of the Eastern Province. Shares of Snoopy skyrocketed in the days that followed. The Continent unilaterally suspends discussions with Stan on 24 June 2022.

The Chronicles of Shavar premiered on June 25, 2022, and severe unrest and riots followed. In Province B alone, more than 1500 women and children were killed. Seven teachers from the Eastern Province were shot on June 26, 2022. On 29 June 2022, one of the key water canals from Province A to Eastern Province was blasted, stopping water supplies. The Eastern Province Water Riots caused approximately \$2 billion in damage from 1 to 9 July 2022. On 10 July 2022, the Prime Minister of Stan proclaimed a state of emergency in the Eastern Province and said that no ex-gratia payments would be issued and that Old Fee recoveries were enough to care for Eastern Province residents. A crew of Stan Navy sappers had radioactive pellets and intended to make Stan's drinkable water radioactive. The sappers told investigators on 18 July 2022 that 'The Chronicles of Shavar' inspired them. On 20 July 2022, the Stan Parliament canceled the Accession Agreement. Province F replaced Province E.

FIR against Varsha

In Province B an FIR was recorded (FIR No. 17/2022) under Section 124A of the Stan Penal Code, 1860 naming Varsha as the main accused. She was accused of sedition, waging war against the Union and criminal conspiracy. Further, an open-ended non bailable warrants were issued against her by the Court of the Chief Metropolitan Magistrate, B City, Province B because she was not available in Stan.

Extradition

Stan asked Brittany for Varsha's extradition on August 1, 2022. Based on the same request, on 14 August the extradition agreement authorized Varsha to be extradited to Stan and the Stan Government agreed not to seek the death sentence for Varsha if she was found guilty under Section 124A IPC.

Varsha was found guilty of the Section 124-A Stan Penal Code offence. It produced a reasoned ruling holding that 'The Chronicles of Shavar' reflected modern Stan society and fostered enmity towards the Stan Government. The court deemed Varsha's unique situation inextricably tied to the film. Varsha's assertions concerning Snoopy's pronouncements were not genuine, and no relationship was identified between Snoopy's shares and Stan's governing party. Varsha had two months to establish mitigating circumstances. Varsha has challenged her extradition from Brittany and the order holding it in abeyance in the Supreme Court of Stan. Further, it also challenged the judgment before the same court.

V. ISSUES RAISED

ISSUE 1

WHETHER VARSHA T WAS LEGALLY EXTRADITED FROM BRITTANY?

ISSUE 2

WHETHER THE GOVERNMENT OF STAN WAS WRONG IN KEEPING THE
EXTRADITION PROCESS OF VARSHA IN ABEYANCE?

ISSUE 3

WHETHER THE JUDGEMENT PASSED BY THE COMPETENT COURT CONVICTING
VARSHA T OF SEDITION UNDER SECTION 124A OF THE STAN PENAL CODE IS
VALID AND CONSTITUTIONAL?

VI. SUMMARY OF ARGUMENTS***1. Whether Varsha T was illegally extradited from Brittany?***

The judgement passed by the competent court is not valid and should be declared unconstitutional as the novels and the film of the Petitioner are not violative of Article 19(2) of the Stan Constitution and does not satisfy the elements of Section 124A of Stan Penal Code. Furthermore, the actions of the Petitioner are not violative of the “procedure established by law” under Article 21 of the Constitution of Stan. Also, Section 124A of Stan Penal Code, 1860 constitutes an unreasonable restriction to freedom of speech and expression under Article 19(1)(a) which thereby makes the petition maintainable before the Hon’ble Court.

2. Whether the process of extraditing Varsha T back to Brittany is wrongly kept in abeyance?

The process of Extraditing Varsha T back to Brittany is wrongly kept in abeyance, as Stan’s authorities are not competent to prosecute Varsha for the alleged offence as Varsha and her husband have sold the shares of their company in apparent contravention of the Brittany securities law and not in contravention with the laws of Stan and Varsha’s subsequent prosecution for securities fraud in Stan is in contravention of Rule of Speciality, according to which a person who is extradited to a country to stand trial for certain criminal offences may be tried only for that specific offence for which he or she is extradited and not for any other offence.

3. Whether the judgement passed by the competent court convicting Varsha T of sedition under Section 124A of the Stan Penal Code is not valid and it is unconstitutional.

The orders of extraditing Varsha back to Stan is legally wrong as Varsha has not committed any Extradition Offence, as the alleged offence committed by Varsha is Sedition, which is not an offence in both the Contracting States, i.e., Brittany and Stan, which is a mandatory requirement under Article 2 of the Bilateral Extradition Treaty between the two states. Additionally, Extradition cannot be done for a Political Offence, as that will be violative of Right to Fair Trial of Varsha, which is violative of Right of Life. Finally, Stan cannot give Death Penalty to Varsha T, as the same will be against Article 16 of the Extradition Treaty read with Section 34-C of the Extradition Act.

VII. ARGUMENTS ADVANCED**ISSUE 1: VARSHA T IS ILLEGALLY EXTRADITED TO STAN**

1. It is humbly submitted before the Hon'ble Supreme Court of Stan that the orders of extraditing Varsha back to Stan is wrong as [1.1] the present writ petition is maintainable, [1.2] Varsha has not committed any Extradition Offence; and [1.3] Stan cannot give Death Penalty to Varsha T.

[1.1] The present writ petition is maintainable before the Supreme Court of Stan

2. It is humbly submitted before the Hon'ble Supreme Court of Stan that Varsha's extradition based on the allegations of Sedition, which is a Political Offence, is against her Right to Fair Trail, which endangers her Right to Life, thus is violative of her Fundamental Right under Article 21⁴ of the Constitution of Stan, which makes this petition maintainable before the Supreme Court of Stan.
3. The existing extradition treaty states that no extradition can be granted for a political offence.⁵ The political offence exception is premised, on the notion that a political offender will not receive a fair trial and even-handed punishment in the state where the offence is committed⁶ as the justice will be coloured by political passion. The principle of non-extradition of political offenders is derived from the principle of humanitarianism.⁷
4. Therefore, in the present case, Varsha's extradition, for a political offence, like Sedition, which has been recognized as offences directed against State, and as such, they come within the ambit of purely political offences,⁸ is against her right to Fair trial, which is violative of her Fundamental Right to Life and Personal Liberty. Therefore, the present petition is maintainable before the Supreme Court of Stan.

[1.2] Varsha has not committed any Extradition Offence

5. It is humbly submitted before the Hon'ble Supreme Court of Stan that the offence committed by Varsha, which as alleged, is Sedition, is not an Offence in both the Contracting States, i.e.,

⁴ INDIA CONST. art. 21.

⁵ The Extradition Act, 1962, § 31(1)(A), No. 34, Acts of Parliament, 1962 (India).

⁶ Antje C. Petersen, *Extradition and the Political Offense Exception in the Suppression of Terrorism, Extradition and the Political Offense Exception in the Suppression of Terrorism*, 67 IND. L.J. 767, 768 (1992).

⁷ E. Martin Gold, *Non-Extradition for Political Offence, The Communist Perspective*, 11 HARV. INT'L L.J. 191 (1970).

⁸ M.C BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 35 (1974).

Brittany and Stan, which is a mandatory requirement under Article 2⁹ of the Bilateral Extradition Treaty between the two states. This can further be substantiated in two parts [1.2.1] Sedition is not an offence in both the countries; [1.2.2] Extradition cannot be done for a Political Offence.

[1.2.1] Sedition is not an offence in both the countries

6. It is humbly submitted that Sedition is no more an offence in Brittany as the same was abolished by Section 73 of the Coroners and Justice Act, 2009¹⁰. This paradigm changes when seen in light of Article 2 of the Extradition Treaty between Stan and Brittany, it can be concluded that since Sedition is no more an offence in Brittany, therefore, the requirement under Article 2 of the Bilateral Treaty is not fulfilled, which requires a offence to be punishable in both the Contracting States.¹¹
7. Furthermore, in the case of *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra*¹² the court observed that an act shall not be extraditable unless it constitutes a crime according to the laws of both the requesting and requested States, this principle is in furtherance of the Rule of Double Criminality. Additionally, the rule of double criminality is part of the basic principle of reciprocity, which underlies the whole structure of extradition, and is part on the maxim *nulla poena sine lege* (one cannot be punished for doing something that is not prohibited by law).¹³
8. Therefore, even though charges of Sedition have been framed against Varsha T in Stan then also she cannot be requested to be extradited back from Brittany because Sedition is no more a punishable offence in Brittany, which makes it a non-extradition offence according to the Bilateral Treaty between the two States.

[1.2.2] Extradition cannot be done for a Political Offence

9. Under most systems of municipal laws and existing extradition treaties,¹⁴ no extradition can be granted for a political offence. The political offence exception is premised, on the notion that

⁹ Extradition Treaty - India and United Kingdom and Northern Ireland art 2, Dec. 30, 1993, PAUSA 9, 1915.

¹⁰ The Coroners and Justice Act, 2009, § 73, Act No. 25, UK Public General Acts, 2009 (United Kingdom).

¹¹ Marie-Emmanuelle, Verhoeven v. Union of India, (2016) 6 SCC 456.

¹² Abu Salem Abdul Qayoom Ansari v. State of Maharashtra, (2011) 11 SCC 214.

¹³ S. Khushboo v. Kanniammal & anr. AIR 2010 SC 3196, *See Also*, Vijay Singh v. State of U.P., (2012) 5 SCC 242.

¹⁴ THE UNITED NATIONS MODEL TREATY ON EXTRADITION, art 3(a) (1990); European Convention on Extradition art 3(1), Apr. 18, 1960, E.T.S. 24.; Inter-American Convention on Extradition art 4(4), Mar. 27, 1879, O.A.S.T.S. No. 60, 1752 U.N.T.S. 190; The Extradition Act (Act No. 34/1962) (India); MANUCL R. GARCIA-MORA, INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT 73 (1956) (In 1833 Belgium, Russia, Prussia and Austria ratified treaties not to extradite political offenders).

a political offender will not receive a fair trial and even-handed punishment in the state where the offence is committed¹⁵ as the justice will be coloured by political passion. The principle of non-extradition of political offenders is derived from the principle of humanitarianism.¹⁶

10. According to Section 31(1)(A) of the Extradition Act, 1962¹⁷ read with Article 5(1)¹⁸ of the Extradition Treaty between Stan and Brittany, a fugitive criminal shall not be surrendered or returned to the foreign country, if the extradition request is based on a Political Offence.
11. In the case of *Rex v. Kolozynski*¹⁹ the definition of political offences was extended by stating that ‘the words, offence of political characters’ must always be considered according to the circumstances existing at the time when they must be considered. Accordingly, now not only offences committed to overthrow a government, but also attempt to suppress or prosecute persons holding different political opinion, is considered as Political offence.²⁰ Treason, sedition and espionage are offences directed against State and are a threat to the existence, welfare, and security of that entity, and as such, they come within the ambit of purely political offences.²¹
12. In the present case, Varsha’s Extradition based on allegation of Sedition, which is a Political Offence, is wrong. As that is restricted by the Extradition Act as well as the Extradition Treaty, solely based on the ground of the Extradited person not getting fair trial in the Requesting country, if extradition is done for a Political Offence. Furthermore, when we consider the circumstances existing at the time when extradition request is made, as has been recommended in the *Rex v. Kolozynski* case, then also we can see that the current political regime in Stan is against the political opinion held by Varsha. Therefore, it can be concluded that Varsha has been wrongly extradited from Brittany as the alleged offence, i.e., Sedition, is a Political Offence, for which extradition is restricted.

¹⁵ Antje C. Petersen, *Extradition and the Political Offense Exception in the Suppression of Terrorism, Extradition and the Political Offense Exception in the Suppression of Terrorism*, 67 IND. L.J. 767, 768 (1992).

¹⁶ E. Martin Gold, *Non-Extradition for Political Offence, The Communist Perspective*, 11 HARV. INT’L L.J. 191 (1970).

¹⁷ The Extradition Act, 1962 § 31 cl. 1(A), No. 34, Acts of Parliament, 1962 (India).

¹⁸ Extradition Treaty - India and United Kingdom and Northern Ireland art 5 cl. 1, Dec. 30, 1993, PAUSA 9, 1915.

¹⁹ *Rex v. Kolozynski* (1955) 1 Q.B. 540 (Q.B.).

²⁰ KALINGA KUMAR PANDA, A TEXT BOOK OF INTERNATIONAL LAW 188 (1998).

²¹ M.C BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 35 (1974).

[1.2.3] Stan cannot give Death Penalty to Varsha T.

13. Varsha T cannot be given Death Penalty even if found guilty of the alleged case of Sedition, as according to Article 16²² of the Extradition Treaty read with Section 34-C²³ of the Extradition Act, Stan cannot give Death Penalty as they have promised not to provide for Capital Punishment, especially in that case where the same is not even a crime in Brittany. The position has been asserted in the Abu Salem Case,²⁴ where the court observed that an extradited person cannot be given more punishment than for what has been agreed in the Extradition decree.²⁵
14. In the present case, since the Ambassador of Stan to Brittany has explicitly stated that Varsha will not be given death penalty, in case she is found guilty of Sedition,²⁶ to which the Brittany Government agreed, and based on that assurance have extradited Varsha back to Stan, therefore, now the Stan's Government cannot breach that agreement.

In light of the above arguments advanced, the Petitioner humbly submits before the Hon'ble Court that, Varsha T has been wrongly extradited from Brittany to Republic of Stan.

ISSUE 2: THE PROCESS OF EXTRADITING VARSHA T BACK TO BRITTANY IS WRONGLY KEPT IN ABEYANCE

15. It is humbly submitted before the Hon'ble Supreme Court of Stan that the process of Extraditing Varsha T back to Brittany is wrongly kept in abeyance, as [2.1] Stan's authorities are not competent to prosecute Varsha for the alleged offence and [2.2] Varsha's subsequent prosecution for securities fraud in Stan is in contravention of Rule of Speciality.

[2.1.] Stan's authorities are not competent to prosecute Varsha for the alleged offence

16. According to Rule of Reciprocity, if a State is unwilling to extradite a fugitive criminal, it should undertake the responsibility of prosecuting him or her,²⁷ that rule originates from the legal maxim *aut dedere aut judicare* (either extradite or prosecute).²⁸ This theory that a criminal should not go unpunished,²⁹ finds its relevance in Article 8 of the Extradition Treaty,³⁰ which

²² Extradition Treaty - India and United Kingdom and Northern Ireland art 16, Dec. 30, 1993, PAUSA 9, 1915.

²³ The Extradition Act, 1962 § 34-C, No. 34, Acts of Parliament, 1962 (India).

²⁴ Abu Salem Abdul Qayoom Ansari v. State of Maharashtra, (2011) 11 SCC 214.

²⁵ CLIVE NICHOLLS QC, CLARE MONTGOMERY QC, JULIAN B. KNOWLES, THE LAW OF EXTRADITION AND MUTUAL ASSISTANCE (Oxford Publication, 2014).

²⁶ MOOT PROPOSITION, ¶ 41

²⁷ Marie-Emmanuelle, Verhoeven v. Union of India, (2016) 6 SCC 456.

²⁸ Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), 2012 ICJ Reports 422.

²⁹ Rosiline George v. Union of India, (1994) 2 SCC 80.

³⁰ Extradition Treaty - India and United Kingdom and Northern Ireland art 8, Dec. 30, 1993, PAUSA 9, 1915.

deals with the obligations of the Requested State if it does not accept the request to extradite the requested person and in turn decides to prosecute him.

17. The obligations underlying Article 8 of the Extradition Treaty have been highlighted under clause 2 of Article 8³¹, which states that if a Requested State decides to prosecute the Requested person and not to extradite him, in that case, the Requested State shall submit the case to its competent authority for the consideration of the prosecution. Furthermore, those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
18. In the present case, it is submitted that the authorities of Stan are not competent to prosecute Varsha T in Stan, as allegations are that Varsha and her husband have sold the shares of their company in apparent contravention of the Brittany securities law³² and not in contravention with the laws of Stan. Therefore, none of the authorities in Stan will be competent to prosecute for an offence, which is not in contravention of their laws.

*[2.2] Varsha's subsequent prosecution for securities fraud in Stan is in contravention of
Rule of Speciality*

19. According to Rule of Speciality, a person who is extradited to a country to stand trial for certain criminal offences may be tried only for that specific offence for which he or she is extradited and not for any other offence,³³ this principle has been recognized in Section 21³⁴ of the Extradition Act and Article 13³⁵ of the Extradition Treaty. The abovementioned provisions further provide an exemption to 'lesser crimes', which has been clarified in the *Daya Singh Case*,³⁶ where while interpreting Section 21 the court observed that a fugitive could be tried for any lesser offence, disclosed by the facts proved or even for the offence in respect of which the foreign State has given its consent. It thus enables to try the fugitive for a lesser offence, without restoring him to the State or for any other offence, if the State concerned gives its consent.
20. In the present case, first of all there is no Extradition Offence to begin with, secondly, even if it is considered as an Extradition offence, then also the said offence does not flow from the facts of the case of Sedition based on which Varsha's extradition was sorted. The current case involves allegations of fraud which are different from the original case of Sedition, for which

³¹ *Id.* at art. 8(2).

³² MOOT PROPOSITION, ¶ 44.

³³ *Suman Sood v. State of Rajasthan*, (2007) 5 SCC 634.

³⁴ The Extradition Act, 1962 § 21, No. 34, Acts of Parliament, 1962 (India).

³⁵ Extradition Treaty - India and United Kingdom and Northern Ireland art 13, Dec. 30, 1993, PAUSA 9, 1915.

³⁶ *Daya Singh Lohoria v. Union Of India*, (2001) 4 SCC 516.

the Extradition request was made. Therefore, for this new case a fresh process ought to be started as specified under Chapter 3 of the Extradition Act, based on the same this fraud case cannot be considered as a lesser offence that flows from the facts of the original case of Sedition.

In light of the above arguments advanced, the Petitioner humbly pleads before the Hon'ble Court that the process of extraditing Varsha T back to Brittany is wrongly kept in abeyance.

ISSUE 3: THE JUDGEMENT PASSED BY THE COMPETENT COURT CONVICTING VARSHA T OF SEDITION UNDER SECTION 124A OF THE STAN PENAL CODE IS VALID AND CONSTITUTIONAL

21. It is humbly submitted before the Hon'ble Court that the judgement passed by the competent court convicting Varsha T of sedition under Section 124A of the Stan Penal Code is not valid and it is unconstitutional, on the grounds that, [3.1] the present writ petition is maintainable, [3.2] the novels and the film of the Petitioner are not Violative of Article 19(2) of Stan Constitution and does not satisfy the elements of Section 124A of Stan Penal Code, and [3.3] the actions of the Petitioner are not violative of the 'procedure established by law' under Article 21 of the Constitution of Stan.

[3.1] The Present Writ Petition Filed by Varsha T before the Supreme Court of Stan is Maintainable

22. It is humbly submitted before the Hon'ble Supreme Court of Stan that section 124A of Stan Penal Code, 1860 constitutes an unreasonable restriction to freedom of speech and expression under Article 19(1)(a)³⁷.
23. It is submitted that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme.³⁸ The freedom to air ones views is the lifeline of every democratic institution and any attempt to stifle, suffocate this right would be inconsistent with the democratic setup.³⁹ So, it can be construed that freedom of speech, is crucial to the working of a democratic Constitution and is an aspect of human self-fulfilment or autonomy.
24. In the case of *Balwant Singh v. State of Punjab*⁴⁰, the Supreme Court declared that where it was held that the mere casual raising of slogans a couple of times without the intention to incite

³⁷ INDIA CONST. art. 19 cl. 1(a).

³⁸ *Shreya Singhal v. Union of India* AIR 2015 SC 1523.

³⁹ *LIC v. Manubhai D. Shah*, AIR 1993 SC 171.

⁴⁰ *Balwant Singh v. State of Punjab*, AIR 1959 All 101.

people to create disorder would not constitute a threat to the Government of India. The court have acquitted the citizens accused of the charge of sedition on the grounds that the prosecution had failed to produce sufficient evidence to prove that they had committed a seditious act. Section 124A of IPC unconstitutional as the Court was of the opinion that the said section transgressed its authority by imposing unreasonable restriction on the freedom of speech enshrined under Article 19(1)(a).

25. It is argued that Varsha's expression of a viewpoint in her fictional book falls within the purview of section 124A, the purpose of which is to penalize anybody who brings the government into contempt or who inspire disaffection against the government using 'violent methods. The accusation of sedition Section 124A of IPC is arbitrary and unreasonable which goes beyond the necessity of the need of the community.
26. Therefore, it is humbly submitted that the restriction imposed by Section 124A of IPC constitutes and unreasonable restriction on the Right to Freedom of Speech and Expression (Article 19) and the same should be declared unconstitutional.

[3.2] The Novels and the Film of the Petitioner are not violative of Article 19(1) of Stan Constitution and satisfies the elements of Section 124A of Stan Penal Code

27. It is humbly submitted before the Hon'ble Supreme Court of Stan that the Novels and the Film of the Petitioner are [3.2.1] neither violative of Article 19(1) of Constitution of Stan, [3.2.2] nor violative of Article 19(2)⁴¹ of Constitution of Stan, satisfies the elements of Section 124A of Stan Penal Code.

[3.2.1] The Novels and the Film of the Petitioner are not violative of Article 19(1) of Constitution of Stan

28. The Counsel on behalf of the Petitioner most humbly submits that the freedom to speak one's mind freely and without fear of punishment is an integral part of the larger concept of free speech, which is regarded as the most fundamental freedom by most philosophers. It's the bedrock of every free society and essential to maintaining a vibrant democracy.⁴² The Supreme Court in *Romesh Thapar v State of Madras*⁴³ held that "criticism of the government exciting disaffection or bad feelings towards it, is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or

⁴¹ INDIA CONST. art. 19 cl. 2.

⁴² Union of India V. Motion Picture Association, AIR 1999 SC 233.

⁴³ Romesh Thappar v. State of Madras, 1950 SCC 436.

tend to overthrow the state.” It was further held that 19(1)(g)⁴⁴ is the very basis and essence of the constitution and our democracy.

29. It is further submitted before the Hon’ble Court that the Punjab and Haryana High Court in *Tara Singh Gopi Chand v. The State*⁴⁵, and the Court in *Ram Nandan v. State of Uttar Pradesh*⁴⁶ declared that Section 124A of the IPC was primarily a tool for colonial masters to quell discontent in the country and declared the provision unconstitutional.⁴⁷ Further, as held by the court in the *Kedar Nath case*⁴⁸, the ruling restricted sedition only insofar as seditious speech tended to incite “public disorder”- a phrase Section 124A itself does not contain but was read into it by the court. This ruling in *Balwant Singh v. State of Punjab*⁴⁹, reiterated that the real intent of the speech must be taken into account before labelling it seditious.
30. In *Niharendu Dutt Majumdar v. King Emperor*⁵⁰, the Federal Court held that “public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence.” But this proposition was overturned by the Privy Council in *King Emperor Vs Sadashiv Narayan Bhalerao*.⁵¹ The Privy Council lent credence to the law laid down in Tilak’s case and ruled that incitement to violence was not a pre-requisite for the crime of sedition and that excitement of feelings of enmity to the government was sufficient to establish guilt under Section 124A. However, in the present case, as established in the moot proposition, the novels written by the Petitioner are exciting the feelings of enmity towards the government in any manner as it was only after the release of the movie that unrest was observed in the provinces.⁵²

[3.2.2] That the Novels and the Film of the Petitioner are not violative of Article 19(2) of Constitution of Stan

31. Drawing attention towards the case of the *Tata Press Ltd. v. MTNL*⁵³, the Supreme Court held that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limits of Article 19(2)⁵⁴. The Supreme Court held that advertising, which is no more than a commercial transaction, is

⁴⁴ INDIA CONST. art. 19 cl. 1(g).

⁴⁵ *Tara Singh Gopi Chand v. The State*, AIR 1951 Punj. 27 (A).

⁴⁶ *Ram Nandan v. State of U.P.*, 1958 SCC OnLine All 117; AIR 1959 All 101.

⁴⁷ P.S.A. PILLAI CRIMINAL LAW 402 (Lexis Nexis, 2018).

⁴⁸ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

⁴⁹ *Balwant Singh v. State of Punjab*, AIR 1959 All 101.

⁵⁰ *Niharendu Dutt Majumdar v. King Emperor*, (1942) 4 FCR 38.

⁵¹ *King Emperor v. Sadashiv Narayan Bhalerao*, 1947 SCC OnLine PC 9.

⁵² MOOT PROPOSITION, ¶ 31.

⁵³ *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139.

⁵⁴ INDIA CONST. art. 19 cl. 2.

nonetheless dissemination of information regarding the product advertised. The public at large is benefited by the information made available through the advertisements.⁵⁵ The fact that Varsha gave several interviews during the production of the film comes under her freedom of speech & expression and cannot be restricted beyond the limits of Article 19(2). In a democratic economy, the free flow of commercial information is indispensable.

32. In *S. Rangarajan v. P. Jagjivan Ram*,⁵⁶ the Madras HC revoked the 'U' certificate issued to a film on the ground that the exhibition of the film was likely to cause public disorder and violence. On appeal by the producer and the Union of India, the Supreme Court reversed the order. The court not only reiterated the importance of the freedom of speech and expression and the role of films as a legitimate media for its exercise but also held that if the exhibition of the film cannot be validly restricted under Article 19(2), it also cannot be suppressed on account of threat of demonstration and processions or threat of violence. It added: It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is obligatory duty to prevent it and protect the freedom of expression.
33. A two-judge division bench of the Apex court, in the case of *Vinod Dua v. Union of India & Ors.*⁵⁷, quashed an FIR (first information report) against the petitioner, journalist Vinod Dua, for the offence of sedition. The Court observed that every journalist shall be protected from the charge of sedition taking into account the interpretation of the offence as propounded in the landmark judgment of *Kedar Nath Singh case*.⁵⁸
34. In light of the aforementioned judgements, the Counsel puts forth that the series of novels written by Varsha T is a mere exercise of her freedom to speech and expression provided under Article 19 of the Constitution of Stan. The novel simply explains a fictional world dealing with a trained warrior mobilising a province. However, nothing in the book is suggestive of the parallels that are drawn between Stan and the Kingdom of Nod. The remarks in the book made by Varsha T are nowhere threatening the sovereignty and integrity of Stan, nor is it putting the security of Stan at stake. Further, as can be derived from the moot proposition, Varsha also released a statement, clearly stating that the sedition novels were a work of fiction and there are no parallels between the Kingdom of Nod and Stan.

⁵⁵ Colgate-Palmolive (India) Ltd. v. Anchor Health and Beauty Care Pvt. Ltd., 2019 SCC OnLine Del 8770.

⁵⁶ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

⁵⁷ *Vinod Dua v. Union of India*, 2020 SCC OnLine SC 1209.

⁵⁸ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

35. The riots and unrest in the Provinces B and C were a result of the Chronicles of Shavar, which was again not a complete adoption of Varsha T's novels. Rather, the storyline was changed significantly as elaborated in the moot proposition. As can be deduced from the aforementioned arguments, the disturbance in the provinces were not a result of the Petitioner's novels as had that been the case, the riots would have started immediately after the book was released and not after two years when the books were adapted into a film with significant deviation in the storyline.
36. Thus, the judgement passed by the competent court convicting Varsha T of sedition is not valid. Thus, it is most respectfully submitted before the Hon'ble Court that the Court convicting Varsha T of Sedition under Section 124A of the Stan Penal Code is unconstitutional as none of the elements of Section 124A are satisfied on the account of Varsha T being liable of sedition.

[3.2.3] The actions of the Petitioner are not violative of the 'procedure established by law' under Article 21 of the Constitution of Stan

37. It is humbly submitted that Art. 21⁵⁹ is inclusive of the "Right to live with dignity" which derives its provisions from DPSPs i.e., Art. 39(e)⁶⁰, (f), 41⁶¹, and 42⁶². The court has interpreted in such a way that, the Right to Life includes the right to life under Art. 21. Right to life and Personal Liberty under Article 21 of the Constitution are the most fundamental of all⁶³ which also includes right to live with human dignity⁶⁴ which is further inclusive of the bare necessity of writing and expressing oneself in diverse forms.⁶⁵
38. It is pertinent to note in the instant case, the expression "procedure established by law" means procedure laid down by statute or procedure prescribed by the law of the State⁶⁶ which is the observance of procedural safeguards⁶⁷. One cannot deprive a man of his personal liberty, unless you follow and act according to the law which provides for the deprivation of such liberty.⁶⁸ Severe substantive restrictions can be endured if they are fairly and impartially applied.⁶⁹

⁵⁹ INDIA CONST. art. 21.

⁶⁰ INDIA CONST. art. 39 cl. e.

⁶¹ INDIA CONST. art. 41.

⁶² INDIA CONST. art. 42.

⁶³ Maneka Gandhi v. Union of India, (1978) 1 SCC 248: AIR 1978 SC 597, 620.

⁶⁴ Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608.

⁶⁵ *Id.* at 619.

⁶⁶ Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161: AIR 1984 SC 802.

⁶⁷ McNabb v. US, 318 US 332.

⁶⁸ Gopalan v. State of Madras, (1950) SCR 88.

⁶⁹ Shaughnessy v. US, 345 US 206.

39. Right to express one's opinion is an inherent right granted to the citizens by the Constitution and it forms an important aspect of a democratic government. In the instant case, the Petitioner, Varsha T has the right to dissent and everyone has the right to express their views in a civilised manner. The novel by Varsha was a mere exercise of her freedom of rights and expression, and the same was not to incite violence amongst the citizens. The expression of her opinion is the exercise of her fundamental rights of her right to life and personal dignity. The law of sedition curtails the liberty of the citizens and also violates the consequent duty of citizens to uphold the truth and speak critically of the government when need be.⁷⁰
40. The trilogy was a fictitious novel by the Petitioner and all such speeches in the novel were fictional speech⁷¹ and the same has no inter-connection with reality. The novel was not instrumental in inciting violence, since while the novel was widely popular over the years and were remade into movies, serials and graphic novels in several languages. The incitement of the violence was a result of the release of the movie 'The Chronicles of Shavar' by the mammoth film production, where riots broke after the release of the first show. It is quintessential to note that the novel was not the reason for the riots and the internal disturbance in Stan, rather the release of the movie was, of which the movie was a product of an independent scriptwriting process.

Thus, it is humbly submitted before the Hon'ble Court that the Petitioner has merely exercised the fundamental right of freedom and expression and thus, the Petitioner being alleged for inciting violence and violating Article 19(2) of the Constitution is an aggravated infringement of the fundamental right of right to life and personal liberty guaranteed under Article 21 of the Constitution of the Stan.

⁷⁰ Eklavya Vasudev, *Dissent & Democracy: Why the Sentinel Should Strike Down IPC Sec. 124A*, THE HINDU, (21ST November, 2022, 18:45) [<https://www.thehinducentre.com/the-arena/current-issues/dissent-democracy-why-the-sentinel-should-strike-down-ipc-sec-124a/article65685090.ece>].

⁷¹ MOOT PROPOSITION, ¶ 12.

VIII. PRAYER

Wherefore in the light of the facts stated, issues raised, arguments advanced and authorities cited, the Petitioner, humbly prays before this Hon'ble Supreme Court, to be graciously pleased to:

- *Firstly*, hold and declare that, Varsha has been illegally Extradited from Brittany.
- *Secondly*, hold and declare that, the Government of Stan was wrong in keeping the extradition process of Varsha T in abeyance.
- *Thirdly*, hold that, the judgement passed by the competent court convicting Varsha T of Sedition is invalid and unconstitutional.

And /or pass any other order that it may be pleased to, in the interest of Justice, Equity and Good Conscience, and for this act of Kindness, the counsels on behalf of the Petitioner shall duty bound forever pray.

Place: Republic of Stan

Respectfully Submitted,

Counsels on behalf of the Petitioner