

29th ALL INDIA MOOT COURT COMPETITION 2020
FOR THE KERALA LAW ACADEMY TROPHY
MOOT PROPOSITION

Sneha Renewal Centre v State of Dharmasthan

Dharmasthan is a State in the Indian Union. Population of the State is 71645718. Literacy of the State is 45%. On 16-4-2019, the leading newspaper of the State, the Dharmasthan Times published the following report:

In the state of Dharmasthan, spiritualism has become a holy cover for unholy deeds. Among the many kinds of mafia thriving in Dharmasthan, the most powerful is of fake Godmen and Godwomen.

Santhu Mahavir alias Swami Mokshanandha (35), wanted by the Interpol since 2014, was arrested two years ago. He was accused of cheating a Gulf-based woman from Dharmasthan of Rs. 45 lakh. Investigations later proved that Santhu Mahavir, who started his career as an astrologer to become a popular Godman in Dharmasthan, was up to many more exploits. A jet-setting guru revered by many film stars, top police officials and politicians until he was arrested, Santhu Mahavir was sentenced by a Sessions Court in 2018 to 16 years' rigorous imprisonment for raping two minor girls. Other charges against him included real estate swindle, tiger skin trade etc. The state police had seized CDs from his ashram containing visuals of the "guru" persecuting the minor girls.

The hypothetical case for the 29th All India Moot Court Competition - 2020, was prepared by Prof. Dr. K.C Sunny, Vice-Chancellor, National Law of Advanced Legal Studies and Research (NUALS), Cochin.

Santhu Mahavir's arrest had triggered a flood of complaints from many parts of the State against scores of God men and God women, accusing them of cheque fraud, tax dodging, cheating, rape and even murder.

Within weeks, the state police arrested more than a dozen "spiritual gurus" belonging to various religions and castes-many with swanky ashrams and devotees not only from the State but other parts of the country, and even abroad.

On 25-05-2019 the Dharmasthan Times published another report which contained the following allegation against a Christian Retreat Centre.

Claimed to be the largest Catholic healing centre in India, the Sneha Retreat Centre in Kalkotti, Dharmasthan, was in news recently after one of the devotees sent an anonymous letter to the Chief Minister. The letter reportedly carried serious charges including, forceful confinement and murder charges against the Centre. Soon the Director General of Police constituted a high-level team headed by an Inspector General of Police to inquire into the charges. The probe team found that several persons were locked in cells in the name of healing. Persons showing violent signs were often injected with unknown drugs by untrained hands. Besides the FIR filed at Kalkotti City police station, the team has also filed a report before the First Class Judicial Magistrate. The team has also recommended a probe into the foreign funding of the healing centre.

In June and July 2019, most of the newspapers in the state published reports regarding incidents of exploitation of the ordinary people in the society, using inhuman, evil and sinister practices, sorcery and practices of black magic.

On 6-11-2019 Dharmasthan Legislative Assembly passed Dharmasthan Prevention and Eradication of Inhuman Sorcery and Black Magic bill, 2019 and it became an Act (**given as Appendix**) and came into force with effect from 12-11-2019.

On 3-12-2018 Sneha Retreat Centre filed writ petition challenging the Validity (vires) of the Act on the following among other grounds

1. Section 3 of the Act read with Section 2 (c) of the Act and paragraph 9 of the Schedule violates his fundamental right under Art 19(1) (a) and Art 25(1) of the Constitution.
2. Section 14 of the Act is unconstitutional on grounds of violation of Art 14 and excessive delegation of legislative power.

On behalf of the State, all contentions were refuted

Appendix

THE DHARMASTHAN PREVENTION AND ERADICATION OF INHUMAN EVIL PRACTICES, SORCERY AND BLACK MAGIC ACT, 2019

Preamble: *WHEREAS*, an alarming number of incidents of-exploitation of the common people in the society, using inhuman, evil or sinister practices, sorcery and practices of black magic by conmen had come to light;

AND WHEREAS, under the circumstances it became absolutely necessary for the Government to take appropriate and stringent social and legal measures to effectively prevent the spread of evil, inhuman and harmful practices, usages and back magic, sorcery and to save the common people from falling prey to the sinister designs of black magicians and conmen, whose anti-social and harmful activities are threatening to damage the very social fibre of the society and driving the common people, on account of their ignorance, to take recourse to black magicians and conmen;

AND WHEREAS the Constitution of India, in Article 51 A(g) proclaims it to be the fundamental duty of every citizen of India "to develop the scientific temper, humanism and the spirit of inquiry and reform";

Be it enacted in the Seventieth year of the Republic of India as follows:-

1. Short title, extent and commencement : (1) This Act may be called the Dharmasthan Prevention and Eradication of Inhuman Evil Practices, Sorcery and Black Magic Act, 2019.

(2) It extends to the whole of the State of Dharmasthan.

(3) It shall come into force at once.

2. Definitions: (1) In this Act, unless the context otherwise requires,-

(a) **"Code"** means the Code of Criminal Procedure 1973 (Central Act 2 of 1974);

(b) **"Government"** means Government of Dharmasthan;

(c) **"Inhuman, or sinister evil practices and black magic"** means any act specified in the Schedule, done by any person by himself or through any other person;

(d) **"Magic Remedy"** includes a talisman, mantra, or any other charm of any kind claimed to possess miraculous powers for or in the diagnosis, cure, mitigation treatment or prevention of any disease or for affecting or influencing in any manner the structure or any organic function of human beings or animals or affecting the future of human beings or animals.

(e) **"Offender"** means any person who has contravened any of the provisions of this Act or has committed any act constituting an offence specified in the Schedule;

(f) **"Person"** includes a company or association or body of individuals whether incorporated or not.

(g) **"Propagate"** means issuance or publication, including publication in electronic form of advertisements, literature, articles or books relating to inhuman, evil or sinister practices, sorcery and black magic and includes any form of direct or indirect help, abetment, participation or co-operation with regard to inhuman, evil or sinister practices, sorcery or black magic;

(h) **"Schedule"** means the Schedule appended to this Act ;

(i) **"Sorcery"** means supernatural magic performed by using the power of evil spirits, separate from religion and science;

(j) **"Victim"** means a person who is harmed or injured physically or mentally, extorted, threatened or exploited financially or sexually or whose dignity is offended by the commission of an offence under this Act;

(2) Words and expressions used, but not defined herein, shall have the respective meanings assigned to them in the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Central Act 21 of 1954) and the Code of Criminal Procedure 1973 (Central Act 2 of 1974) or in any other law for the time being in force.

3. Prevention and eradication of inhuman, evil or sinister practices, sorcery and black magic : (1) No person shall by himself or through any other person, promote, propagate or practice or cause to promote, propagate or practice inhuman, evil or sinister practices, black magic or sorcery specified in the Schedule.

(2) Whoever commit any act in violation of sub - section (1) shall on conviction be punished with imprisonment for a term which shall not be less than one year but which may extent to seven years and with fine which shall not

be less than five thousand rupees but which may extent up to fifty thousand rupees.

Provided that if as a consequence of any offence punishable under this sub section, death of the victim occurs, he shall be deemed to have committed an offence under Section 300 of Indian Penal Code, 1860 (Central Act 45 of 1860) and shall on conviction be punished accordingly.

Provided further that if the said act causes grievous hurt as defined under Section 320 of the Indian Penal Code, 1860 (Central Act 45 of 1860) the offender shall be deemed to have committed an offence u/s 326 of Indian Penal Code 1860 and shall on conviction be punished accordingly.

(3) Whoever abets the commission of any act or offence punishable under Sub-Section (2), shall be deemed to have committed that offence and shall on conviction be punished with the same punishment provided for such offences.

(4) Whoever attempts to commit any offence punishable under Sub Section (2), shall on conviction be punished with the same punishment as provided under section 511 of Indian Penal Code 1860 (Central Act 45/1 860)

(5) Consent of the victim shall not be a defence under this section.

4. The offences to be cognizable and non bailable : The offences punishable under this Act shall cognizable and non-bailable.

5. (1) Prohibition on any activity of sorcery or advertisement etc : No person shall carry on any activity of administering magic remedies or Sorcery or take any part in the publication of any advertisement referring to any magic remedies or sorcery which directly or indirectly claims to be efficacious for any purposes specified in the schedule.

(2) Any person who commits any act in violation of sub- section (1) shall on conviction be punished with imprisonment for a term which shall not be

less than one year but which may extend to 7 years and with fine which shall not be less than five thousand rupees but which may extend up to fifty thousand rupees.

6. Offences by companies : (1) If the person committing an offence under this Act is a company whether incorporated or not the company as well as every person in charge of, and responsible to the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: - For the purpose of this section -

- (a) "Company" means any body corporate and includes a firm or other Association of individuals; and
- (b) "Director" in relation to a firm means a partner in the firm.

7. Jurisdiction to try offences : Any offence punishable under sub-section (2) and the 2nd proviso of Sub Section (2) of section 3 and section 5 shall be triable by a Court of Judicial First Class Magistrate and the offences punishable under the first proviso to sub-section (2) of section 3 shall be triable only by a Court of Session and the offences punishable under Sub - Sections (3) and(4) of Section 3 and Section 6 shall be triable by the Court of competent jurisdiction as the case may be and the procedure under the Code shall mutatis mutandis apply for the trial of offences under this Act.

8. Powers of entry, search etc : (1) Subject to general or special orders issued in this behalf by the State Government from time to time, a police officer may, within the local limits of the area of his jurisdiction,

(i) enter and search at all reasonable times with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;

(ii) seize any material, instrument or advertisement which he has reason to believe has been or is being used for any act or commission of an offence which is in contravention of the provisions of this Act; and

(iii) examine any record, document or material object found in any place mentioned in clause (i), and seize the same, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code shall , so far as may be, apply to any search or seizure made under this Act as they apply to such search or seizure made under the authority of warrant issued under section 94 of the Code.

(3) Where any Police Officer seizes anything under clause (ii) or (iii) of sub-section (1), he shall as soon as may be inform the Judicial Magistrate having jurisdiction over the area and take his orders as to the custody thereof.

9. Application of provisions of the Code : The provisions of the Code shall apply to the investigation and trial of the offences under this Act.

10. Act to be in addition to and not in derogation of any other law : The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

11. Publication of fact of conviction : Where any person is convicted of any offence punishable under this Act, it shall be competent for the court convicting such offender to cause the name and place of residence of such person to be published by the police in the local newspapers where such offence has taken place together with the fact that such offender had been convicted under this Act and such other particulars as the court may deem fit and appropriate to be allowed to be published.

12. Awareness programs : The Government may undertake programs to spread awareness in the society about the ill-effects of inhuman, evil or sinister practices, and black magic or sorcery and to provide proper counselling and medical relief to the injured victims in Government/Private hospitals through appropriate ways and authorities as may be prescribed.

13. Power to make rules : (1) The State Government may, by notification in the Official Gazette make rules for the purpose of carrying into effect the provisions of this Act.

14. Power to amend the Schedule : (1) The State Government may by notification published in the Official Gazette add, amend or alter the Schedule.

(2) Every such notification issued under Sub-Section (1), shall be laid before the State legislature.

15. Savings : For removal of doubts, it is hereby declared that nothing in this Act shall apply in respect of the following, namely:-

- (i) The form of worship performed at any religious or spiritual places.
- (ii) Teaching of ancient Saints and traditional learnings, its practice and propagation and circulation thereof.
- (iii) To state about the miracles of the deceased saints, propagation, publicity and circulation of the same and the propagation, publicity and distribution of the literature about the miracles of religious preachers.
- (iv) The performance of religious rituals at places such as home, temple, church, mosque or other religious places, which do not cause physical harm to any person.
- (v) All religious celebrations, festivals, prayers, processions and any other act relating thereto.
- (vi) The advice in regard to vasthusastra, or advice by astrologers unless such advice results in cheating, defrauding or exploiting any person.
- (vii) Any traditional religious rites and acts which the State government may notify in the official gazette.

16. Power to remove difficulties : (1) If any difficulty arises in giving effect to the provisions of this Act, within two years of the coming into force of the Act, the State Government may by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty.

(2) Every order made under Sub - Section (i) shall be laid as soon as may be, after it is made, before the State Legislature.

SCHEDULE

SEE SECTION 2(1)(h)

- (1) Performing any inhuman, evil or sinister act, black magic or sorcery, parading naked or putting a ban on a person's daily activities or uses such alleged powers to extol, threaten or intimidate people or assaulting any person in search of precious things, bounty or hidden treasure or instigate, advice or encourage committing of such inhuman acts.
- (2) Instilling an impression by declaring that a power inapprehensible by senses has influenced one's body or that a person is possessed of such power, and thereby create fear in the mind of another or to threaten another of evil consequences for not following the advice of such person.
- (3) Under the pretext of expelling ghost, assaulting any person or tying the person with rope or chain, beating by stick or whip causing pain to the person, hanging a person to roof fixing with rope or plucking hair or causing pain by way of touching heated object to organs or body of a person, or inflicting pain by any other means; forcing a person to perform sexual act, practice inhuman acts, putting urine or human excreta forcibly in the mouth of a person or practice any similar acts.
- (4) To create panic in the minds of public in general on the pretext of invoking ghost or threaten to invoke ghost creating an impression that there is some super natural power inapprehensible by senses, and preventing a person from taking medical treatment or threatening a person with death or causing physical pain or causing financial loss by practicing or tending to practice black magic, sorcery or inhuman, evil or sinister act.

(5)(a) To create an impression that one has special supernatural powers or that he is the incarnation and thereby indulging in sexual activity with another person.

(b) To indulge in sexual act with a woman who is unable to conceive, assuring her of motherhood through supernatural power.

(6) Involving in evil practices against women by forcing isolation, prohibiting re-entry into the village or facilitating segregation of menstruating postpartum women; and subjecting women to inhuman or humiliating practices such as parading them naked in the name of worship or otherwise.

(7) Forcing any person to carry on evil practices such as causing hurt or killing of an animal or bird.

(8) The practice of piercing rod or arrow from one side of cheek or tongue to other side.

(9) Prohibiting and preventing a person from taking medical treatment for any illness and instead giving him treatment like mantra-tantra or chanting prayers or deliverance retreat or such other things.