**6th SGT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2020**

**MOOT PROPOSITION**

The Union of FERAASHU[[1]](#footnote-2) consisting of 20 states, is known for its age old heritage and cultural diversity. In 2013, FERAASHU ratified the “International Convention on Traditional Medical Knowledge and Biodiversity, 2010” which mainly deals with states initiative for the protection of traditional and ancient knowledge, art, culture and practices prevailing in every nation. In compliance with this Convention FERAASHU created the ‘Department of Folk Medicines’ under the Ministry of Health in the year 2015, which recognizes traditional knowledge related to health, wellness of people and medicines having long practice in different communities in various parts of the Country. The Department *inter alia* recognizes the practices of AAJISHA as one of the traditional medicine techniques prevalent in the Country from time immemorial. The Department has the responsibility to look after all the activities related to production, development and quality assurance of the folk medicines. The Department also has the responsibility to verify the authenticity of the practitioners of folk medicines by providing a registration certificate. The state of FERAASHU is famous for its traditional medication, popularly, known as AAJISHA. The AAJISHA system of medicine has proved its efficiency many times at the international level though its worth is still to be recognized by the World Health Organization (WHO) under its traditional Medicine Programme.

According to the traditional medicinal knowledge passed from generation to generation, there had been various instances in the past, where a nearly dead person in the physical world with no hope of being saved even by the use of modern medical sciences, had been revived by the special techniques of AAJISHA. Mr. Shwetambara, 60, is one of those few doctors in the state who has got the best expertise in AAJISHA, having experience of handling very critical cases. He has the registration certificate issued by the Department of Folk Medicines to practice the traditional medication. Patients from all over the state visit Mr. Shwetambara for his medical advice. The medical treatment given by Mr. Shwetambara has made him very popular among the people of the Country.

Mr. Yaavenka is a modern, educated 38 year old Army Officer. He resides in a very posh Army society situated in MEPRA, a prominent state in FERAASHU with his mother Ms. Dellia, 67, his Father Mr. Dinchik, 70 and his sister Ms. Sheerina, 30. Mr. Dinchik is suffering from a chronic heart problem and is being treated by Mr. Shwetambara for the last 12 years. Ms. Sheerina has just returned from abroad after completing her M.D in Surgery.

On the morning of the 21st of February, 2019 Mr. Yaavenka found his father having breathing difficulty. He immediately rushed his father to a nearby famous ABC Hospital. The hospital without wasting any time formed a team of four specialist doctors to treat Mr. Dinchik. The treatment started at 10:00 a.m. After 1 hour the team informed Mr. Yaavenka that his father had had a cardiac arrest and had been put on ventilator. The team also informed that he would not survive for more than two days. On the 23rd of February, 2019 around 9:00 a.m. the hospital informed Mr. Yaavenka who was sitting outside the ICU that his father was no more. The hospital issued a death certificate mentioning the time of death as 8:57 a.m., 23rd February, 2019.

However, Mr. Yaavenka, who was a staunch believer of AAJISHA and had seen its miraculous effect on his father’s health, did not believe the death certificate issued by the hospital. He decided to take a second opinion from Mr. Shwetambara who had been treating his father for a very long time and had done wonders on his health. Mr. Yaavenka brought his father back home. While returning back he contacted Mr. Shwetambara over the phone and narrated the whole episode of the hospital. Mr. Shwetambara consoled Mr. Yaavenka that he was coming to his place and would examine his father. Mr. Shwetambara after examining Mr. Dinchik informed the family members that very feeble signs of life still existed in him and he would try his best to save Mr. Dinchik. Mr. Shwetambara immediately started treating Mr. Dinchik at his residence. Ms. Sheerina also agreed with Mr. Shwetambara.

On the 1st of March, 2019 a news report was published in a local daily news paper that two guards on duty had fallen sick due to the foul smell coming from the home of Mr. Yaavenka who was keeping the lifeless body of his father. The report also stated that Mr. Yaavenka was doing some paranormal and occult activities to revive his father. After this news report, a Non Governmental Organisation (NGO) called ‘Science against Occult’ which works against all kinds of superstitious activities and promotes the scientific temperament among people came forward protesting against Mr. Yaavenka’s action of keeping the lifeless body of his father. The NGO claimed that Mr. Yaavenka was practising black magic and paranormal activities to revive his father. The NGO alleged that such activities would promote superstition among people and violate the fundamental duty “to develop the scientific temper, humanism and the spirit of inquiry and reform” which is enshrined in Article 51-A of the Constitution of FERAASHU. This incident was brought to the notice of the public and the NGO got the support of various environmental organisations that such activity was a serious health hazard for the people and animals in the vicinity and would cause great public nuisance. Some human rights activists also came forward supporting the cause of the NGO and claiming that the last rites of a deceased person are his/her fundamental human rights and must be complied with by the family members.

After this outcry and public uproar the State Human Rights Commission of MEPRA (MHRC) took a *suo motu* action on the 12th of March, 2019 and directed the Director General of Police (DGP) of MEPRA to enquire whether Mr. Dinchik was given his last rites or whether any scientific measures had been taken by the family members of Mr. Dinchik to preserve the body. The DGP replied that Mr. Dinchik was not given his last rites and informed the Human Rights Commission that it was not possible to ascertain whether scientific measures had been taken by the family members of Mr. Dinchik to preserve the body as Mr. Yaavenka did not allow the police officers to enter his premises. The MHRC formed a committee of five doctors constituting three allopathic doctors and two AAJISHA experts and on the 22nd of March, 2019 directed the DGP of MEPRA to assist the committee and to enter the premises of Mr. Yaavenka respectfully after informing him the purpose of their visit and gather the necessary information that was earlier sought, with immediate effect. The directions further stated that if any of the family members of Mr. Yaavenka interfered with the work of the committee then the committee was empowered to forcefully enter the premises of Mr. Yaavenka under section 13(3) of “The FERAASHU Protection of Human Rights Act, 2000”[[2]](#footnote-3). The direction also included that if the committee would find Mr. Dinchik dead then, the cremation of the dead body would be conducted by the office of the DGP.

Thereafter, Mr. Yaavenka on the 25th of March, 2019 filed a writ petition in the High Court of MEPRA seeking relief for the violation of his fundamental right under Article 21 of the Constitution of FERAASHU. Mr. Yaavenka claimed that the directions given by MHRC on the 22nd of March, 2019 violated his fundamental right to privacy. He further claimed that his father was alive and undergoing treatment by Mr. Shwetambara. He also annexed the record of the treatment given by Mr. Shwetambara. The MHRC argued that keeping a dead body at home was a serious health hazard to the society and to the environment. It further argued that such activity would create fear and superstition in the society. Also, not performing the last rites of any person and non cremation of the dead body was a violation of human rights of the body. The High Court of MEPRA, considering the gravity of the case, took immediate action and on the 30th of March, 2019 issued an order in favor of the petitioner on the grounds that even if the father of the petitioner was dead but so long as the keeping of the body by the petitioner was not posing any health problem to the society or polluting the air, his act would not be violating any existing law of the Country. The court stated that the act of the petitioner could be abhorrent or immoral for the society but the act by itself was not an offence or an illegal act under the existing law of the Country, warranting state intrusion. The court further reasoned that not consigning the body to the last rites would not always be a violation of the fundamental right of the deceased as it is a common practice to donate a dead body to medical colleges for practical training of medical students where it is completely mutilated or partially mutilated. Similarly, the dead bodies are also donated to hospitals for the purpose of organ transplantation. It must be noted that no witness came on record before the court to prove that Mr. Yaavenka was keeping the lifeless body of his father and the foul smell was coming from his house.

Soon after, the Supreme Court[[3]](#footnote-4) of FERAASHU delivered a judgment on the 10th of April, 2019 under Public Interest Litigation (PIL) which was filed on the 3rd of January, 2014 by an NGO ‘Vigyan Morcha’ which deals with the spreading of scientific awareness among the people of the Country. The PIL was filed after the death of 50 persons in various incidents which took place in the state of XYLLA[[4]](#footnote-5), during the year 2012–2013 after getting treatments from the practitioners of VIJISHA, another traditional medicinal system in the Country.

In this judgment the Supreme Court directed the Ministry of Health to constitute an expert committee to verify the authenticity and functioning of the various traditional medicinal practices prevailing in the Country and to subsequently register again with the Department of Folk Medicines, even though they had already been recognised by the Department of Folk Medicines in the year 2015. Based on the information provided by the Ministry of Health the court identified 22 such types of traditional medicinal practices existing in the Country, which included VIJISHA and AAJISHA practices, requiring verification.

After the judgment in the Public Interest Litigation of ‘Vigyan Morcha’, the ‘Science against Occult’ again took up the matter of Mr. Yaavenka before the MEPRA Human Rights Commission for their active initiative in the said matter. On the 15th of April, 2019 MEPRA Human Rights Commission filed a Special Leave Petition under Article 136 of the Constitution before the Supreme Court of FERAASHU against the order of MEPRA High Court delivered on the 30th of March, 2019.

Now the case is listed before the Supreme Court of FERAASHU.

**Disclaimer –The contents of this problem including names, facts, etc. are fictitious. Any resemblance whatsoever is purely coincidental.**

1. The laws of FERAASHU are *Parimateria* to the laws of India. [↑](#footnote-ref-2)
2. Section 13 (3) states that The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such docu­ment or take extracts or copies there from subject to the provi­sions of section 100 of the Code of Criminal Procedure, 1973, of FERAASHU in so far as it may be applicable. [↑](#footnote-ref-3)
3. Highest Court of Appeal of FERRASHU. [↑](#footnote-ref-4)
4. Second largest State in FERAASHU. [↑](#footnote-ref-5)