

**SHRI I.M. NANAVATI MEMORIAL NATIONAL ONLINE MOOT COURT
COMPETITION, 2020-21**

MOOT PROPOSITION

1. Rangistan is one of the fastest developing countries of the world and occupies the greater part of South Asia. Its government is a constitutional republic that represents a highly diverse population consisting of thousands of ethnic groups and likely hundreds of languages. With roughly one-sixth of the world's total population, it is the second most populous country of the world. It has one of the lengthiest constitutions of the world and has a quasi federal system of Government. The Constitution is considered as a dynamic document covering almost all aspects of human life. It is an Agricultural Country and its physical boundaries are covered with water bodies and mountains. To its west, south and east, the country is surrounded with water bodies, and from its north is covered with a mountain range. It is a land of diversity in all manners. From culture, economy to even the landscape, Rangistan has diverse elements. The wide range of physical features of Rangistan makes the country a complete geographical study. In fact, Rangistan has every possible landscape that the earth has. From cold mountains to arid deserts, vast plains, hot and humid plateaus and wide sea shores and tropical islands, the physical features of Rangistan cover every terrain.

2. The Himalayas form the highest mountain range in the world, extending 2,500 kms over northern Rangistan. Bounded by the Indus River in the west and the Brahmaputra in the east, the three parallel ranges, the Himadri, Himachal and Shivaliks have deep canyons gorged by the rivers flowing into the Gangetic plain. The Himalayan Rivers are generally snow-fed and flow throughout the year. During the monsoon months (June to September), the Himalayas receive very heavy rainfall and the rivers carry the maximum amount of water, causing frequent floods. The Himalayan range in the north acts as the perfect meteorological barrier for the whole country. Despite the country's size and its varied relief, the seasonal rhythm of the monsoon is apparent throughout. Although much of northern Rangistan lies beyond the tropical zone, the entire country has a tropical climate marked by relatively high temperatures and dry winters.

3. One of the states in the territory of Rangistan located in the Northwest of the state and in the bed of Himalayas is the State of Umarkand. It is bordered to the northwest by the Rangistian State of Rhimchal Pradesh, to the northeast by the Ribet Autonomous Region of Myna, to the southeast by Sepal, and to the south and southwest by the Rangistian State of Yattar Pradesh. It is the 27th state of the country and has 86% area covered with mountains and 70% covered with forest.
4. Umarkand is the biggest foreign tourist destination in Rangistan; it provides a lot of options for all kinds of travellers as it is a destination to explore the riches of Rangistian culture, history, and natural beauty. The State is known for its adventure, sports, pilgrimage and festivals, nature and wildlife, sightseeing, health and rejuvenation. In a nutshell, Umarkand is the ideal place for those who want to amalgamate all the experiences. The recreational activities of Umarkand are so engaging that you will find this a once in a lifetime experience.
5. The biggest adventure industries in Umarkand are paragliding and white water rafting on the bank of river Ganga. There are so many cities in Umarkand that have been providing such adventurous sports on the bank of river Ganga since a long time. The development of river rafting as a leisure sport became popular as far back as the mid-1970s. The initial beach camps on Ganges were established during 1988. The places where such activities are offered have now become extremely well known throughout the country and are jam-packed with tourists every year. One of the cities named Mogusia has various rafting camps. There are more than 1000 camps along the river banks. The industry was promoted by the government. The economy of the State has been largely dominated by the service sector including Tourism which contributes over 51% to the total GSDP. Tourism is already a major driver of economic growth and livelihood promotion in Umarkand.
6. The region has been a point of attraction amongst tourists because of the availability of different forms of tourism products. Not only from Rangistan but the region has been catering to a massive number of global tourists seeking Spiritualism, Adventure, Yoga and Wellness. In order to be in sync with the changing times and to compete with the global destinations in tourist receipts, the Government of

Umarkand is constantly working towards the beautification and sustainable development, with effective marketing, of the tourist attractions of the region.

7. During the end of the 1990s, a group of volunteers from an organisation called “People for Sustainable Adventure”, while trekking through the mountains of the City of Highgarden in Umarkand, discovered a beautiful stretch of white-water where no rafting took place. The land immediately surrounding the river was lined with sparse vegetation that gradually ebbed into the surrounding trees and woodland found in the mountains. The volunteers saw in the place an opportunity to establish a new rafting stretch but in line with their motto of promoting sustainable adventure, they decided to conduct their business in a way that would lead to the protection, preservation and enhancement of the environment and ecology of the area. Hence, they used sustainable materials, adopted environment best practices and actively indulged in offering rafting adventures that were combined with instilling a sense of appreciation, awareness and sensitivity towards the environment among their customers. Their values are etched in their commitments towards the environment as contained on their website under “White Water River Rafting” (Annexure 1). Over time, their business gained popularity and also received great positive feedback from the customers who had availed of their services. .
8. The initial beach camps were established with permission by the regulatory authority Umarkand Tourism Development Board (UTDB). The state government started issuing licences in 1990 and the licences are renewed every year.
9. Gradually over time, there started appearing reports claiming an extremely high rise in the number of rafting camps on the Ganges in less than a decade, blaming 'haphazard' and 'unregulated licensing' behind the rise. Thereafter, in 2003, the state government notified certain cities in the State as “Reserved forests” (Annexure 2).
10. One of the non profit making organisations that had previously collaborated with the State Government, named “Man and Mankind” was working for the Ganga project and for the conservation of the Forest and wildlife. They saw certain crucial bad impacts on the ecological structure by the activities carried out by “People for Sustainable Adventure”. Thus they commissioned a Research study in collaboration with internationally acclaimed research institution “The Institute for Biodiversity” to

make a survey of the camps that were set by the organisation on the river Ganga and their effect on the local habitats, effect on forest and the wild life. They stated that contrary to the objectives of the organisation, they had over time abandoned their environment friendly practices and had become a serious source of pollution of spotless river Ganga on one hand and violation and degradation of various areas on the other hand of an area that had otherwise been pristine and unadulterated.

11. The research and analysis of the institution and the NGO found that there are certain camps that are into this business without proper licensing policy and only very few were fulfilling all the policy regulations. They claimed that the camps are located and are operating in a forest area on the river bank. The camps were also found to have tampered with the banks of the river by flattening them. It has been noticed that a license had been issued by State agencies without appreciating or analyzing carrying capacity. This has caused excessive pressure on the river which the river is unable to bear over a period of time. These sites either do not have or have inadequate sewage and sanitation facilities; also there are no toilet facilities, making people defecate in the open or where the toilets exist, they are in the nature of pit disposal. During monsoon, the discharge remains flow into the river, thereby causing pollution and interfering in the river eco-system.
12. The tourists and rafters also throw polythene, wrappers and various kinds of bottles on the sites and on the river bed which ultimately flow into the river. Ganga is also polluted because of high use of detergents, soaps and shampoo. As the camp sites and beach camps have even encroached upon the forest area, many trees have been cut and land is flattened for setting up of such camps. According to the applicant, the agencies are not acting in the interest of the environment on account of vested interest and many influential people who carry on the activities of these camping sites.
13. The rafting camp sites are located upstream and rafters are taken to the camp site in diesel vehicles, creating noise and air pollution. Also, visitors park their vehicles on the camp site and as a consequence a large number of vehicles arrive at the camp sites every day. Owners and their employees serve food and even alcohol at the camp sites, the leftover of which flows into the river, thereby causing pollution. The

State Government and authorities do not have any mechanism in place for collecting the municipal waste and its disposal in accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000.

14. Another aspect that they came across and have emphasized is that these camps are also adversely affecting the wildlife to a great extent because of increased man animal conflict. It is submitted on behalf of the applicant by relying on previous decisions that since rafting camps are a 'non-forest activity', therefore it cannot be carried on without clearance from the competent authority under the Forest (Conservation) Act, 1980 (for short 'the Conservation Act').
15. On 15th December, 2015, the NGO filed an application in the National Green Tribunal against the Union Government and the owner of the River rafting camps to direct closure and removal of camps along the river Ganga in the City of Higharden in State of Umakand and direct the State Government to frame proper policy for regulating such activities being carried out as recreation facilities for the tourists, also to direct that no camps be allowed to operate in areas which are part of forest land without specific approval under the Forest (Conservation) Act, 1980. They also prayed to direct that a carrying capacity be undertaken within a specified time frame in order to arrive at a sustainable number of rafting camps which can be allowed.
16. It was also submitted that the large scale unregulated river rafting and camping activities is being operated for commercial purposes and not with a bonafide motive, which is severely damaging the environment and river Ganga. According to the NGO, this is essentially a commercial activity which is being allowed in the guise of eco-tourism. The license has been issued by the State Authorities without application of mind, proper verification of antecedents of such applicant and without following the requisite legal process.
17. It has also been averred that River Ganga is a trans-boundary river. It originates from snow glaciers in western Himalayas in Umakand. It emerges at Mogusia and then flows South and East through Gangetic plains into Bangladesh and finally into Bay of Bengal. River Ganga besides being a sacred River provides a life line to millions of farmers, a habitat for animals residing in forests and is home to more than a hundred species of fishes and amphibians. Wild animals and birds are being affected

by large scale camping activities conducted along river Ganga in the city of Highgarden, use of forest land for camping is in blatant violations of the Conservation Act and even violates the Constitutional protection available in relation to environment and ecology.

18. Tourism is a significant contributor to the GDP of Rangistan. However, at the same time there is an urgent need to develop these industries in a direction that ensures minimum impact on nature and environment. Conservation; it must generate financial benefits for both local people and private industry; it should deliver memorable interpretative experiences to visitors that help raise sensitivity to host countries'/regions' political, environmental, and social climates.
19. It is submitted by the owners of Rafting camps that the highest income is from the foreigners. The clients at site are given proper briefing in relation to dos and don'ts by camp guides. There is no environmental and ecological threat, most of the camp operators often act as environmental stewards in instilling a sense of appreciation for nature and conservation in the visitors and that this has been their motto from the beginning. Besides, they have been carrying out activities that are in promotion of sustainable environmental practices.
20. The State further submitted that beach camp operators are prohibited from using firewood for cooking. None of the camp operators in the forest area are allowed to serve/offer alcohol and consumption of any intoxicant is strictly prohibited.
21. After hearing both the parties, the National Green Tribunal on 14th October, 2016 passed the judgment in favour of the Petitioner and stated that the land used for camping is the reserved land and the camp owners are thus in violation. The NGT further directed the camp owners to reduce the intake of tourists to 60% of the current capacity within 3 months of passing of the order and further directed them to obtain clearance from the respective authorities within 3 years from the date of the passing of the order. The NGT imposed a penalty of Rs. 2,00,00,000 on the Respondent camp owners for damaging the environment and directed the Respondent Governments to form guidelines for the process of obtaining clearance.

22. On 4th December, 2016, the Ministry of Environment, Forests and Climate Change issued a notification stating that all operators of rafting camps would require to obtain permission for operating camps from the Central Government within a period of 1 year from the date of the Notification (Annexure 3).

23. Being aggrieved by the notification passed by the Ministry and the judgement passed by the Hon'ble National Green Tribunal, the Respondents on 12th January, 2017 filed the petition in the Supreme Court of Rangistan.

Note: Rangistan and its laws and other implications in the problem are in pari materia with India.

Disclaimer: This problem is a hypothetical moot problem. It is only for an academic purpose having no concern with any of the pending/decided cases before any court and all details and name of parties are fictitious and nothing to do with reality, even if found similar it is only coincident.

ANNEXURE 1

PEOPLE FOR SUSTAINABLE ADVENTURE

White Water River Rafting

We are reaching a critical point in our culture and society where we must decide when enough is enough when it comes to our material possessions. Our environment is unquestionably polluted, beyond repair in some areas, and we either live in the mess that is a result of excess, or we transport it to others who then have to deal with it. It's time we make a change in the way we go about enjoying ourselves, away from indulgent vacations which destroy resources and the environment, and towards a lifestyle where our recreational activities are as clean as the scenery and experiences they provide to us.

"Leave No Trace" ethics are just the first step in making sure that we as river runners leave our natural lands for those that will come after us. Just as the people who came before us have had an effect on the environment, so will we. People for Sustainable Adventure believes strongly in the minimalistic approach to outdoor activities, which is why we operate under several strict protocols that go beyond what is required of us by governing and legislative authorities. These include but are not limited to:

- **No piece of equipment is carried that does not directly influence the safety of the trip.** While we take extra precautions by making sure that each boat has above and beyond the required safety equipment, we do not take candy bars, soda, or any trash whatsoever. Every piece of equipment that is taken on the river on a People for Sustainable Adventure day trip has a direct purpose related to the safety of our guests.
- **We typically do not stop for lunch on our day trips.** Multi day trips are where we go to wine and dine our guests, but all of our day tours are specifically designed to have little to no impact on the river corridor, therefore we do not pull over to make food for our guests, which creates an opportunity for litter or "micro trash" which can then attract insects.
- **We do not have a storefront.** A lot of energy must be devoted to having a large storefront. We operate out of two warehouse-like locations. Neither of these requires power 24 hours a day, and each one is meticulously located near the river. All guides

are encouraged to commute, and People for Sustainable Adventure voluntarily pays for their fuel as long as one vehicle is taken for multiple employees.

- **We run the same section of river repeatedly.** Other outfitters are busy driving giant vans, buses, and cargo trucks to and from the various rivers and back again to their places of business. People for Sustainable Adventure has made a strong commitment to remain local to what we believe to be a great river system which can provide our guests with the absolute finest whitewater rafting experience. As guides we have yet to tire of the Highgarden area, and we think with the changes in the river, the changes in the seasons, and the abundance of storytelling, social networking, and great wildlife, that you will always see something new on each and every People for Sustainable Adventure day trip.
- **We are fast and we are light.** One thing noticed immediately about our crew is how efficient we are both on and off the boat ramp. We take great care in staying out of the way of other boaters wherever we are, as well as offer our hand and support to any and all who may need help on the river. In an effort to increase our efficiency at the boat ramps and while on the river, we spend significant amounts of time and money researching and purchasing the most updated and cutting edge river rescue equipment we can find, and make sure that all of our equipment is routinely tested and is the absolute best piece of equipment we can possibly find to take rafting with us. We absolutely despise "disposable" equipment, and make every effort necessary to purchase only equipment which will last for many years under even the harshest environments that river rafting can provide.
- **We do not allow plastic water bottles on our trips.** Guests who absolutely need to drink water during their 1-2 hour trip on the water are encouraged to bring reusable water bottles that can be fastened to the rafts, so that in the case of a raft capsize we do not add waste or litter to the river system.
- **We go on the trips with our guests.** When you go rafting with PSA you go in one vehicle unless it is overloaded and we need a second. There is often no equipment vehicle because our systems are so efficient and our guides trained and prepared to run the trip with you for the greatest experience. Our systems are so efficient and quick that our guests can go right along with us to the river. Furthermore, since we voluntarily and intentionally limit the size of groups on each PSA Tour, we do not need to "stage" large amounts of equipment at the river before we get there. Leaving equipment at the river is a poor and unprofessional practice in the view of our river

managers, and should not be necessary with a highly trained crew of rafting guides. PSA prides itself on making a small footprint on the river, on the boat ramp, and on the road.

- **Our guides all share one critical viewpoint:** less is more. All People for Sustainable Adventure guides are trained to the highest degrees of effectiveness for safety, rescue, and professional hospitality. Furthermore, PSA makes sure, during the hiring and training process, that the values of our company are held in the hearts and minds of all of our guides. When we pay guides a wage well above the industry standard, and we are clear of our expectations for them as professionals, we have seen that these people have the enthusiasm and care to show our guests a great time. Guides make the trip, and we at PSA are well aware of that. Whitewater rafting and scenic float trips can be run by a number of different companies, but when you ride with us, with one of our guides, you support a company that exists for a purpose. All of us want to act as stewards of the river, and work to guide you as you take in your experience with nature on your river tour. We pride ourselves in doing this in the safest, most effective, most efficient manner.

People for Sustainable Adventure operates under continuously evolving safety protocols and mechanisms. Before any decision about how and why a trip operates a certain way is adopted, there are fundamental ethics that must first be considered. What is our primary objective in our trips? First and foremost, we value human life and the environment. It is actually the synergy of these two things which provide the platform for our trips to have meaning, without an awareness and honor of the two, our trips will lose their potency, and thus our customers will fail to see their value, and ultimately we will not only have failed as a business, but we will have failed to live up to the demands of our own conscience. It is our goal to take as many people down the river as possible, and to leave it in exactly the same condition as we found it.

ANNEXURE 2

NOTIFICATION

The Office of Commissioner,
Forest Conservation Division,
The City of High Garden,
Umarkand
Dated the 18th of May, 2003

The Government of Rangistan has, in exercise of the powers conferred by section 3 of the Rangistanian Forest Act, 1927 (16 of 1927), decided to constitute the City of High Garden and those of the adjacent cities of Winterfell and Dorne more specifically mentioned in the schedule appended hereto (hereinafter referred to as “the said lands”), to be reserved forests;

Now, therefore, in exercise of the powers conferred by sections 4 and 17 of the Rangistanian Forest Act, 1927 (16 of 1927), read with the Government Notification, Forest Conservation Department, No. FLD. 006, dated the 8th of March (issued in exercise of the powers conferred by sub-section (4) of section 3 of the Umarkand Commissioners of Division Act, 1957 (Uma. VIII of 1958)), the Commissioner hereby,-

- (a) Declares that the Government of Umarkand has decided to constitute the said lands as reserved forests;
- (b) Specifies the situation and limits of reserved forests as per the schedule appended hereto; and
- (c) Appoints the Assistant Collector or Deputy Collector to be the Forest Settlement Officer to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within the limits of the reserved forest, or in or over any forest produce, and to deal with the same as provided in Chapter II of the said Act;
- (d) Appoints the Collector to hear appeals from any orders passed by the Forest Settlement Officer under sections 11, 12, 15 and 16 of the said Act.

SCHEDULE

The State of Umarkand

SERIAL NUMBER	SURVEY NUMBER	AREA
1.	217	The City of Highgarden
2.	148	Winterfell
3.	109	Dorne

By order and in the name of Governor of Umarkand,

ANNEXURE 3

F. No.8-781996-FC (pt)

Government of Rangistan

Ministry of Environment, Forests and Climate Change

Forest Conservation Division

Indira Paryavaran Bhawan,

King's Landing-210 076

Dated: 4th December, 2016

To,

The Principal Secretary (Forests),

All State/Union Territory Governments

Sub: Guidelines regarding prior approval of Central Government under the Forest (Conservation) Act, 1980 (FC Act) for areas falling in the camping operations which were or are recorded as "forest" in the Government record on or after the day the FC Act came into force, but while processing and/or approving the proposals under the FC Act for use of forest land falling in such camping operations for camping purposes, such areas were treated as non-forest-reg.

Sir,

I am directed to say that the Hon'ble Supreme Court directed as below:

"The Forests Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (1) of the Forest Conservation Act. The term "forest land", occurring in section 2, will not only include forest as understood in dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."

2. The Hon'ble Supreme Court made it clear that provisions of the Forest (Conservation) Act, 1980 (FC Act), extend to inter-alia all those areas which, on or after the day the FC Act came into force (i.e. 25th October 1980), were recorded as "forest" in the Government record irrespective of ownership.

3. It has however, been observed that while processing and/or approving the proposal under the FC Act, substantial areas included in the camping operations which were recorded as forest in Government records on or after the day the FC Act came into force, have been treated as 'non-forest'. Prior approval of the Central Government under the FC Act for use of such areas, for camping and the allied non-forest activities is required to be obtained.

4. After, careful examination of the matter, I am directed to say that State Governments and Union territory administrations shall ensure that camping operations in all such virgin/unbroken areas falling in the camping operations which were or are recorded as forest in the Government record on or after 25th October 1980, but while processing and/ approving the proposals under the FC Act for use of forest land located in such camping operations for non-forest purpose, were treated as "non-forest", is undertaken only if the prior approval of Central Government under the FC Act for use of such areas for camping purposes has been obtained or is obtained. However, keeping in view the peculiar circumstances under which while processing and/or approving the proposals under the FC Act for use of forest land falling in such camping operations for camping purpose, such areas were treated as non-forest, State Governments and Union territory administrations may allow the concerned user agencies to continue, for a period not exceeding one year from the date of issue of this letter, camping in such areas, which have already been broken up provided the other statutory requirements and Rules are otherwise being complied with and NPV of such broken up areas

has already been released from the user agency. After one year, even in such broken up areas running shall be allowed only the prior approval of Central Government under the FC Act for use of such areas for camping purposes has been obtained or is obtained.

This issues with approval of the Hon'ble Minister of State (Independent Charge) for Environment, Forest and Climate Change.

Yours faithfully,

(Arya Stark)

Director