



H I M G I R I

ZEE UNIVERSITY

Estd. Under Uttarakhand (Amendment) Act no.- 3 of 2011, Recognised by UGC Under Section 2(f) of (1956 Act)

DEHRADUN



MOOT PROPOSITION

[1.] The Republic of Indica is a constitutional democracy i.e. a union of 28 states and 8 union territories (UTs) of which federalism and secularism have been identified as basic features. Indica is currently one of the developing economies, which is considered the largest constitutional democracy. Considering its civilizational history, it is a land of migrants, which has attracted foreign invaders, who eventually settled here in various parts of the country. It is considered to be the land from where 'Buddhism' and 'Jainism' originated, however, 'Hinduism' is the religion followed by the majority of its population. It is a country that values unity in diversity under the aegis of the Constitution of Indica. The basic governing document i.e. The Constitution of Indica confers basic fundamental rights to the person and its citizens as outlined under Part III of it. The laws of Indica are pari materia to that of India i.e. Bharat.

[2.] The Republic of Indica, having its unique geographic location, has a porous border with neighboring countries except its western land border. The history of human civilization is a discourse of migration. In the last few decades, the migration of the human population has been due to several reasons including the opportunities offered by globalization or the challenges posed by internal conflicts, continued violation of basic rights by State/non-state actors, or even catastrophic anthropogenic climate change. As a response to the influx of illegal immigrants attributable to several reasons, the Republic of Indica enacted the Immigration (Tagging) Act, 2024 which allows for the electronic monitoring (tagging) of individuals seeking refugee status or residency permits to live and stay in the country. The Immigration (Tagging) Act, 2024 lays down a procedure for such immigrants, who are subjected to deportation proceedings or a deportation order. The new law has attracted criticism, and appreciation and has generated a wider public response on the issue of basic human rights and dignity from academicians, lawyers, and civil society at large.

Part A

[3.] Mr. Chitrasena, who belongs to the Veddhas tribe (generally an inhabitant of one of the islands near the mainland of Indica) from one of the neighbouring countries, along with his community members (almost 20 in number) arrived at the southern shore of Indica in the state of Tanadu. They seek refugee status and protection due to the adverse impacts felt by the community at large; on life and livelihood due to the climate change in the low-small islands of the Indian Ocean. Mr. Chitrasena has no criminal background or history of misconduct in his home country. He along with his other community members connected with the Republic of Indica through common cultural, religious, and language in the southern state of Tanadu. Mr. Chitrasena along with his community members have been detained by the immigration authority and subjected to the law of the land. He applied for immigration bail under the relevant law of Indica. The Indica authorities, acknowledging the urgency of climate-induced migration, decided to tag (electronic tagging) Mr. Chitrasena and his community members as a condition for bail under the newly enacted Immigration (Tagging) Act, 2024[1]. They cited the need for enhanced immigration monitoring even for individuals who are classified as immigrants due to environmental and climate change. Mr. Chitrasena approached the Hon'ble High Court of Judicature at Madri challenging the orders passed by the immigration authorities i.e. electronic monitoring/surveillance under the Immigration (Tagging) Act, 2024.

[4.] In the petition, Mr. Chitrasena challenges the constitutionality of the Immigration (Tagging) Act, 2024 as violative of basic human dignity which infringes the privacy rights of individuals/persons under Article 21 of the Constitution of Indica. He argues that being tagged hampers his ability to access the necessary legal processes to establish his claim as a climate refugee besides emphasizing his non-criminal records and highlights that his migration is solely driven by climate-related challenges. He also questions the necessity of tagging individuals with no criminal involvement/ background, as it implies a presumption of guilt and infringes upon their presumption of innocence. Being constantly monitored through electronic tagging, he contends that it will interfere with his personal space and undermine his dignity.

[5.] The Republic of Indica highlights its compelling interest and contends that the Immigration (Tagging) Act, 2024 is necessary for enhancing national security and immigration control. By monitoring individuals seeking refugee status, the government asserts that it can prevent potential security threats and ensure effective immigration enforcement. The government contends that the tagging system is applied uniformly to all individuals subject to deportation

proceedings or seeking refugee status. According to the state, the uniform application is essential for administrative efficiency and ensuring a consistent approach to immigration monitoring. The state highlights the need to prevent potential abuses of the refugee status process.

Part B

[6.] The northernmost region of Indica is administered as a union territory. This unique union territory, nestled in the foothold of the Himalayas, has been historically significant, with a population reflecting religious diversity. The population professing 'Hinduism' is in the minority in this union territory. The administration and management of prisons in the UT are presently regulated by an Act that is identical to the new Model Prisons and Correctional Services Act of 2023 . The Act states that the prisoners may be granted prison leave on the condition of their willingness to wear electronic tracking devices for monitoring the movement and activities of such prisoners. Any violation by the prisoner shall attract cancellation of prison leave, in addition to disqualification from any prison leave being granted in the future.

[7.] Mr. Arjun Singh, a resident of this UT who is known for his political activism and prolific writings, organizes and participates in a peaceful protest advocating for political rights and greater autonomy of the region. During the protest, Mr. Singh delivers a speech addressing the public, expressing his political thoughts through pamphlets. His speech includes statements such as: "The time for passive resistance is over. It's time for action. Our struggle needs to go beyond words; it demands a radical shift." The authorities interpret these statements as advocating for violent resistance, attracting the ingredients of the Unlawful Activities (Prevention) Act, of 1967. Subsequently, Mr. Singh is arrested under the UAPA. While in detention, Mr. Singh applies for temporary release contending that he is merely exercising his right to freedom of speech & expression and engaging in legitimate political activism. The competent authority releases him but subjects him to the provisions of the Prisons and Correctional Services Act of 2023. Mr. Singh is tagged with an electronic tracking device as a condition for his temporary release.

[8.] Mr. Singh contends that his arrest infringes upon his fundamental right to freedom of expression and political thought which is guaranteed under Article 19 of the Constitution. Mr. Singh challenges the interpretation of his quoted statements, asserting that his call for action was metaphorical and did not imply any violence or there is no evidence that it led to any illegal activities against the 'State'. He argues that the authorities misunderstood the context of his speech, leading to an unwarranted arrest under the Unlawful Activities (Prevention) Act of 1967.

[9.] Before the Hon'ble High Court for the UT, Mr. Singh challenges the legality of being electronically tagged, arguing that the use of electronic monitoring for individuals engaged in peaceful political activities, even under the shadow of the Unlawful Activities (Prevention) Act, is an overreach. He contends that the provision and conditions stipulated under the Prisons and Correctional Services Act, 2023 disproportionately restrict his basic rights.

[10.] The Republic of Indica contends that Mr. Singh's arrest is based on concerns related to his statements advocating for radical action, which attracts the ingredients of the Unlawful Activities (Prevention) Act of 1967. The government contends that detaining individuals engaged in activities that could lead to public unrest is a legitimate exercise of state authority. The government defends the legality of electronic monitoring stating that monitoring is crucial for preventing potential violations and maintaining public safety. They argue that such measures are particularly warranted when the arrest is made under the Unlawful Activities (Prevention) Act, indicating potential threats to national security.

Part C

[11.] Ms. P. Rama, a woman prisoner, in one of the UTs in the republic of Indica, is serving a rigorous imprisonment sentence of 25 years for a murder conviction. While incarcerated, Ms. P. Rama, who is of childbearing age expressed her desire to conceive a child. However, the prison authorities, considering the gravity of the conviction and balancing the societal interest, deny her request. Ms. P. Rama challenged the decision of prison authorities and filed a writ petition under Article 32 of the Constitution of Indica asserting her natural right to procreation as a component of the right to live with dignity which is ingrained within the right to life guaranteed by Article 21 of the Constitution of Indica.

[12.] Ms. P. Rama's plea highlights her belief that the denial of her right to conceive while serving a rigorous imprisonment sentence infringes upon her constitutional rights and dignity. The state, emphasizing the severity of her offense and other considerations, argues that the prison environment is not conducive to supporting the needs of a pregnant woman and her child. The potential impact on the child's well-being and the overall security of other inmates within the prison are cited as additional reasons for denying her request.

[13.] Ms. P. Rama contends that the severity of her offense should not preclude her from exercising this fundamental right. She argues that the denial of the right to procreation hampers her potential for rehabilitation and reintegration into society once her sentence is served. She

emphasizes the principle of gender equality enshrined in the Constitution. She argues that denying her the right to procreate while in prison, solely based on the nature of her incarceration, constitutes discrimination and violates the principles of equality before the law.

14.] The government argues that while individual liberties and rights are important, they must be balanced against the responsibilities of the state to ensure the safety, security, and orderly functioning of correctional facilities and prison administration. The state argues that the court must pay deference to the legislative wisdom as the Model Prisons and Correctional Services Act, 2023 has carefully chosen not to facilitate such a right to woman prisoners.

Part D

[15.] The Hon'ble Supreme Court of Indica while hearing an old public interest litigation petition on prison reform and correctional services, decides to transfer the two petitions i.e. petition by Mr. Chitrasena and Mr. Arjun Singh from respective High Courts due to the interconnectedness of legal issues arising from the Immigration (Tagging) Act, 2024 and the Model Prisons and Correctional Services Act, 2023. It also decides to hear the Writ Petition under Article 32 of the Constitution of Indica as preferred by Ms. P. Rama along with the above-mentioned petitions as it raises the issue of the rights of women prisoners and administration thereto.

The Supreme Court of Indica framed the following issues arising out of the above petitions:

(a) Whether the electronic monitoring (tagging) of the individuals/ persons as a pre-condition for bail is violative of dignity, autonomy, and privacy rights under Article 21 of the Constitution of Indica or not? Whether citizens/non-citizens can be treated differently for temporary release/ bail from prison to secure their respective liberties or not in the present set of facts and circumstances?

(b) Whether a foreign national has locus standi to challenge the constitutionality of legislative enactment of the Republic of Indica as violative of Article 21 invoking writ jurisdictions of the constitutional courts respectively or not?

(c) Whether the Constitution of Indica guarantees a fundamental right to women i.e. right to procreation as a natural consequence of dignity, choice, and autonomy under Article 21 or not? If so, whether the denial by competent authorities in the present case to Ms. P. Rama constitutionally valid or not?

ANNEXURE I

RELEVANT PROVISIONS OF INDICA IMMIGRATION (TAGGING) ACT, 2024

SECTION 1: POWER TO GRANT IMMIGRATION BAIL

- (1) The competent court/ authority may grant a person immigration bail if—
- (a) the person being detained is subject to deportation proceedings or a deportation order.
 - (b) the person is being detained and there is a pending deportation proceeding.
- (2) The Court may grant a person immigration bail if the person is liable to detention under a provision mentioned in sub-section (1).
- (3) A person may be granted and remain on immigration bail even if the person can no longer be detained if the person is subject to deportation proceedings or a deportation order.
- (3) A grant of immigration bail to a person does not prevent the person's subsequent detention under a provision mentioned in sub-section (1).
- (4) For the purposes of this Act, a person is on immigration bail from when a grant of immigration bail to the person commences to when it ends.
- (5) A grant of immigration bail to a person ends when—
- (a) the person is granted leave to enter or remain in Indica,
 - (b) the person is detained again under a provision mentioned in sub-section (1), or
 - (c) the person is removed from or otherwise leaves Indica.

SECTION 2: CONDITIONS OF IMMIGRATION BAIL

- (1) If immigration bail is granted to a person, it must be granted subject to one or more of the following conditions —
- (a) a condition requiring the person to appear before the court at a specified time and place;
 - (b) a condition restricting the person's work, occupation, or studies in Indica;
 - (c) a condition about the person's residence;
 - (d) a condition requiring the person to report to the court or such other person as may be specified time to time;
 - (e) an electronic monitoring condition (see Section 4);
 - (f) such other conditions as the court granting the immigration bail thinks fit.

2) If immigration bail is granted to such a person—

(a) it must be granted subject to an electronic monitoring condition,

(b) if it is granted subject to an electronic monitoring condition, it may be granted subject to one or more of those other conditions.

(3) Immigration bail granted may also be granted subject to a financial condition (see Section 5).

(4) Sub-section (2) does not apply to a person who is granted immigration bail by the court if the court considers that to impose an electronic monitoring condition on the person would be—

(a) impractical, or

(b) contrary to the person's rights under the Constitution of Indica.

(5) In considering for the purposes of this Act whether it would be impractical to impose an electronic monitoring condition on a person, or would be impractical for a person to continue to be subject to such a condition, the Court may in particular have regard to—

(a) any obstacles to making arrangements of the kind mentioned in Section 4 in relation to the person,

(b) the resources that are available for imposing electronic monitoring conditions on persons to whom sub-section (2) applies and for managing the operation of such conditions in relation to such persons,

6) In this Act, "bail condition", in relation to a person on immigration bail, means a condition to which the person's bail is subject.

SECTION 3: EXERCISE OF POWER TO GRANT IMMIGRATION BAIL

(1) The Court must have regard to the matters listed in sub-section (2) in determining—

(a) whether to grant immigration bail to a person, and

(b) the conditions to which a person's immigration bail is to be subject.

(2) Those matters are—

(a) the likelihood of the person failing to comply with a bail condition,

(b) whether the person has been convicted of an offence (whether in or outside Indica or before or after the coming into force of this section),

(c) the likelihood of a person committing an offence while on immigration bail,

(d) the likelihood of the person's presence in Indica, while on immigration bail, causing a danger to public health or being a threat to the maintenance of public order,

(e) whether the person's detention is necessary in that person's interests or for the protection of any other person,

(f) whether the person has failed without reasonable excuse to cooperate with any process—

(i) for determining whether the person requires or should be granted leave to enter or remain in Indica,

(ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject,

(iii) for determining whether the person's leave to enter or remain in Indica should be varied, curtailed, suspended, or cancelled,

(iv) for determining whether the person should be removed from Indica, or

(v) for removing the person from Indica, and

(g) such other matters as the court thinks relevant.

(3) If the court decides to grant, or to refuse to grant, immigration bail to a person, the court must give the person notice of the decision.

Section 4: Electronic Monitoring Condition

(1) In this Act, an "electronic monitoring condition" means a condition requiring the person on whom it is imposed ("P") to cooperate with such arrangements as the court may specify for detecting and recording by electronic means one or more of the following—

(a) P's location at specified times, during specified periods of time, or while the arrangements are in place;

(b) P's presence in a location at specified times, during specified periods of time, or while the arrangements are in place;

(c) P's absence from a location at specified times, during specified periods of time, or while the arrangements are in place.

(2) The arrangements may, in particular—

(a) require P to wear a device;

(b) require P to make specified use of a device;

(c) require P to communicate in a specified manner and at specified times or during specified periods;

(3) If the arrangements require P to wear or make specified use of a device, they must—

(a) prohibit P from causing or permitting damage to, or interference with the device, and

(b) prohibit P from taking or permitting action that would or might prevent the effective operation of the device.

4) In this section, “specified” means specified in the arrangements.

(5) An electronic monitoring condition may not be imposed on a person unless the person is at least 18 years old.

SECTION 5: FINANCIAL CONDITION

(1) In this Act, a “financial condition” means a condition requiring the payment of a sum of money by the person to whom immigration bail is granted (“P”) or another person, in a case where P fails to comply with another condition to which P’s immigration bail is subject.

(2) A financial condition may be imposed on P only if the court imposing the condition thinks that it would be appropriate to do so with a view to ensuring that P complies with the other bail conditions.

(3) The financial condition must specify—

(a) the sum of money required to be paid,

(b) when it is to be paid, and

(c) the form and manner in which it is to be paid.

(4) No sum is required to be paid under a financial condition unless the person who is liable to make a payment under it has been given an opportunity to make representations before the court.

(5) In Indica, a sum payable under a financial condition is recoverable as if it were payable under the relevant provision of the Code of Civil Procedure.

SECTION 6: ARREST FOR BREACH OF IMMIGRATION BAIL

(1) An immigration officer or a constable may arrest without warrant a person on immigration bail if the immigration officer or constable—

(a) has reasonable grounds for believing that the person is likely to fail to comply with a bail condition, or

(b) has reasonable grounds for suspecting that the person is failing, or has failed, to comply with a bail condition.

(2) Sub-section (3) applies if an appropriate judicial officer is satisfied that there are reasonable grounds for believing that a person liable to be arrested under this paragraph is to be found on any premises.

(3) The appropriate judicial officer may issue a warrant authorizing any immigration officer or constable to enter, by reasonable force, if necessary, the premises named in the warrant to search for and arrest that person.