



CHRIST
(DEEMED TO BE UNIVERSITY)
BANGALORE • INDIA

13TH NATIONAL MOOT COURT COMPETITION

IN ASSOCIATION WITH LAKSHMIKUMARAN
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MOOT PROPOSITION



KNOWLEDGE
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BANGALORE

MOOT PROPOSITION

1. The Union of Kennedy is a sovereign, democratic and secular country. It gained independence in 1947 after a century-long struggle against the Empire of Dunphy. After independence, Union of Kennedy embarked on an unending quest to tackle centuries worth of ill fortune, with the Constitution illuminating the path of freedom to strive towards greatness. The new Constitution established a quasi-federal structure bestowing upon its citizens certain fundamental rights, creating a prosperous society standing on the pillars of justice, equality, and liberty.
2. With the onset of democracy, two parties with conflicting ideologies rose to prominence in the country's political landscape. The Nationalistic People's Party (NPP), a predominantly right-wing party, primarily catered to the demands of the majority Belcourt Community, while the Socialistic Liberal Party (SLP) largely represented the needs and aspirations of the minority population.
3. In the national elections of 2018, NPP won a majority of the seats in the Parliament of Union of Kennedy and formed the Government at the Centre. Within a span of a couple of years, at least three non-NPP ruled State Governments were toppled due to defection of Members of Legislative Assemblies (MLAs) to NPP. There has been a steady increase in the number of houses and offices of various leaders belonging to non-NPP political parties being raided by the law enforcement agencies such as the Union Bureau of Investigation (UBI), Income Tax Department (IT), and Enforcement Directorate (ED). This caused an enormous blemish on the reputations of the parties.
4. In 2021, the Southern State of Sokovia, the State of Eastwood, and the Union Territory of Francobar (UT) went for legislative assembly elections. These elections saw an unprecedented landslide victory of NPP amidst the saturated political climate of Union of Kennedy. Popular parties such as SLP, Glenett Party (GP), and Forwards Democratic Bloc (FDB) party were shocked at the turn of events and voiced harsh criticism against the campaigning strategies of the NPP. Major opposition parties termed the actions of NPP as unjust, claiming that NPP was using "dirty tricks" to win the election.

However, due to lack of evidence, no complaints were lodged before the Election Commission.

5. On 26th January, 2022, an Open Editorial piece titled ‘Corporates now know what you think & how you breathe’ was published in a leading national daily of Union of Kennedy. This editorial addressed the misuse of social media platforms by its developers, due to which privacy of users was in jeopardy. The relevant parts of the article are produced below:

“The Union of Kennedy has suffered from widespread data breaches and infringements in the absence of any statute to protect the privacy of citizens. A Neverland-based cybersecurity firm, Sharker, released a report which stated that across the world, Union of Kennedy faced the second highest number of data breaches in the first half of 2022. Furthermore, according to an analysis of ONA, multinational technology corporation,, the average cost of data breach grew from \$3.22 million in 2021 to \$3.57 million in 2022.

It has come to light that the active infringement of privacy is not done by hackers, but by leading social media platforms like Bluetick and similar applications providing online services. They employ algorithms that can access the microphones or cameras of their mobile phones, and use words typed by them in messengers to show advertisements to their users to suggest - friends/connections and providers of goods and services to the users in their market platforms. Further, an average user would not easily exercise the choice of disabling microphones or cameras with respect to the usage of such mobile applications as permission to use the microphones or cameras are required to use basic features of the application...” (Refer to Annexure 1)

6. This Editorial stirred the public and an investigation was initiated by an independent agency to look into the events that took place before and after the election. The recurring issue that came up in the investigation report dealt substantially with Bluetick.
7. The investigation report stated that Bluetick had acquired several other contemporary instant messaging and social networking applications like Acanti and Labyrinth in 2014. Acanti is the most extensively used instant messaging application in Union of Kennedy since its inception. The platform is largely popular for its video calling and message broadcasting features. On Bluetick's acquisition of the platform, there have been constant updates enabling more attractive features while fostering greater collection of data by Bluetick. Further, in any such updates, users have to click on the 'I Agree' button and any continued usage of the application post new updates is deemed to be implied consent to the terms and conditions of the privacy policy of the application. In a notice released in August 2016, Bluetick announced that a change would be made to the privacy policy of Acanti wherein users' account information would be shared with Bluetick and all its group companies to improve Bluetick's advertisements and product experiences. The users were asked to agree to the terms and conditions of the privacy policy by 25th September 2016 to continue using Acanti.
8. Lucian Verlac, a tech expert and user of Acanti, was distressed by the general privacy policy of Acanti, and the anti-competitive practices pursued by Bluetick. To ensure that there is no persisting problem, he decided to file a case against Bluetick in the Competition Commission of Union of Kennedy (CCUK).
9. The CCUK formed a prima facie opinion that the 'take-it-or-leave-it' nature of the terms and conditions of the service, required ordering of an investigation by the Director General under Section 26 of the Competition Act, 2002. While the privacy policy allowed for end-to-end encryption and auto-deletion of messages left undelivered for 31 days, it contained a provision that in the event of merger/acquisition with a third-party entity, Acanti reserved the right to transfer or assign the information it has

collected from their users as part of such merger/ acquisition. In the same policy, it was stated that if the Government had a 'reasonable' ground for accessing the data, the same would be provided to them at a request.

10. On 5th September, 2022, the CCUK based on the Director General's report held that the privacy policy of Acanti caused a strong lock-in effect for the users. Thus, this policy helped reduce migration to similar application, invariably allowing them to maintain the dominant position of Acanti in the market. The CCUK found the company to be indulging in anti-competitive trade practices and ruled in favour of the complainant, Mr. Lucian Verlac.
11. Bluetick filed an appeal before the Diagon Branch of National Company Law Appellate Tribunal (NCLAT) contending that the findings of the CCUK were incorrect as they failed to consider data relating to the surge in the quantum of download of their competitor's applications i.e., Hetecom and Quingle after announcement of the policy update, and thereby, CCUK concluded that the position held by Acanti is dominant. Finding no merit, NCLAT dismissed the appeal. Thus, on 19th October 2022, Acanti challenged NCLAT's order before the Hon'ble Supreme Court of Union of Kennedy in Civil Appeal No. (153/2022).
12. Meanwhile, the series of raids and probes against persons voicing criticism of the Government continued. Prominent politicians and jurists like Magnus Everdeen, the leader of SLP, Isabella Abraham, the leader of GP, and Supreme Court judge Justice Gloria Sevnair found themselves amidst incessant probes. This once again led to an investigation that uncovered a software embedded in the devices of these leaders. This software was found to be a spyware called Unicorn, which was created by Dementor, a technology firm that uses Unicorn to spy on users of Bluetick's messaging platform, Acanti. This type of spyware could be downloaded onto a mobile device even without the user's knowledge which subsequently compromised the user's privacy. The manufacturer of the spyware claimed that they only sell this spyware to governments and various published reports suggest that at least 40 citizens of Union of Kennedy

were on the list of potential snooping targets including journalists, judges and political leaders. An international consortium of 67 media organisations leaked a list of 26,000 phone numbers which were potential targets for the spyware. This cast suspicion on the now-ruling NPP government which may have purchased and used this spyware to gain an unfair advantage during the elections.

13. Furthermore, as per findings of an International undercover agency, the software has been actively used since April of 2021 for extracting personal information majorly by tapping calls and accessing private SMS'. Based on this report, Unicorn was used to launch probes and raids against opposition leaders. Dementor was allowed by Bluetick to collect and store personal data of its users to predict behaviour patterns. This type of behavioural data could also be used to strategically induce voters to vote for a particular political party. These findings also suggest that the malware can intrude into the bedrooms of the users, hear what they speak, perceive what is typed and even collect data relating to their consumer preferences, purchases, travel information, food preferences and so on. The data collected by Dementor would then be sold to the highest bidder. This unearthed a very important question of whether NPP had availed the services of Dementor during the elections and after winning the same, had continued to collude with Bluetick to keep tabs on political opponents and dissidents.
14. The contents of the editorial and investigation report stirred the public by spreading distrust against the ruling party and Bluetick along with its group companies. This resulted in the opposition party leading mass protests against the Government for failing to protect the rights of its citizens and using unethical and illegal means to secure power. In lieu of the same, the opposition party filed a Writ Petition (WP No. 102/2022) against the Government. To pacify the public, the Government introduced the Digital Personal Data Protection Bill, 2022, in the winter session of the Parliament, and hurriedly passed it by a voice vote in both the houses and received the assent of the President.

15. The Act was passed on 19th November 2022, on 7th December 2022, A.H.D.S, the most reputed government hospital in the country, suffered a serious data breach. The sensitive and private medical information of about 40 million people of Union of Kennedy, including the data of several VIP patients such as diplomats, celebrities, and renowned sportspersons was stored with the hospital. The servers which contained the e-Hospital data were breached, and all the private medical information of the patients was leaked. All the affected parties addressed letters to the Government to take adequate steps to prevent the leaked data from being misused. The Government disregarded these letters and refused to take any action by stating that they were not responsible for the leak. There were criticisms being levelled against the Government that despite the Data Protection Act, 2022 being in force, data was not truly being protected. SLP, wanting to hold the government liable for the breach, filed a Writ Petition (WP No. 172/2022) in the Supreme Court of Union of Kennedy alleging that the leak happened due to the negligence of the Government. The Union, in response, stated that under the Digital Personal Data Protection Act, 2022, they are exempt from any liability in case of a leak and hence, this petition should be dismissed in limine.

16. The Supreme Court took notice of several interconnected matters that were filed before the Hon'ble Court in WP No. 172/2022, WP No. 102/2022 and Civil Appeal No. 153/2022. The Court also took suo motu cognizance of the Open Editorial letter dated 26 January, 2022 and clubbed all the three matters into a single petition. Notices were issued to Bluetick, the Union of Kennedy, and Dementor. The matter was posted for final arguments based on the following issues:

1. Whether Section 8, 18, 19, and 22 of the Digital Personal Data Protection Act, 2022 is violative of Fundamental Rights enshrined in the Constitution of Union of Kennedy?
2. Whether the Government violated the Fundamental Rights laid down in the Constitution of Union of Kennedy by employing the Unicorn software?

3. Whether bluetick should have made available an opt-out of sharing data with the parent company option without having users to let go of their services?
4. Whether the terms and conditions of the recent update by Bluetick violate the provisions of the Competition Act, 2002?

NOTE:

1. The laws of Union of Kennedy, including the Union of Kennedy Constitution are pari materia to that of India.
2. The contents of the Digital Personal Data Protection Act, 2022 mentioned in the proposition are pari materia to the contents of the Draft Digital Personal Data Protection Bill, 2022.
3. The socio-economic and political background and context of Union of Kennedy is similar to that of India.
4. The Constitutional jurisprudence, legal doctrines & theories and precedents accepted before the Courts in India are accepted by the Hon'ble Supreme Court of Union of Kennedy.
5. The maintainability of all petitions is not in question.
6. The names used in the proposition are purely a work of fiction. Any resemblance to any person, living or dead, or place is purely coincidental.

ANNEXURE – 1

TIMES OF KENNEDY

Daily News



CORPORATES NOW KNOW WHAT YOU THINK & HOW YOU BREATHE!

by Kimberly Starkweather

The Union of Kennedy has suffered from widespread data breaches and infringements without any statute to protect the privacy of citizens. A Frayland-based cybersecurity firm, Maryse released a report which showed that across the world, Hogsmeade faced the second-highest number of data breaches in the first half of 2022. Furthermore, according to an analysis of ONA, a multinational technology corporation, the average cost of a data breach grew from \$3.22 million in 2021 to \$3.57 million in 2022.

It has come to light that the active infringement of privacy is not done by hackers, but by leading social media platforms like Bluetick and similar

applications providing online services.

They employ algorithms that can access the microphones or cameras of their mobile phones, and use words typed by them in messengers to show advertisements to their users to suggest - friends/connections and providers of goods and services to the users in their market platforms. Further, an average user would not easily exercise the choice of disabling microphones or cameras with respect to the usage of such mobile applications as permission to use the microphones or cameras are required to use essential features of the app.

These settings were never questioned as their prima facie purpose was to enhance the user experience by using this information to exhibit



content and advertisements which are of interest or relevance to the users of these platforms. In a survey conducted by ONA, 98% of people with accounts on Bluetick reported that if they spoke about certain products around their phones repeatedly, then their Bluetick feed and advertisements would largely display the same or similar products, over time the same patterns were observed across such other platforms as well.

This unrestrained access that the corporates have through such mediums helps them observe behavioral patterns, creating a window into the minds of their users on an individual basis. These mechanisms are used covertly and the data so developed cannot be altered by individuals, furthermore, they are retained by the corporations even if the account is deleted.

The corporates have largely been questioned only by the Governments of Western countries such as Riverdile and Euphorion which are known to protect the privacy of their citizens fervently. However, the silence of every other nation has encouraged these corporations to openly work on developing overt mechanisms to read the minds of people.

The unethical nature of the novel quest of social media platforms to create neural sensors which detect people's thoughts and convert them into actions by redirecting its focus on research to create a brain machine with the ability to pick up thoughts directly from the neurons to help people 'speak their mind.'

As per Bluetick's announcement, the objective of this technology is to help people with paralysis to communicate with the world, however, regulators are weary of the potential of such technology beyond its public-oriented objective.

There is a pressing need for all Governments to introduce measures to restrain these corporations from infringing upon the fundamental rights of the citizens not only due to the unchecked access these corporations have into one's bedroom but also in foresight of the future technological developments which would aid the corporations to enter the minds of people more efficiently.

"...the active infringement of privacy is not done by hackers, but by leading social media platforms like Bluetick and similar applications..."