

MOOT PROBLEM

1. The Republic of Ombarpearl is the second most densely populated country in the world. It is also the third largest country in terms of area and the fourth fastest growing economy. The country has a quasi-federal with 25 structure states and 5 centrally administered units. The Union Government has exclusive jurisdiction over areas such as external affairs, defense, etc., and also has primacy over states in certain matters enumerated in the Constitution of Ombarpearl. It has been home to some of the oldest civilizations and has also attracted a lot of foreign invaders and migrants, some of which have eventually settled in various parts of the country.
2. The state of Aura is located in the south-west corner of Ombarpearl. The state is rich in natural resources and one of the largest rivers of Ombarpearl, Nihel, flows through it. Aura shares its western border with the neighbouring country, People's Republic of Mumbaria, most of which is the natural riverine border formed by the Nihel. Historically, the border had remained largely porous as the river had been used for trade and commerce between the local people. As per the historical records available, going as far back as in the 2nd century AD, Aura was ruled and inhabited by the Auro race. The Auro people have had language and customs that has made them culturally distinguishable from the other people in and around the Ombarpearl region. Aura, like the rest of Ombarpearl, was invaded and also colonized during different periods in history. There have also been instances of marriages between the Auro and Mumbarian people. However, the Auro people have managed to preserve their distinct culture all throughout, and they voluntarily decided to be part of Ombarpearl when it attained independence from the colonialrule.
3. Prior to declaring its independence on 25th January 1991, the Mumbaria was a colony of the United Provinces of Balian for a period of almost 15 years. During the said period the Balian armed forces reportedly committed several grave human rights violations on the Mumbarian people. In early 1990, the Mumbarian rebel groups started violent protests against the Balian administration. The Balian armed forces retaliated with heavy use of force, compelling hundreds of thousands of Mumbarians to flee across the border into Aura in Ombarpearl. The Prime Minister of Ombarpearl issued a press statement stating as

follows:

“We strongly condemn the acts of oppression on the Mumbarian people committed by the Balian armed forces. Ombarearl is committed towards its human rights obligations, and will provide food and shelter to the refugees who are entering its borders due to persecution by the Balian forces. At times like these, it is the duty of the entire international community to step up and protect humanity.”

4. Over the next few months, over a million Mumbarians entered Aura. Most of the immigrants entered illegally through the river Nihel, as that part of the border did not contain any fencing or barbed wires. Although some of the refugees were taken to the temporary camps set up by the Government of Ombarearl, most of them mingled with the local population and started making their own settlements in Aura. Some of them also migrated to other neighbouring states. When the local population expressed its concerns about the immigrants, the Government verbally assured them that this is only a temporary situation and the Mumbarians will return to their homeland once the situation is resolved. At the same time, the Government of Ombarearl was engaged in dialogue with other nations encouraging them to intervene in the situation in Mumbaria in order to prevent a massive humanitarian crisis and enable the Mumbarians to return home.

5. In November 1990, a violent large scale movement erupted against the Balian administration, led by a Mumbarian rebel group, popularly known as United Against Oppression. Some unverified reports suggested that the rebels were getting aid and ammunition from the Government of Ombarearl. The Government of Ombarearl intensified its efforts lobbying for an intervention in Mumbaria. However, when no other country declared their active support, in January 1991, Ombarearl itself carried out large-scale airstrikes in Mumbaria, causing a significant loss to the Balian forces. Eventually, on 25th January 1991, the Balian armed forces were defeated and Mumbaria declared its independence.

6. Although Mumbaria became an independent nation- putting an end to the persecution of Mumbarians, the migration in Aura continued. In fact, the local administration in Aura was having a tough time in distinguishing Mumbarians from the citizens of Ombarearl as both

had similar features and languages. Reports stated that a lot of Mumbarians had also obtained land and employment in Aura and other neighbouring states on the basis of some forged and fabricated documents showing them as citizens of Ombarpearl. After repeated dialogues between the two countries, the new government in the Republic of Mumbaria assured the Government of Ombarpearl that they are taking necessary steps to stop their citizens from entering Ombarpearl. It also stated that they are willing to take back those persons living in Ombarpearl, who have valid proof to show that they are Mumbarian citizens.

7. In December 1998, several local organizations in Aura, led by the Auro Youth United (a registered association comprising mostly of college students), started protesting against the governments of Ombarpearl and Aura, alleging that the governments are deliberately not taking effective measures to detect and deport the immigrants as most of them had managed to get their names on to the voters' lists and the governments therefore, wants to ensure their support in the elections. The protests rapidly caught the attention of the local people and by January 1999, thousands of Auro people took to the streets inter alia demanding detection and deportation of Mumbarians who have illegally entered Aura and are staying in the state. The protestors claimed that the continued illegal immigration in Aura has not only affected the culture of the Auro people, who face a threat to be reduced to a minority in their own land, but has also adversely affected their access to natural resources, opportunity of education and employment, and the law and order situation in the state. The protests often grew violent resulting in serious loss of life and property.

8. In order to resolve the situation, on 15th May 1999, the Prime Minister of Ombarpearl entered into a Tripartite Agreement with the Government of Aura and Auro Youth United, which inter alia contained provisions for the following:

- a. The Government of Ombarpearl will amend the Ombarpearl Citizenship Act to grant citizenship to any person of Mumbarian origin who entered the State of Aura from Mumbaria prior to 25th January 1991.
- b. The Government of Ombarpearl will take effective measures for the detection and deportation of illegal immigrants living in Aura.
- c. The Government of Ombarpearl will set up quasi-judicial authorities for determination of the citizenship status of persons suspected to be illegal immigrants.

- d. The Governments of Ombarpearl and the state of Aura will take measures to allow the Auro people to protect and preserve their culture.
- e. The Governments of Ombarpearl and the state of Aura will provide reservation for the Auro people in schools, colleges and government employment.
- f. The Government of Ombarpearl will take quick and sustained measures for strengthening of border security to stop any illegal immigration in the future.
- g. The Governments of Ombarpearl and state of Aura will take quick and sustained measures for improving the general infrastructure of the state of Aura.

9. In accordance with the Agreement, Ombarpearl Citizenship Act was amended on May 23rd, 1999 to include Section 6-A, which read as follows:

“6-A. Special provisions as to citizenship of persons covered by the Tripartite Agreement dated 15th May, 1999.—

(1) Any person of Mumbarian origin, who entered the state of Aura from the territory of the Republic of Mumbaria on or before 25th January 1991, shall be deemed to be a citizen of Ombarpearl.

(2) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.”

10. In February 2019, a leading national magazine called the Ombers, published a report called “Two Decades since the Auro Movement: A Review”. The said report claimed that despite making a concession in the Tripartite Agreement of 1999 allowing citizenship to a class of illegal immigrants, the Auro people have not received the benefits of the said Agreement so far. The report further stated that illegal immigration from Mumbaria continues to be a problem in the state of Aura and that according to the government records, so far only 926 people have been detected to be illegal immigrants, and not one of them has been deported. The reason for the continued influx of illegal immigrants, as per the report, were the significantly better employment opportunities and access to natural resources in Ombarpearl as compared to Mumbaria. It also claimed that the population in the State of Aura has almost doubled since 1989 and Auro people have been reduced to a

mere 38% of the total population. The report further stated that, contrary to the said Agreement, the governments have also failed to provide reservations to the Auro people so far. It was also stated in the said report that the Government of Ombarearl responded by saying that it cannot deport any person unless Mumbaria is willing to take them back- the detected illegal immigrants do not contain valid documents proving their Mumbarian origin, and the Government is in continuous dialogue with the Republic of Mumbaria in this regard. The Government of Ombarearl was also reported to be stating that although the Agreement was signed by the then Prime Minister in his capacity as such and the present government is not bound by the same, steps are being taken to ensure the welfare of the Auro people. It was reported that the Government is facing difficulties in securing the riverine boundary.

11. In April 2019, an unregistered association called the Society for the Welfare of Indigenous People of Aura (SWIPA) filed a writ petition before the Supreme Court of Ombarearl under Article 32 of the Constitution of Ombarearl:

- a. Challenging Section 6A of the Ombarearl Citizenship Act as being ultra vires the Constitution of Ombarearl.
- b. Challenging the action of the Republic of Ombarearl in amending the Ombarearl Citizenship Act on the basis of an agreement.
- c. Challenging Section 3¹ of the Ombarearl Citizenship Act insofar as it grants birth-right citizenship to the children born in Ombarearl, where even one of the parents is an illegal immigrant.
- d. The Petition also claimed that without prejudice to the aforesaid, the other provisions of the Tripartite Agreement of 1999 are binding on the Republic of Ombarearl and the State of Aura and that they are liable to provide compensation to the Auro people for committing a breach thereof.

12. The Supreme Court of Ombarearl issued a notice to the Republic of Ombarearl and the State of Aura in the said writ petition, numbered as W.P.(C) No.23 of 2019 and

Section 3. Citizenship by birth- Any person born in Ombarearl, either of whose parents is a citizen of Ombarearl at the time of his/her birth, shall be a citizen of Ombarearl by birth.

placed the matter for adjudication before a five-judge Constitution Bench in accordance with Article 145(3) of the Constitution of Ombarearl on all questions arising out of the said Writ Petition, including the question of maintainability. The said petition is listed for hearing before the Constitution Bench on 29th June 2019.

13. For the purposes of this problem statement, the Constitution of Ombarearl and the Ombarearl Citizenship Act are in parimateria with the Constitution of India and the Indian Citizenship Act, 1955 (except Section 3 and Section 6A) respectively, so far as they are applicable to the facts stated here in above.