

Moot Proposition
for
2nd Virtual Intra-Department Moot Court Competition
2021



Ambassador Ishid Adams

-Versus-

People's Republic of Levington

Dhaka University Moot Court Society (DUMCS)

Faculty of Law, University of Dhaka

1. The People's Republic of Levington is a coastal state surrounded by the Democratic Republic of Asana in the East, United States of Fylumn in the North and the West and the Karkanian Sea in the South. Levington attained its independence in 1978 through a liberation war against Fylumn that continued for almost two years. As of 2021, Levington is the most densely populated country in the world with 190 million people living within a territory of 200,000 square kilometers. Its economy is largely based on exporting agricultural products and ready-made garments. Recently Levington has graduated from the list of Least Developed Countries (LDC) and emerged as a country of lower-middle income in 2021.

2. Fylumn is currently a highly developed country. Its economy is principally based on international trade, tech industries, development of medical equipment and life-saving drugs. The country is known worldwide for their contribution in scientific advancement. Although Levington was a federal state of Fylumn previously, in the present days both the countries maintain an amicable and cooperative relationship with each other. Since 1982, each of the countries established an embassy in the other in order to maintain sound diplomatic relation and conduct necessary functions thereof. As of 2021, Fylumn has one embassy in Thundertown, the capital of Levington, and one consulate in the Qorali region. The Qorali region is situated at the south-west corner of Levington, which is the tourism and cultural hub of the country. Every year approximately 1 million tourists visit Levington, especially the beautiful hills, beaches and picture-perfect countryside of Qorali.

3. On 9th December 2020, the Government of Levington proposed a bill namely "The Data Protection Bill, 2020" in the regular session of the Parliament. Public showed mixed reaction towards the proposed bill. While some professionals including lawyers, law enforcement officers and cybersecurity experts viewed the proposed law as a means to ensure better protection and justice, many others were of the view that the law was a tool to arbitrarily deprive people of their right to privacy and data protection. Since 12th December 2020, many small to medium public groups were seen to be protesting against the enactment of this law. Parallely, numerous op-ed articles were being published in newspapers, journals and online platforms for and against the law. The Daily Public Voice, a popular newspaper, on 16th December published an editorial op-ed strongly opposing the proposed law. It also claimed that all the positive feedbacks on this law was in fact a part of government propaganda.

4. The Law Minister of Levington, Ms. Raya Silverstone mentioned in an official statement on 1st January 2021 that, "...the Government has no plan to drop the proposal and the bill may be

adopted as law any time soon. The movements against the law does not reflect public opinion, rather these are the result of the opposition party's propaganda...".

5. The movements had to stop by mid-January due to the first official "Orvid-20" case in Levington. Orvid-20 is a highly infectious air-borne disease caused by the Ordozin Virus capable of human transmission. It directly affects the lungs causing numerous complications including breathing problems, asthma, lungs failure, poor immunity and in many cases, death. The symptoms of Orvid-20 include similar symptoms of regular cold and fever, and often asymptomatic (the symptoms are not detectable) even after weeks of infection. The only way to conclusively detect Orvid-20 infection is through lab test of nasal fluid. The first case of Orvid-20 was detected in the Social Republic of Strasburg, a developed country situated 12000 km far from Levington on 27th November, 2020. By two months, a total of 108 countries recorded Orvid-20 cases and on 15th January, World Health Organization (WHO) declared it to be a global pandemic. After recording the first case of Orvid-20 infection on 13th January, the government closed down its borders and declared lock down all over the country on 16th January that continued for a week. Only professionals relating to the healthcare, law enforcement and journalism sectors were allowed to go out during that period. Mass testing of the Orvid infection was conducted and after one week, the number of recorded patient of Orvid-20 was 1248.

6. After one week, the Government declared emergency situation all over the country and ordered all institutions except for hospitals, drug stores and police stations to be closed for an unknown period. Grocery store, bank and convenience stores were to be opened for three hours each morning. This situation continued for eight months. This caused numerous foreign tourists getting trapped in the Qorali region where the infection rate and number of infections were the highest. The Government of Levington assured that they would extend their protective measures to foreigners as well. Most institutions including schools, universities, offices and courts started functioning virtually and other sectors including RMG industries functioned four days a week since 28th April, 2021. Though the emergency situation continued until 7th July, 2021, Government took steps to pass the Data Protection bill. Despite strong opposition faced from the leaders of the opposition party, the bill got full support from the pro-government parliamentarians. The Data Protection Act 2021 [Act No. III of 2021] was eventually enacted on 22nd May, 2021. The relevant portions of this Act are attached in Annexure-A.

7. Meanwhile different countries including Fylumn discovered different vaccines for preventing Orvid-20. On 18th June, Levington and Fylumn entered into a bilateral treaty for importing “Orca-XN”, the Orvid-20 vaccine developed by Fylumn. Fylumnian Ambassador Mr. Ishid Adams, residing in Thundertown, was included as one of the representatives of Fylumn in the treaty and was also entrusted to help Levington Government for ensuring due management and distribution of the vaccine.

8. During the first mass vaccination campaign from 30th June to 7th July, 200,000 doses of Orca-XN were imported and distributed among the frontliners only. The second campaign was in September where another 1.3 million doses were duly distributed among the rest of the frontliners. For the third campaign, the Government made a contract to import 10 million doses of Orca-XN in the first week of October. The third mass vaccination campaign was applicable to all fit adults regardless of their profession. The government decided to launch the mass vaccination in the most affected areas first and due to the infection rate, Qorali Region was considered to be one of them. However, due to a massive Orvid-20 wave occurred in the last week of September in Fylumn, Fylumn only exported 30% of the promised number to Levington.

9. By the time the third mass vaccination campaign started, a total of 38 million people registered for vaccination, among which 29% were from the Qorali region. The vaccine available for the people were much less than the registered recipients, so only 8% of the registered adults got vaccinated in the third campaign. Allegedly, the so called educated and higher-class people were the only ones who received the vaccine during that campaign.

10. After a week since the campaign was over, a news channel broadcasted a call recording claimed to be between Ms. Mikasa Brunazzo, the Chief Health Officer of the Vaccine Campaign for Qorali Region, and Ambassador Ishid Adams, regarding the criterion for prioritizing recipients among them. In the recording, the female voice explained the shortage of vaccine and asked suggestions for picking and choosing recipients. The male voice in response, suggested that the first-class gazette officers should be prioritized in this regard. The recording created massive dissatisfaction among people. Virtual movements were held against Ms. Brunazzo and Ambassador Adams and many concluded that such a classification was directly violative of the right to equality and non-discrimination. It came to light that a journalist named Carla McConoughey held an investigation regarding the third vaccination campaign and collected the recording during that process.

11. Neither Ms. Brunazzo nor Mr. Adams agreed to give any public statement regarding this matter. Formal investigation was held and proceedings were launched in the lower court of Levington against Ms. Brunazzo and Mr. Adams along with 22 other members affiliated with the third vaccination campaign. In response to a court summons, Mr. Adams appeared before the lower court and claimed that he could not be prosecuted under any law of Levington, including the Data Protection Act 2021 due to his entitlement to diplomatic immunity. The lower court disregarded such claim and the government continued to proceed with the matter. Ambassador Adams then decided to move to the High Court Division of the Supreme Court of Levington.

12. In order to determine whether the proceedings against Mr. Adams under the Data Protection Act 2021 was maintainable, the High Court Division decided to hear upon the following two issues after finding jurisdiction under Article 102 of the Constitution of Levington:

- a.** Whether the Data Protection Act, 2021 was lawful according to the Constitution of Levington and its international obligations;
- b.** Whether Ambassador Ishid Adams was entitled to diplomatic immunity under the Vienna Conventions.

The Constitution of Levington is *pari materia* with the Constitution of People's Republic of Bangladesh. Levington has also signed and ratified all treaties that Bangladesh has, including the International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Vienna Convention on the Law of Treaties 1969; Vienna Convention on Diplomatic Relations, 1961; Vienna Convention on Consular Relations, 1963.

ANNEXURE-A

THE LEVINGTON DATA PROTECTION ACT 2021

[ACT NO. III OF 2021]

Section 1: Short Title, Commencement and Application

- a. This Act shall be called the Levington Data Protection Act, 2021.
- b. This Act shall come into force at once.
- c. Save as otherwise specified elsewhere in this Act, it shall extend to the whole of Levington and shall be applicable to all persons within the territory of Levington at any given time.

Section 21: Establishment of Data Protection Office

A Data Protection Commission (DPC) shall be established under this section to operated by the Digital Oversight Department under this Act.

Section 27: Third Party Data Collection

- a. Save as otherwise provided in this Act, any data, information or any other evidence, collected, acquired, procured or harvested from any third party by the Government may be utilized by such authority as circumstantially deemed necessary in accordance with the laws of Levington.
- b. No legal action can be taken against any employee or officer of the Data Protection Commission with regard to any act or omission done by any of them in good faith in official capacity.

Section 30: Data Breach

In the event of an occurrence of a data breach, the persons affected by the said breach are required to duly notify the Data Protection Commission within the timeframe as prescribed in the Rules of this Act.

Section 35: Civil and Criminal Liability in Consequence of Data Collection

Save as otherwise provided in this act, if any data or information collected, obtained or harvested under this act results in invocation of liability of any person, civil, criminal or

otherwise under the laws of Levington, such person shall be subjected to such legal proceeding in accordance with such laws.

Section 64: Compensation for Victims of Non-Compliance to Data Collection Mandate:

Any person having been subjected to the adverse effects in consequence of non-compliance with the provisions of this act for the purpose of data collection or process or for data or information collected, obtained, or processed by the Data Protection Commission or any officer or employee therein may be entitled to receive compensation for the anguish suffered as a result of such non-compliance. The method of valuation of the compensation amount and procedure for application of compensation shall be detailed in the Rules of this act.

Section 75: Formulation of Rules

For the purpose of facilitation of the objectives of this act, with the prior approval of the Government of Levington, Rules supplementary to the provisions of this Act shall be formulated detailing the processes to be carried out under the various provisions of this Act.