



UTTARANCHAL
UNIVERSITY

LAW COLLEGE DEHRADUN faculty of Uttaranchal University

3rd NATIONAL MOOT COURT COMPETITION

on Constitutional Law

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Moot Court Society

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MOOT PROPOSITION

A

1. The Republic of Indica is an independent 'Union of States' which got its independence from British Rule in 1947. The Constitution of Indica imbibes in itself wisdom and farsightedness based on the principle of "*Vasudhev Kuttumbhkam*" which means "*the whole world is our family*". Taking inspiration from the constitutions of the major democracies of the world, the Constitution of Indica was perspicaciously drafted by the members of its Constituent Assembly. It encompasses the values of Human Dignity and Equality. It guarantees to its citizens certain fundamental rights - the scope of which is considerably enlarged by the dynamic judgments of the Supreme Court of Indica. Moreover, Indica is a member of the U.N. and has vowed to abide by and implement the mandate of all International Human Rights instruments. Among the members of U.N., the image of Indica is that of a 'responsible State.' The Constitutional, legal and policy framework of the Republic of Indica is in *pari materia* to the Republic of India.
2. The Republic of Indica is a multi-religious, multi-lingual, multi-cultural and secular country which exhibits to the world the principle of "Unity in Diversity." The major religion of Indica is 'Hinduism' after which the majority of the people follow 'Islam'. Besides this, there are other minorities belonging to Christianity, Judaism, Jainism, Buddhism, etc. People, by nature, are very peace loving and harmonious and have been in the habit of helping each other since time immemorial irrespective of religion, race or creed.
3. Modern Indica took inspiration from the west and inducted democratic set-up in its governance through its Constitution. Fundamental ideology of its Constitution is "equality among all" in general, and "equality among equals" in particular. Though the Constitution provides for 'equality of gender', but historically, Indica has been a male-dominated State since ancient times and patriarchy is an age-old practice both among Hindus and Muslims. It is a system of society and government in which men hold the power and women are largely excluded from it. However, with the passage of time, women of Indica have become aware of their rights and liberties, and sporadically, voices are raised by the women bodies and organizations laying emphasis on equal and greater participation of women in the governance of the country, both at federal and provincial levels.



4. According to a recently released ranking of all 193 member countries of U.N. relating to the representation of women in the Parliament, Indica had 64 women as MPs among 542 members in the Lower House which is just 11.8% and 27 women as MPs among 245 members in the Upper House which is about 11% in 2005. The representation of women in the Parliament was indeed very low in comparison to the representation of males. According to social scientists, this low representation of women in the Parliament of Indica was because of an age-old patriarchal system which in a way subjugated the cause of women depriving them of their full development except a few who progress. The government of Indica had framed several policies and initiated numerous programs for women empowerment and enablement, but, with little success - since the orthodox mindset of society remained stagnant.
5. Concerns were raised for women empowerment since the commencement of the Constitution by women activists and feminists, and they have been demanding that there must be reservation in the membership of Parliament for women to build Indican society on the principle of real equality and at least 33% seats in both Houses of the Parliament must be reserved exclusively for women by enacting a law. This demand was forcefully laid before the Parliament. Consequently, many heated debates took place in both Houses of the Parliament upon this issue. Some members were of the opinion that seats in the Parliament must be reserved for women concerning their demand, but, others had either opposed this move or abstained from such debates in a state of indecision, thus, no bill assuring such reservation for women could pass and become law. One of the main reasons for this failure was the fact that during the period from 1996 to 2005 no single political party was in majority in the Lower House. Thus, without the help of other allied parties no party was in a position to form government. Before 1996, the government was of one of the major political parties of Indica named "Wrongrace Party", which never had shown any interest to pass such law.
6. Back in 1992, the Parliament took a revolutionary step by bringing a Constitutional Amendment that introduced provisions for the reservation of 33% seats exclusively for women in Municipalities and Panchayats in all States of Indica. This development had galvanized the feminists' movement and the demand of feminists for 33% reservation in Parliament became more stringent, which now also started receiving



support from the male section of the majority community. However, a sect of this community was of the opinion that the ultimate power must be in the hands of the male section, because women, according to them, were incapable and irresolute, hence, accurate, judicious and timely decisions were unexpected from them in exigent situations. This sect also had a desire that Indica must be a religious state and Hinduism should be declared its official religion, but, their aspirations never materialized till date because the majority community never acceded to do so.

7. On the other hand, the demand for 33% reservation to women was also strongly opposed by the members of the minority community because according to them men and women can never be equal. And it shall be against their religious beliefs to make women equal to men. Some factions of people of the majority community too agreed with them.
8. However, the demand for 33% reservation got support from members of the eminent and intellectual class belonging to the educational and societal reform movements. Among them, Mrs. Garima Dhall, Mrs. Yamini Paul and Mrs. Mannat Raichandani were hardcore supporters of the demand, and they were the leaders and flag bearer of this movement. They took initiative of door to door contact with people of Indica and left no stone unturned to harbor support from the Indican society for their demand - on the notion that if women have representation at the highest forum of this country then that shall not only be conducive for the society but shall also serve national interest which ultimately makes Indica one of the developed countries of the world. The Surveys and studies conducted at that time revealed that most of the Indican people agreed with their demand.
9. In 2005, another major political party, the “Rashtriya Janta Party”, came to power with an absolute majority in the Lower House and formed government. The demand for 33% reservation for women was also laid before them. Initially, they were reluctant to pass such law, but, in 2006, suddenly they decided to pass it, and hence, the law prescribing 33% reservation for women in both Houses of the Parliament was passed which received the assent of the President on 1st July 2006.
10. However, some members of the society belonging to both the majority and the minority communities started opposing the newly enacted law. Their main allegation against this law was that this law will empower only elite class women whom they



referred to as "*Parkati Mahilayen*" (by which they mean – "*woman belonging to rich and aristocratic class who are the faces of already established politicians of the country*") who are modern in nature and wanted to establish their dominance in Indica, and ultimately by such reservation only such kind of women shall be benefited, because, Indica is basically a rural country where majority of women belong to rural class where they are unaware even about their basic rights.

I

11. By the year 2015, in consequence of such law, women representation in both Houses of the Parliament got tremendously increased and now a situation has arisen where without the support of women members of the Parliament, not even a single Bill can be passed. Moreover, in 2015, the women-laden Parliament, by a constitutional amendment, to empower the women to express themselves and their opinions freely with very few limitations, inserted a proviso to Article 19(2) of the Constitution which reads "*Provided that in case of women, reasonable restrictions can only be imposed on the grounds of immorality, public order and friendly relations with foreign states.*"
12. Most of the women members of the parliament, in 2015, which belonged to the "*Rashtriya Janta Party*" and their supporters started utilizing this law as a political tool for achieving the hidden agenda of their party by delivering venomous and hate speeches against the minority community on religious lines, and also raised demand for appointment of women in all important constitutional and Public Offices. Their desire transpired into reality and women started acquiring all important Public Offices in Indica and a new kind of environment was created by May 2016 wherein all strategic and important decisions in Indica were now being taken by women. This transitional phase widely empowered women in Indica. Thus, the Indican society has undergone a tremendous change which has disrupted its traditional social fabric, but no visible action was taken against this scenario by the ruling "*Rashtriya Janta Party*".
13. According to Population Census of 2011, there were 940 women on 1000 men but now the figure of women seemingly increased. The traditionally orthodox male-dominated society of Indica could not bear this dominance of women and their interference in affairs of men, and they regarded it anti-religious and violation of the concept of equality enshrined under the Constitution and also questioned the law



providing 33% reservation to women on ground of it being arbitrary. One of such persons, Dr. R.M Swain, filed a PIL in the High Court of the State of Dehri, on 27th December 2017, praying, inter alia, to declare such reservation as unconstitutional. This matter is still *sub judice*.

II

14. On 26th December 2017, in the winter session of the Parliament, one of the members of the Lower House, Mrs. Fatima Ghansari, brought a motion in the House for repealing the law providing 33% reservation to women, alleging that this law has become a tool in the hands of the ruling party which is using it to achieve their own hidden agenda and objectives which are against the spirit of the Constitution of Indica. Her other allegation was that behind the mask of women, some orthodox religious men of the ruling party who wanted to make Indica a Hindu State were instigating such women members to use their right of expression, under the guise of the proviso inserted by the amendment made to Article 19(2), against minority community, to rig the State towards religious extremism and intolerance. According to her, such law is against the unity and integrity of Indica, hence, Parliament itself should repeal it. She apprised the House about a recent sting operation by “Zebra Post” which reveals that the members of the ruling party in collusion with large media houses are running “Hindu” agenda. She also made a written complaint to the Speaker making various revelations about her accusations.
15. But as the majority of members of the parliament are of the ruling party, therefore, the motion for repealing this law was defeated. However, Mrs. Ghansari continued her resentment against this law and made an attempt to reintroduce the motion afresh for repealing it in the summer session of Parliament on 1st May 2018. However, the Speaker of the Lower House refused to entertain it.
16. On the night of the same day i.e. 1st May 2018, she received an anonymous phone call on her landline phone and the caller threatened her of dire consequences if she continues to insist upon her stand to repeal the law of 2006. An F.I.R. was lodged by her on the same night in the police station of her locality and the police registered the case against an unknown person for threatening her. She also informed the Speaker of Lower House, who, in turn, increased the security of Mrs. Ghansari.



17. However, aggrieved by this incident and rejection of her motion by the Speaker of the Lower House, Mrs. Ghansari filed a petition in the Supreme Court of India praying for declaring the reservation law as unconstitutional because it is disrupting communal harmony of the country and is becoming a tool of communal politics. She also contends that these laws are being used to profess anti-secular agenda. She also alleged in this petition that communal riots broke out in various parts of India due to the hate speeches delivered by women Members of Parliament who belonged to the majority community, and particularly, belonged to the ruling party. She also demanded that the amendment made to Article 19(2) of the Constitution should be declared unconstitutional because these laws are, in reality, not serving the objectives for which they were enacted and the latter particularly violates the basic structure of the Constitution.
18. Through the same petition, she further prayed to the Supreme Court that she be provided with adequate security as she fears her life and blamed the ruling party for this state of affair. She also contended that she had played the role of a "Whistle Blower", by pointing out the hidden agenda of the ruling party, thus, protection should be provided to her against such threat.

III

19. In an unprecedented event on 28th February 2018, Mrs. Garima Dhall, Mrs. Yamini Paul and Mrs. Mannat Raichandani, who were instrumental forces behind the passing of this law providing 33% reservation to women in the Parliament, got arrested by the intelligence agency of India, on the grounds of spying for and providing vital State Secrets to the enemy country of India. The intelligence agency claims to have credible evidence against these ladies and various criminal cases have also been instituted against them in Dehri.
20. After this, additional allegations were put forth by the members (MPs) of the "Wrongrace Party" in the Parliament on 10th May 2018, blaming Foreign Powers behind the enactment of this Law providing for 33% reservation for women in the Parliament, for dividing India by using women as a tool. They jointly introduced a motion in the Lower House for repealing this law, but, the same was out-rightly rejected by the Speaker. As the MPs of opposition party could not do much in the



Parliament for repealing this law because of their lower representation, they filed a PIL in the Supreme Court of India alleging role of enemy State behind the passing of this law. They also requested the Court to declare this law as unconstitutional because it is serving the ends of the enemy state.

21. The ruling party of the State of India i.e. “Rashtriya Janta Party” has opposed all allegations in the Supreme Court in both petitions filed by Mrs. Fatima Ghansari and the MPs of “Wongrace Party” party emphasizing that 33% reservation and the constitutional amendment are constitutional and the petitioners want to drag India backwards by filing such frivolous petitions.
22. Supreme Court of India has clubbed both petitions filed before it and the petition before the High Court of Dehri under Article 139A of the Constitution and has scheduled them for final hearing on 7th October 2018.

THE MAIN ISSUES BEFORE THE SUPREME COURT ARE:-

- I. WHETHER THE LAW PROVIDING FOR 33% RESERVATION TO WOMEN IN THE PARLIAMENT AND THE AMENDMENT TO ARTICLE 19(2) ARE ARBITRARY AND VIOLATIVE OF THE CONCEPT OF EQUALITY?
- II. WHETHER LEGISLATING THE LAW PROVIDING 33% RESERVATION TO WOMEN IN PARLIAMENT AND THE AMENDMENT TO ARTICLE 19(2) SMACKS OF SOME ULTERIOUR RELIGIOUS MOTIVES, AND IF SO, DO THEY VIOLATE SECULAR PRINCIPLES AND CAN THEY BE CHALLENGED ON THIS GROUND?
- III. WHETHER A LAW CAN BE STRUCK DOWN ON GROUNDS THAT IT SERVES THE MOTIVE OF ANY FOREIGN POWER OR HAS BECOME A TOOL OF COMMUNAL POLITICS?
- IV. WHETHER THE CONSTITUTIONAL AMENDMENT TO ARTICLE 19(2) VIOLATES THE BASIC STRUCTURE OF THE CONSTITUTION?
- V. WHETHER THE PROTECTION OF THE WHISTLE BLOWERS PROTECTION ACT, 2014 EXTENDS TO MRS. FATIMA GHANSARI?

THE TEAMS MUST MAKE AT-LEAST ONE OR AT-MOST TWO ADDITIONAL ISSUE(S) EXCLUDING THE ISSUE OF MAINTAINABILITY.

