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**LAW COLLEGE DEHRADUN, FACULTY OF UTTARANCHAL UNIVERSITY
NATIONAL MOOT COURT COMPETITION - 2018**

BEFORE THE HON'BLE SUPREME COURT OF INDICA

TRANSFER PETITION NO. ____/2018

W.P. (PIL) No. ____/2017

DR. R.M. SWAIN (Petitioner 1)

AND

W.P. (PIL) No. ____/2018

FATIMA GHANSARI (Petitioner 2)

WITH

W.P. (PIL) No. ____/2018

WRONGRACE PARTY (Petitioner 3)

VERSUS

UNION OF INDICA (Respondent)

**PETITION INVOKED UNDER ARTICLES 32 & 139A OF
THE CONSTITUTION OF INDICA**

**UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS LORDSHIP'S
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDICA**

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONERS

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LIST OF ABBREVIATIONS

&	And
%	Percentage
¶	Paragraph
A.	Article
A.I.R	All India Reporter
AllHC	Allahabad High Court
Bom.	Bombay
BomHC	Bombay High Court
CA	Calcutta
CAD	Constituent Assembly Debates
CEDAW	Convention on The Elimination of All Forms of Discrimination Against Women.
Cri.	Criminal
DLT	Delhi Law Times
Dr.	Doctor
Del	Delhi
Edn	Edition
Govt.	Government
HC	High Court
Hon'ble	Honourable
Ibid	Same as immediately above
ILR	Indian Law Review
J.	Justice
MP	Member of the Parliament
Mad	Madras
MANU	Manupatra
MH	Maharashtra
MPLJ	Madhya Pradesh Law Journal
No.	Number
PIL	Public Interest Litigation

MEMORANDUM OF ARGUMENTS FOR THE PETITIONER

(P) Ltd	Private Limited
P&H	Punjab and Haryana
Pg.	Page
Ors.	Others
OA	Original Application
OBC	Other Backward Class
PM	Prime Minister
RJP	Rashtriya Janata Party
Raj	Rajasthan
Rep.	Represented
SCALE	Supreme Court Almanac
SCC	Supreme Court Cases
SC	Supreme Court
SCR	Scheduled Caste
SC	Scheduled Tribe
ST	Cited authority develops a Question analogous to discussion in the text.
See also	Same as mentioned before or above, whenever an authority has been fully cited in proceeding footnotes, the supra is used
Supra	Mentioned before
Suppl.	Supplementary
T.L.R	Times Law Reports
UHC	Uttaranchal High Court
UOI	Union of India
U.P	Uttar Pradesh
u/	Under
UNO	United Nations Organization
v.	versus
Vol	Volume
W.P.	Writ Petition
W.B	West Bengal

MEMORANDUM OF ARGUMENTS FOR THE PETITIONER

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STATEMENT OF JURISDICTION

I. TRANSFER PETITION NO. ____/2018**W.P. (PIL) No. ____/2017**

The Petitioner has approached the Hon'ble High Court of Dehri under Article 226 of the Constitution of India, 1950 and it has been transferred to appear before Hon'ble Supreme Court of India under Article 139A of the Constitution of India, 1950

II. W.P. (PIL) No. ____/2018

The Petitioner has approached the Hon'ble Supreme Court of India under Article 32 of the Constitution of India, 1950.

III. W.P. (PIL) No. ____/2018

The Petitioner has approached the Hon'ble Supreme Court of India under Article 32 of the Constitution of India 1950.

STATEMENT OF FACTS

- I. The Republic of Indica is an independent, 'Union of States', following the values of Human Dignity and Equality. It guarantees Fundamental Rights to its citizens and the Constitutional, legal and the policy framework of the Republic of Indica is in '*pari materia*' to the Republic of India. The ideology of the Constitution is that of "equality among all", and "equality among equals".
- II. It exhibits to the world the principle of "Unity in Diversity," It is a multi-religious, multi-lingual, multi-cultural and secular country. The major religion of Indica is Hinduism followed by Islam. The minorities belong to Christianity, Judaism, Jainism and Buddhism.
- III. Indica has been a male dominated society, with low representation of women, the example of which can be seen in 2005, where in the Upper House the percentage of women was 11% and 11.8% in the Lower House. In this scenario a 33% reservation for women in the Parliament was proposed. This was received with opposition more so because there was no single majority party in the Lower House from 1996 to 2005. Prior to 1996, Wrongrace Party, the majority party at that time had shown no interest for the same.
- IV. In 1992, a Constitutional Amendment was introduced with the provisions of 33% reservation of seats for women in Municipalities and Panchayats in all states of India. This too was faced with opposition from the minority community. However, it received support from the intellectual class .Mrs. Garima Dhall, Mrs Yamini Paul and Mrs Mannat Raichandani being some of them.
- V. In 2005, the Rashtriya Janta Party (hereinafter referred to as "RJP") came to power with an absolute majority. In 2006 with a sudden move the 33% reservation was passed. This led to the increase of women representation in both houses to a situation in which no Bill could be passed without their support. A proviso to Art. 19(2) was inserted by a constitutional amendment (hereinafter referred to as "amendment") to empower the women and give them the opportunity to express themselves freely.
- VI. This move of RJP was opposed by the majority as well as minority communities as it was empowering the elite class women exclusively. This law resulted in the tremendous increase of women representation in both Houses by 2015.
- VII. This law became a tool of propagating the hidden agenda of delivering venomous and hate speech against the minority community. Along with this, the demand for appointment of women in all important constitutional and Public Offices.

MEMORANDUM OF ARGUMENTS FOR THE PETITIONER

- VIII. The increase in the population of women and the interference of women in the affairs of men was anti-religious and violating the concept of equality under the Constitution. A PIL was filed by Dr.R.M Sawain in the High the Court of Dehri on the ground that the 33% reservation law was arbitrary.
- IX. Mrs Fatima Ghansari, a member of the Lower House, brought a motion for the repealing of the 33% reservation law, which was a tool in the hands of the ruling party to achieve their hidden religious agenda to make Indica, a Hindu state under the guise of the amendment to Art. 19(2). Mrs Ghansari also brought to the notice of the House, the sting operation, “Zebra Post”, will reveals the collusion of the ruling party with large media houses, also running a Hindu agenda. Her motion was repealed in the winter as well as the summer sessions.
- X. In consequence to her raising the motion, on 1st May Mrs Ghansari received a threatening call on her landline with dire consequences if she insisted on keeping her stand on repealing the 2006 law. A FIR was lodged the same night by Mrs. Ghansari in the police station of her locality regarding the same. This made Mrs Ghansari, file a petition in the Hon’ble Supreme Court for declaring the reservation law as unconstitutional as it was being used to profess anti-secular agenda. In the same petition she prayed to the Supreme Court, to be provided with adequate security as she feared for her life. She contended that she played the role of a ‘whistle blower’, by bringing out the hidden agenda of the ruling party.
- XI. In an unprecedented event in February, 2018, the three ladies, the instrumental forces behind the passing of the law, were arrested by the Intelligence Agency of Indica, on the grounds of spying for and providing vital State Secrets to the enemy country of Indica with such credible evidences.
- XII. The members of the Wrongrace Party alleged that, Foreign Powers were behind the enactment of the 33% reservation law. A joint motion was introduced by them in the Lower House which was rejected by the Speaker.
- XIII. Not, having any other way, the party filed a PIL in the Hon’ble Supreme Court, alleging the role of enemy state, behind the passing of this law. They prayed before the Court to declare this law as unconstitutional as it was serving the ends of the enemy state.
- XIV. The Supreme Court clubbed both the petitions filed before itself and the petition filed in the High Court of Dehri under Art. 139A of the Constitution.

STATEMENT OF ISSUES

ISSUE I

WHETHER THE PRESENT CASE IS MAINTAINABLE BEFORE THE HON'BLE COURT?

ISSUE II

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?

ISSUE III

WHETHER THE CONSTITUTIONAL AMENDMENT TO ARTICLE 19(2) VIOLATES THE BASIC STRUCTURE OF THE CONSTITUTION?

ISSUE IV

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?

ISSUE V

WHETHER LEGISLATING THE LAW PROVIDING 33% RESERVATION TO WOMEN IN PARLIAMENT AND THE AMENDMENT TO ARTICLE 19(2) SMACKS OF SOME ULTERIOR RELIGIOUS MOTIVES, AND IF SO DO THEY VIOLATE SECULAR PRINCIPLES AND CAN THEY BE CHALLENGED ON THIS GROUND?

ISSUE VI

WHETHER THE PROTECTION OF THE WHISTLE BLOWERS PROTECTION ACT 2014 EXTENDS TO MRS FATIMA GHANSARI?

ISSUE VII

WHETHER THE ARREST OF THE THREE LADIES IS LEGALLY VALID?

SUMMARY OF ARGUMENTS

I. Whether the present petition is maintainable before the Hon'ble Supreme Court of India?

The Petitioners humbly submit before this Hon'ble Court that the petition by Dr. R.M Swain has been transferred under Art.139A. Along with this the petitions by Mrs Ghansari and Wrongrace Party, clubbed by the Hon'ble Supreme Court. It is submitted by the Petitioners that the 33% reservation law is discriminatory in nature and violative of the basic structure of the Constitution. Further, the laws are anti-secular and the Fundamental Rights enshrined under the Constitution.

II. 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?

It is humbly submitted by the Petitioners that the law providing 33% reservation to women in the Parliament and the amendment to Art.19(2) are arbitrary and violative of the concept of equality. The arguments are twofold. Firstly, the reservation of seats for women is arbitrary in nature. Under Art.15(3) special powers are provided to the State to make special laws for women and children. However, the laws may be discriminatory it shall be intra-vires to the Constitution. The reservation that shall be provided should be Horizontal. Secondly, the Amendment to Art.19(2) is arbitrary as it is against the Basic Structure. The provision gives excessive rights to women which is violative of the Fundamental Right to Equality.

III. Whether the Constitutional amendment to Article 19(2) violates the basic structure of the Constitution?

The Petitioners humbly submit before this Hon'ble Court that amendment to Art.19(2) violates the basic structure of the Constitution and should hence be struck down. No amendment can take away the Fundamental Rights of the citizens and thus should be declared ultra vires to the constitution. The maintenance of communal harmony is the duty of the state and it has been violated. To affirm the same reasonable restrictions on speech should be allowed so as to not give rise to communal tensions.

IV. Whether legislating the law providing 33% reservation to women in Parliament and the amendment to Article 19(2) smacks of some ulterior religious motives, and if so, do they violate secular principles and can they be challenged on this ground.

It is humbly submitted by the Petitioners that the law providing 33% reservation to women in Parliament and the amendment to Art.19(2) smacks of some ulterior religious motives and they violate the secular principles. The State is indulging in spreading the Hindu agenda through spite speeches which is creating communal disharmony along with exposing the minorities to threat. The law introduced is instrumental in propagating the same. This was further proved by a sting operation which was carried out. The anti-secular motive of the party along with the hate speech brings out the ulterior motive of the Ruling Party violating the secular principles.

V. 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?

The Petitioners humbly submits before this Hon'ble Court that any law which is enacted under the influence of a foreign power may be struck down. The Sovereignty of India is an essential aspect of the basic structure and something that should never be violated. The law should not be such that it is serving the motive of any external power. The second submission of the Petitioners is that, any law which gives rise to communal disharmony too should be struck down for it effects the unity of the country. It is humbly submitted before the Hon'ble Court that this petition be allowed.

VI. Whether the protection of the Whistle Blowers Protection Act,2014 extends to Mrs Fatima Ghansari?

The Petitioners humbly submits that the protection under the Whistle Blowers Protection Act, be extended to Mrs Fatima Ghansari as she has played the role of a whistleblower in bringing out the ulterior motives of the Ruling Party. She was instrumental in apprising the House about the sting operation which brought out the hidden agenda of the Party. Most importantly, Mrs Ghansari's actions were for the welfare of the people and in public good, which is the most essential pre-requisite for protection under the Whistle Blowers Protection Act.

VII. Whether the arrest of the three ladies was legally valid?

The Petitioners humbly submits that the arrest of the three ladies, was legally valid. The arrest was made on basis of the credible evidence by the Intelligence Agency which stated that they were spying and providing vital State secrets to enemy country of Indica. It is thus stated that the arrests were made in compliance to all judicial precedents, hence it is valid.

MEMORANDUM OF ARGUMENTS FOR THE PETITIONER

ARGUMENTS ADVANCED

I. WHETHER THE PRESENT CASE IS MAINTAINABLE BEFORE THE HON'BLE COURT?

It is humbly submitted by the petitioners, before the Hon'ble Court, that the petitions filed by the three petitioners have the locus standi to appear before the court and are maintainable. The petition filed by Dr. R.M. Swain has been transferred u/Art.139A and has been taken up together clubbed with the other petitions, by this Hon'ble Court.¹

1. The PIL filed by R.M. Swain is maintainable

Dr. R.M. Swain is a bona-fide public spirited citizen who has originally filed the PIL, praying for declaring the law on reservation to be unconstitutional, at Dehri HC and now stands transferred to this Hon'ble Court u/Art.139A.² It is submitted that the jurisdiction of the court can be invoked by the petitioner, a public spirited citizen for the enforcement of interest of the aggrieved class of men³ as the interest of the masses of the society are compromised on introduction of the laws. In the present matter, the laws are discriminatory in nature, wherein the discrimination is solely based on sex, thereby violating the right to equality of the men in the society. Such discrimination is against the rule of law which comprises of equality of law⁴ and it is a basic feature which permeates the whole of the constitutional fabric.⁵ In *D.C. Wadhwa v. State of Bihar*⁶, the Hon'ble SC held that, any law which is against the rule of law, can be challenged by a member of the public by filing a writ petition and its constitutional validity constitutional duty of the court to adjudicate upon the validity of such laws. Thus, he being a bona-fide litigant and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi⁷ and can approach the court to wipe out violation of fundamental rights u/Art.14.⁸ Therefore, it is submitted by Dr. R.M. Swain that the writ filed

¹ Moot Compromis, ¶22.

² Moot Compromis, ¶13 and ¶22.

³ Mohan Singh Bora v. Union of India, 2011 (1) U.D. 164.; Janata Dal v. H.S. Chowdhury, AIR 1993 SC 892.

⁴ His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461.

⁵ Sub-committee on Judicial Accountability v. Union of India, AIR 1992 SC 320.; Supreme Court Advocates-on-Record Association and Ors. v. Union of India; AIR 1994 SC 268.

⁶ Dr. D.C.Wadhwa and Ors. v. State of Bihar and Ors., AIR 1987 SC 579.

⁷ Videh Upadhyay, *Public Interest Litigation in India*, (1st Ed., 2007).

⁸ Janata Dal v. H.S. Chowdhury, AIR 1993 SC 892; Ashok Kumar Pandey v. State of W.B. AIR 2004 SC 280; Dattaraj Nathuji Thaware v. State of Maharashtra and Ors., AIR 2005 SC 540; Bandhua Mukti Morcha v. Union of India, AIR 1992 SC 38.

by him is in public interest and is maintainable as the laws passed by the State is against the fundamental rights of the society at large.

2. The PIL of Mrs. Fatima Ghansari is maintainable.

Mrs. Fatima Ghansari, is an independent member of the Parliament⁹, who has filed the PIL before this Hon'ble Court, praying for declaration of the law on reservation and amendment to Art.19(2) as unconstitutional as well as for protection of that of a Whistle Blower as she had played the role of the same against the ruling party after receiving an anonymous threat call.¹⁰ It is submitted that, though, the petition also seeks for the redressal of her personal grievances, the Court in furtherance of Public Interest shall treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice, thus, her private interest of protection against threats shall be treated as a public interest case¹¹ The PIL was filed also based on the threat call received by her, however, to file the writ, she need not wait for the threat to occur in reality.¹² It is further submitted, that the laws are anti-secular in nature, as it leads to communal disharmony and has pushed the State towards religious extremism and intolerance.¹³ Therefore, these anti-secular actions of the Ruling party are violating the principles of Democracy and Secularism and also the Fundamental Right of the minorities' u/Art.25, thereby violating the Basic Structure¹⁴. In *Bandhua Mukti Morcha v. UOI*¹⁵ it was held that u/Art.32, the Court must allow any bona-fide member of the public to file a petition, whose fundamental rights are violated at large.¹⁶ In the present matter, Mrs. Ghansari is a representative of the minority community, therefore, she has the locus standi to represent disadvantaged section¹⁷ as it is the duty of the State to preserve communal harmony¹⁸ and as actions of the State has infringed the freedom of religion u/Art.25¹⁹. Therefore, it is submitted

⁹ Moot Clarifications, Point 23.

¹⁰ Moot Compromis, ¶16, ¶17 and ¶18.

¹¹ *Indian Banks' Association, Bombay and Ors. v. M/s Devkala Consultancy Service and Ors.*, (2004) 11 SCC 1; *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Ors.*, (1987) 1 SCR 458.

¹² *D.A.V. College v. State of Punjab*, (1971) 2 SCC 261.

¹³ Moot Compromis, ¶14.

¹⁴ *S.R. Bommai and Ors. v. Union of India and Ors.*, AIR 1994 SC 1918.

¹⁵ *Bandhua Mukti Morcha v. Union of India*, AIR 1992 SC 38.

¹⁶ *Supra* 7.

¹⁷ "Actions of the Indian government with respect to minority communities", Minority Rights Group International, Universal Periodic Review, 27th session (May 2017), available at <http://minorityrights.org/advocacy-statements/actions-indian-government-respect-minority-communities-universal-periodic-review-27th-session-may-2017>, last seen on 24.08.2018; Banerjee, Paula, "Institutions, Publications and Eminent Individuals Working on Minority Rights", India, available at <http://www.mcrg.ac.in/inst1.htm> last seen on 24.08.2018.

¹⁸ *State of Karnataka and Ors. v. Dr. Praveen Bhai Thogadia*, (2004) 4 SCC 684; *Dr.Das Rao Deshmukh v. Kamal Kishore Nanasaheb Kadam and Ors.*, AIR 1996 SC 391.

¹⁹ *Supra* 14; *Mahanagar Ghaziabad Chetna Munch through its President, Sri Ram Avtar Agarwal and Ors. v. State of U.P. through Principal Secretary and Ors.*, 2007 (1) ADJ 77.

that Mrs. Ghansari has the locus standi to approach the court through a PIL filed u/Art.32 as the laws passed by the State is against the fundamental rights of the society at large.

3. The PIL filed by Wrongrace Party is maintainable.

The “Wrongrace Party” constitutes the Opposition Party and has approached the court u/Art.32 of the Constitution by filing a PIL. A political party is a legal person²⁰ and therefore, as a bonafide legal person can file a petition representing the aggrieved disadvantaged communities for public interest, on violation of their fundamental rights²¹. In the present matter, the security and sovereignty of the nation is also endangered, as the laws are passed under foreign influence, which is against the sovereignty of the nation. Sovereignty constitutes the Basic Structure²², and when any law which is violative of the Basic Structure, the locus standi of the petitioner arises²³. Therefore, it is submitted that “Wrongrace Party” has the locus standi to file the PIL, before the Hon’ble Court and thus, is maintainable.

Hence, in the light of the submissions made, it is humbly submitted that, since, the laws passed by the State violates Fundamental Rights of the citizens, along with the violation of the Basic Structure of the Constitution, the PILs filed by the three petitioners shall be held maintainable.

II. 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?

It is humbly submitted before the Hon’ble Court that the law providing for 33% reservation to women in the Parliament and the Amendment to Art.19(2) are not consistent with the concept of equality enshrined under Art. 14 of the Indian Constitution and is arbitrary in nature, and also violative of the concept of equality. The petitioners submit the following arguments to affirm the same.

1. Reservation of Seats for women is arbitrary in nature.

Art.15(3) provides a special power to the State to make special laws for women and children, and even though the law may be discriminatory and based on sex, violating Art.15(1), such law shall be intra-vires to the Constitution.²⁴ However, in case of reservation for women, the reservation which is protected u/Art.15(3) should be Horizontal in nature within the quota

²⁰ Smt. Kittur Yasmin Riyaz and Anr. v. Deputy Commissioner and Ors., ILR 2009 KARNATAKA 47.

²¹ Supra 8.

²² Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

²³ Supra 8; Dr. Subhash C. Kashyap, *Constitutional Law of India*, Vol.3, (2nd Ed., 2015).

²⁴ Dattatraya v. State of Bombay, AIR 1953 Bom 311.

already established u/Art.16(4).²⁵ In 2006, the State passed a law prescribing 33% reservation for women in the Parliament.²⁶ While discussing reservation for women, the Hon'ble Apex Court differentiated between Vertical Reservation and Horizontal Reservation, wherein the court held that the former includes social reservation in favour of SC, ST and OBC u/Art.16(4)²⁷ and the latter includes special reservation extending to the women within the ambit of Art.16(1) and Art.15(3)²⁸, moreover, such special reservation can cut across all vertical reservations.²⁹ The Apex Court in *Indira Sawhney v. UOI*³⁰ held that Vertical reservation in cases of offices under State³¹ is barred by Art.16(2). Moreover, in case of special social reservation for women, it would attract women from both backward and forward classes. In this case, the law passed by the parliament, provides for a separate vertical reservation for women in the Parliament and therefore, relying upon the judgement given by this Hon'ble Court in the this case³², it is submitted that if reservations are kept for women as a separate class under Art.16(1), the same inequitous phenomenon will emerge. The women from the elite classes referred to as "*Parkati Mahilayen*"³³ will secure all the posts, leaving no post for the backward classes. It will amount to indirectly providing statutory reservations for the advanced classes, which is impermissible under any of the provisions of Art.16.³⁴ The women are already provided a quota in the respective class, therefore, there is no need to keep a special quota for women u/Art.16 and have achieved the status of equality, requiring no more reservation³⁵. It is further submitted by the petitioners that only horizontal reservation or quota for women within the vertical reservation would only be constitutional. This is because such horizontal reservation is allowed u/Art.15(3) and any formation of separate social reservation would lead to vertical reservation which will be ultra-vires to the Constitutional provisions and arbitrary in nature.³⁶ The same has been reiterated by the judiciary in many other cases.³⁷ Further, in a

²⁵ P. Katama Reddy v. Revenue Divisional Officer, 1998 (1) ALD 136.

²⁶ Moot Compromis, ¶9.

²⁷ Art. 16(4), The Constitution of India, 1950.

²⁸ Rajesh Kumar Daria v. Rajasthan Public Service Commission & Ors., (2007) 8 SCC 785.; See also Kumari Sheela Phowagat v. State of Rajasthan, Civil Writ Petition. No. 5689/2011, (Raj HC, 15.07.2011).

²⁹ Ajit Singh v. State Of Haryana and Ors., Civil Writ Petition No.18738 of 2009, (P&H HC, 06.09.2011).

³⁰ Indira Sawheny v. Union of India and Ors., AIR 1993 SC 477; See Also R.K.Sabharwal v. State of Punjab, 1995 (2) SCC 745.

³¹ 179th Law Commission of India Report, *The Public Interest and Protection of Informer*, (2001), available at <http://lawcommissionofindia.nic.in/reports/179rptp1.pdf>, last seen 16.08.2018.

³² Supra 25.

³³ Moot Compromis, ¶10.

³⁴ Supra 25, ¶608.

³⁵ Ashok Kumar Malpani and Anr. v. State of M. P. and Ors., 2010 (1) MPLJ 229

³⁶ Neelam Rani v. State of Punjab and Ors., ILR (2010) 2 P&H 204.

³⁷ Public Service Commission, Uttaranchal v. Mamta Bisth & Ors., (2010) 12 SCC 204.

Parliamentary Committee Report it is stated that quota will only help elite women who are proxy of powerful men. Therefore, there is no need for reservation for women in the Legislatures.³⁸

Moreover, while deliberating on the reservation for women in the Constituent Assembly, it was submitted that reservation of seats for women would lead to questioning of the competencies of the women parliamentarians, and further, there are women members already in the parliament through their merit and capability. Therefore, there is no requirement of reservation of seats particularly for women as they are capable and in an equal footing with the men.³⁹

Therefore, any law making separate reservation for women should be declared arbitrary and violative of Art.14 and such an arbitrary law should be struck down on the grounds of arbitrariness.⁴⁰

2. The Amendment to Art.19(2) is arbitrary and is violative of Art.14.

The Amendment to Art.19(2) introduced a proviso providing only few reasonable restrictions to the freedom of speech and expression to the women.⁴¹ Though this proviso upholds special provision⁴² for the women, however, the proviso is also subjected to the test of Intelligible Differentia⁴³ and the reasonable nexus with the object of the Statute⁴⁴. The special proviso in the form an amendment is discriminatory in nature as it provides excessive rights to the women. Such excessive rights are against the right to equality of men as they are subjected to more grounds of reasonable restrictions on freedom of speech and expression⁴⁵. Such discrimination in favor of women is not required because, freedom of speech is allowed to all citizens without any discrimination. In *Minerva Mills Ltd. v. UOI*, it was held that fundamental rights are subjected to reasonable restrictions to protect the rights of the citizens.⁴⁶ Though, in this case, the proviso was introduced u/Art.15(3), it should not be allowed to encroach upon the right to equality of the other citizens of the country. Chandrachud J. had enlisted “equality of

³⁸ Department Related Parliamentary Standing Committee On Personnel, Public Grievances, Law And Justice, Rajya Sabha, *Thirty Sixth Report On The Constitution (One Hundred And Eighth Amendment) Bill, 2008*, December, 2009.

³⁹ Statement by Mrs. Renuka Roy, Volume 4, CAD, 18.07.1947; Krishna Pal Malik and Dr. Kaushik C. Raval, *Law and Social Transformation in India*, (3rd Ed., 2012).

⁴⁰ *People's Union for Civil Liberties v. Union of India*, AIR 2005 SC 2419; *Ajay Hasia v. Khalid Mujib*, (1981) A. SC. 487; H.M. Seervai, *Constitutional Law of India, Vol. 1*, (4th Ed., 2015).

⁴¹ Moot Compromis, ¶11.

⁴² Art. 15(3) of Constitution of India, 1950.

⁴³ *Dhirendra Pandua v. State of Orissa*, (2008) 17 SCC 311.

⁴⁴ Dr. Subhash C. Kashyap, *Constitutional Law of India, Vol. 1*, (2nd Ed., 2015); H.M. Seervai, *Constitutional Law of India, Vol. 1*, (4th Ed., 2015); *Manmad Reddy v. Chandra Prakash Reddy*, AIR 2010 SC 1001; one of the principles enunciated In *Re: Special Courts Bill*, by the Seven-judge Bench, AIR 1979 SC 478.

⁴⁵ Art. 19(1)(a), Constitution of India, 1950.

⁴⁶ *Minerva Mills Ltd. and Ors. v. Union of India and Ors.*, AIR 1980 SC 1789.

opportunity and status” as one of the fundamental elements of the basic structure.⁴⁷ The Hon’ble Apex Court, held that constitutional amendment would be liable to be declared invalid to the extent to which it damages or destroys the basic structure of the Constitution by according protection against violation of any particular fundamental right⁴⁸. The same was reiterated in subsequent cases, making equality as an important part of the Golden Triangle⁴⁹ and violation of the same means, violation of the basic structure.⁵⁰

Therefore, while applying the test of arbitrariness to this amendment, it can be found that the law providing special provision to women is unreasonable and violative of fundamental rights of the citizens and that there is no nexus with the object of Art.15(3). Thus, the law is discriminatory in nature, as it provides undue advantage to the women and on the grounds of arbitrariness it should be held unconstitutional.

Hence, in the light of the submissions made, it is humbly submitted that the law providing 33% reservation to women and the amendment to Art.19(2) should be struck down on grounds of arbitrariness and violative of right to equality.⁵¹

III. WHETHER THE CONSTITUTIONAL AMENDMENT TO ARTICLE 19(2) VIOLATES THE BASIC STRUCTURE OF THE CONSTITUTION?

It is humbly submitted before the Hon’ble Court that the Constitutional Amendment to Art.19(2) violates the Basic Structure of the Constitution and therefore, it should be declared unconstitutional and struck down by the Hon’ble Court. The petitioners submit the following argument to affirm the same

1. Amending power does not extend to the Basic Structure.

In 2015, the women laden Parliament amended Art.19(2), thereby introducing a proviso providing very few limitations on the freedom of speech and expression⁵² of women.⁵³ The newly inserted proviso is an amendment to Part III of the Constitution and falls within the purview of judicial review⁵⁴ and the Parliament cannot abrogate or take away any fundamental

⁴⁷ Indira Gandhi v. Raj Narain. AIR 1975 SC 2299; A.K. Behara v. Union of India, (2010) 11 SCC 322.

⁴⁸ Supra 41; Dr. Subhash C. Kashyap, *Constitutional Law of India, Vol. I*, (2nd Ed., 2015).

⁴⁹ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁵⁰ I.R. Coelho (dead) rep. by L.Rs. v. State of Tamil Nadu and Ors., AIR 2007 SC 861.

⁵¹ Art.14, Constitution of India, 1950.

⁵² Art. 19(1)(a), Constitution of India, 1950.

⁵³ Moot Compromis, ¶11.

⁵⁴ Art.13(2), Constitution of India, 1950.

right by exercising amending power.⁵⁵ In the case of *Kesavananda Bharati v. State of Kerala*⁵⁶, the Hon'ble SC, decided that the fundamental rights formed part of the basic structure and the Parliament cannot destroy the basic structure of the Constitution. Since power to amend the Constitution is not unlimited, if changes brought about by amendments destroy the identity of the Constitution, such amendments would be void.⁵⁷ The concept of basic structure was further developed by the Supreme Court and it is now established that the basic features cannot be altered even by constitutional amendments.⁵⁸ The amendment strikes at the fundamental rights of other citizens, and therefore, it is impermissible to it is impermissible to destroy Art.14 and 15 or abrogate or *en bloc* eliminate these Fundamental Rights.⁵⁹

Thus, it is humbly submitted that the amendment should be struck down and declared ultra-vires, as it showcases, sheer misuse of amending power and is such amendment is violative of the basic structure of the Constitution.

2. Anti-Secular nature against Basic Structure

Maintaining communal harmony is the duty of the State and reasonable restrictions should be imposed on the freedom of speech⁶⁰. Such amendment by the State, under the cover of special provision for women, is against the concept of secularism⁶¹ and right to religious beliefs⁶². This is because, this amendment led to the misuse of the amendment for establishing the agenda of the political party by delivering anti-secular and venomous hate-speeches against the minority communities.⁶³ Secularism is a part of the basic structure of the Constitution⁶⁴ and any amendment which allows anti-secular activities should be struck down. The SC has ruled that the State has no religion and State has to treat all religions and religious people equally and with equal respect.⁶⁵ However, the same has been violated by ruling party while spreading hate-

⁵⁵ Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845; Sanjay S. Jain and Sathya Narayan, *Basic Structure Constitutionalism*, 5,17 (1st Ed., 2011).

⁵⁶ Supra 4.

⁵⁷ Supra 48.

⁵⁸ Wamman Rao v. Union of India and Ors., AIR 1981 SC 271.; Bhim Singh v. Union of India, AIR 1981 SC 234.

⁵⁹ Supra 48, ¶66; Dr. Subhash C. Kashyap, *Constitutional Law of India*, Vol. 3, (2nd Ed., 2015); H.M. Seervai, *Constitutional Law of India*, Vol. 3, (4th Ed., 2015).

⁶⁰ State of Karnataka and Ors. v. Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684.

⁶¹ Preamble, The Constitution of India, 1950.

⁶² Art. 25, The Constitution of India, 1950.

⁶³ Moot Compromis, ¶12.

⁶⁴ Supra 4; Dr. Subhash C. Kashyap, *Constitutional Law of India*, Vol. 3, (2nd Ed., 2015).

⁶⁵ Bal Patil and Anr. v. Union of India, AIR 2005 SC 3172; Dr. Durga Das Basu, *Shorter Constitution of India*, 185 (Justice A.R. Lakshmanan, V.R. Manohar, 14th Ed., 2013).

speeches against other community. This amendment not only strikes at secularism, but also, strikes at the freedom of conscience⁶⁶.

Therefore, it is submitted by the petitioners that the amendment is anti-secular in nature and is violative of secularism, a basic feature of the Constitution, and is liable to struck down.

Hence, in the light of the submissions made, it is humbly submitted that the amendment to Art.19(2) should be held ultra-vires to the Constitution, on the ground of violation of the Basic Structure of the Constitution.

IV. WHETHER LEGISLATING THE LAW PROVIDING 33% RESERVATION TO WOMEN IN PARLIAMENT AND THE AMENDMENT TO ARTICLE 19(2) SMACKS OF SOME ULTERIOR RELIGIOUS MOTIVES, AND IF SO, DO THEY VIOLATE SECULAR PRINCIPLES AND CAN THEY BE CHALLENGED ON THIS GROUND?

It is humbly submitted before the Hon'ble Court that the law providing 33% reservation to women in parliament and the amendment to Art.19(2) smacks of some ulterior religious motives and violates the secular principles and therefore, should be declared void and ultra-vires on the ground of being anti-secular. The petitioners submit the following argument to affirm the same

1. The law and amending power smacks anti-secular motive through hate speeches.

The law for reservation and the amendment to Art.19(2) has been misused by the ruling party under the mask of women, the party has been spreading Hindu agenda against the minorities. The right to freedom of conscience and propagation is subjected to the interest of public order⁶⁷ so that it would not authorize the outrage of the religious feelings of another class, with a deliberate intent.⁶⁸ In this matter, the State has indulged in anti-secular practices through spite speeches and such practices are anti-thesis to secularism which seeks to contribute in some degree to the process of secularization of the matters of religion or religious practices and are liable to held invalid.⁶⁹ Desai J. in a case held that a secular state must have nothing to do with religious affairs except when their management involves crime, fraud, or becomes a threat to

⁶⁶ Art. 25, The Constitution of India, 1950.

⁶⁷ Ibid.

⁶⁸ Ramji Lal Modi v. State of U.P., AIR 1957 SC 620.

⁶⁹ A.S. Narayana Deekshitulu v. State of Andhra Pradesh and Ors., (1996) 9 SCC 548; Dr. Subhash C. Kashyap, *Constituional Law of India*, Vol. 3, (2nd Ed., 2015); H.M. Seervai, *Constitutional Law of India*, Vol. 3, (4th Ed., 2015); M.P. Jain, *Indian Constitutional Law*, (7th Ed., 2016).

unity and integrity of the State⁷⁰ thereby, making the activities carried out by the ruling party invalid.

The hate speeches delivered by the ruling party has exposed minorities to hatred, delegitimizing group members in the eyes of the majority, curtailing their social standing and acceptance within society leading to distress to individual group members.⁷¹ They being anti-secular in nature should be subject to reasonable restrictions to preserve the chore democratic process and to maintain public order and rule of law.⁷² In *S. R. Bommai v. UOI*⁷³, it was held that the right to free profession of religion and exercising right to organize religious congregations does not carry with it the right to make inflammatory speeches, nor speak religious intolerance as an aspect of religious faiths.⁷⁴ Therefore, the ruling party has misused the amending power to create communal disharmony and cannot be allowed to deliver such venomous speeches biased of Hinduism as they have inter-twined religion with politics which is impermissible.⁷⁵ The anti-secular nature of the speeches disrupting public order is against the concept of secular state making it violative of basic structure⁷⁶ and constitutes an illegal activity.

Therefore, it is submitted by the petitioners, that the law of reservation and the amendment smacks anti-secular motive as it propagates Hindu agenda under the farce of freedom of speech and expression enjoyed by the women parliamentarians.

2. Sting Operation proves the propagation of Hindu Agenda.

The sting operation conducted by Zebra Post, a media house proves that the ruling party has been engaged in propagating Hindu agenda.⁷⁷ The sting operation conducted, forms a part of the right of the citizens to know each and every public act, everything that is done in a public way by their public functionaries⁷⁸ and also the act carried out by the media house falls within the ambit of their right to freedom of press⁷⁹. Further, the court should not look into the motive of the persons who engineered the sting operation, leading to the material being brought into public domain through electronic media.⁸⁰ Moreover, in this matter, the purpose of the media

⁷⁰ Ziauddin Burhamuddin Bukhari v. Brijmohan Ramdas Mehra, 1975 Suppl. SCR 281.

⁷¹ Pravasi Bhalai Sangathan v. Union of India, (2014) 11 SCC 47.

⁷² State of Karnataka and Ors. v. Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684.

⁷³ S.R. Bommai and Ors. v. Union of India and Ors., AIR 1994 SC 1918.

⁷⁴ H.M. Seervai, *Constitutional Law of India*, Vol. 2, (4th Ed., 2015); Dr. Durga Das Basu, *Shorter Constitution of India*, 186,187 (Justice A.R. Lakshmanan, V.R. Manohar, 14th Ed., 2013).

⁷⁵ Supra 71.

⁷⁶ Dr. Ismail Faruqui & Others v. Union of India, AIR 1995 SC 605.

⁷⁷ Moot Compromis, ¶14.

⁷⁸ State of U.P. v. Raj Narain, AIR 1975 SC 865.

⁷⁹ Art.19(1)(a), Constitution of India, 1950; Bennet Coleman v. Union of India, AIR 1973 SC 106.

⁸⁰ Ram Pal v. The Hon'ble Speaker, Lok Sabha and Ors. (2007) 3 SCC 184.

house is to advance the public interest by publishing facts and opinions⁸¹. In *Anirudha Bahal v. State*, the Del HC, while upholding the constitutional validity of publication of sting operation, stated that it is the fundamental duty⁸² of the media houses as citizens u/Art.51A(h) and Art.51A(j), to expose any corruptive practices which they have knowledge of, to move towards a corruption free state and if possible along with proof⁸³, which in this case includes the videotaping. The SC has also upheld the legitimacy of sting operations as in view of larger public interest it serves an important public cause.⁸⁴ The same was reiterated in another case, where sting operations were held to be a permissible means to expose illegal activity in view of Public Accountability and Vigilance.⁸⁵

Therefore, it is submitted that the publication sting operation is valid and is a proof for the anti-secular practices carried out by the ruling party as they brought into light the “Hindu” agenda carried out by the ruling party, which is of larger public interest as it is important to expose the illegal activities carried out by the ruling party.

Hence, in the light of the submissions made, it is humbly submitted that considering the sting operation as proof of Hindu agenda and the hate speeches delivered by the ruling party, it shall be held that they have some ulterior religious motive and are violating the secular principles set by the Constitution.

V. 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?

It is humbly submitted before the Hon’ble Court that the law providing 33% reservation to women in parliament and the amendment to Art.19(2) should be struck down on the grounds that it serves the motive of the foreign power and has become a tool of communal politics. The petitioners submit the following argument to affirm the same.

1. Any law enacted under the influence of a foreign power may be struck down.

In the year 2006, RJP, had suddenly passed the law providing 33% reservation to women and following this, in 2015, passed a constitutional amendment, thereby inserting a proviso to Art.19(2), imposing very few reasonable restrictions on the women. Consequently, the laws

⁸¹ Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641.

⁸² Part IV-A, Constitution of India, 1950.

⁸³ Anirudha Bahal v. State, 172 (2010) DLT 268.

⁸⁴ R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106.

⁸⁵ Rajat Prasad v. Central Bureau of Investigation, (2014) 6 SCC 495.

were misused through hate speeches against minority communities. There were subsequent communal riots, thereby disturbing public order. It is also an allegation that some foreign power has a role in passing the law that provides for 33% reservation.⁸⁶ Sovereignty is a part of the Basic Structure of India and the same must never be violated.⁸⁷ India is a sovereign country according to the Preamble of India.⁸⁸ Cooley defined a sovereign state as one “where there resides within itself a supreme and absolute power acknowledging no superior.”⁸⁹ While drafting of the Constitution, the Constituent Assembly moulded no new sovereignty, it merely gave a shape to the aspirations of the people, by renouncing the influence of any foreign power and evolving into a completely democratic form of Government as a republic.⁹⁰ The Republic of India is sovereign because it could make or unmake any decision with respect to itself without any interference from outside.⁹¹

India being a sovereign is a state that can make any law which it may deem fit for the welfare of its people. India can enact legislations that give effect to international covenants.⁹² But, it cannot enact any Law to serve the motive of any foreign power or under the influence of a foreign power. India has the power to make laws in order to maintain international peace⁹³ but then also the act of passing a law under the influence of a foreign power is not allowed. There has also been judicial pronouncement where the Hon’ble Court has struck down a provision of Law since it was influenced by a foreign Law.⁹⁴

2. Any law that gives rise to communal disharmony ought to be struck down.

Secularism is a part of the Basic Structure of the Indian Constitution.⁹⁵ Secularism is not atheism but just equal tolerance towards all religion.⁹⁶ Communal politics is mere impediment to the functioning of the Constitution and perpetuation of communal politics must be avoided at any cost.⁹⁷ The then PM declared that secularism was an ideal to be achieved and that establishment of a secular state was an act of faith. The term “secular” is advisedly not been

⁸⁶ Moot Compromis ¶20.

⁸⁷ Supra 4.

⁸⁸ Indira Nehru Gandhi v. Raj Narain AIR 1975 SC 2299. See also: Vijay Shankar Pandey v. Union of India, AIR 1984 SC 363, Ajit Chakraborty v. State of Tripura, 2017 1 TLR 184, Govt. of NCT of Delhi v. Union of India 2018 (8) SCALE 72.

⁸⁹ Dr. Subhash C. Kashyap, *Constitutional Law of India, Vol. 1*, (2nd Ed., 2015).

⁹⁰ State of Gujarat v. Vora Fiddali Badruddin, AIR 1964 SC 1043.

⁹¹ Kesavananda Bharti v. Union of India, AIR 1973 SC 1461.

⁹² Art. 253, The Constitution of India, 1950.

⁹³ Art. 51, Constitution of India, 1950.

⁹⁴ George Swamidoss Joseph v. Miss. Harriet Sundari Edward, AIR 1955 Mad 341.

⁹⁵ Supra 4.

⁹⁶ A.R. Blackshield, *Socialism and Social Control in the West- The Material and the Ethereal*, in, *Secularism: Its Implications for Law and Life in India*, (G S Sharma (ed), N M Tripathi, 1966).

⁹⁷ Statement by Mr. Raj Bahadur in Volume 7, CAD, 04.11.1948.

defined presumably because it is a very elastic term not capable of a precise definition and perhaps best be left undefined.⁹⁸ Anything that is pernicious and exploitative cannot be allowed to remain outside the control of Law simply because it is paraded under the garb of religion.⁹⁹ In a case¹⁰⁰, being a secular state, no policy can be enacted on grounds of taxation that violate the secular principles of the state. The state shall make laws uniformly and thus no particular community or religion should be preferred over another. State is obliged under the Constitution to treat persons belonging to all faiths and religions with equality. The Acquisition of Certain Area at Ayodhya Act, 1933 was under challenge in a case¹⁰¹. The Case was based on a reference which favoured one religion over another, thus the reference itself was against the principles of secularism. The reference was thus declared unconstitutional. Even the aforementioned Act provided for acquisition of land for setting up Hindu structures. As it was opposed to secular principles, the Acquisition of Certain Area at Ayodhya Act, 1993, was struck down as being unconstitutional. In another case¹⁰², a law¹⁰³ was partly struck down as there was a provision which was biased towards Hindus. It was declared unconstitutional for being against the spirit of secularism.

Under the light of these submissions, it is humbly submitted that a Law can be struck down if it leads to communal disharmony or opposes secularism.

VI. WHETHER THE PROTECTION OF THE WHISTLE BLOWERS PROTECTION ACT, 2014 EXTENDS TO MRS. FATIMA GHANSARI?

It is humbly submitted before the Hon'ble Court that the protection of the Whistle Blowers Protection Act, 2014 (hereinafter referred to as the "Act") extends to Mrs. Fatima Ghansari as she is a claimed whistle blower in the present matter. The petitioners submit the following argument to affirm the same.

1. Mrs. Fatima Ghansari is a Whistle blower.

Mrs. Fatima Ghansari has played a pivotal role in this matter. She is an independent member of the Lok Sabha¹⁰⁴. She has filed the instant petition in the SC asking to strike down the reservation law and the constitutional amendment as it was *prima facie* unconstitutional

⁹⁸ S.R. Bommai and Ors v. Union of India and Ors. AIR 1994 SC 1918.

⁹⁹ M.H. Beg J., *Impact of Secularism on Life and Law*, 61 (1st Ed.,1985).

¹⁰⁰ State of Gujarat v. The I.R.C.G., Civil Appeal No: 3249 of 2016 (Supreme Court, 09.08.2017).

¹⁰¹ Md. Ismail Faruqui v. Union of India, AIR 1995 SC 605.

¹⁰² Mohd. Hanif Quareshi v. State of Bihar, AIR 1985 SC 731.

¹⁰³ Bihar Preservation and Improvement of Animals Act, 1955.

¹⁰⁴ Point 23 of Clarifications.

because it was disrupting communal harmony of the country and was functioning against the Constitutional provisions.¹⁰⁵

She apprised the House about a 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. Mrs. Ghansari, who is a MP is also a public servant.¹⁰⁶ Thus, she is also a subject to the Act. One of the basic requirements of a person being accepted as a “whistle blower” is that his/her primary motive for the activity should be in furtherance of public good.¹⁰⁷ Moreover, criticism of Government Policies is also not prohibited.¹⁰⁸ A whistle blower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption¹⁰⁹. Hence she was a Whistle Blower under S.4 of the Act.

2. Mrs. Fatima Ghansari is entitled to be protected under the Act.

S.11 of the Act says that the Central Government will make sure that no person who has made a public disclosure for the welfare of public is made to go through any kind of victimization by way of initiation of any proceedings. Thus, S.11 provides protection to a whistle blower.

On 1st May 2018, Mrs. Ghansari was threatened of dire consequences over an anonymous phone call, she continues to insist revocation of the laws in question. Later, she informed the Speaker about this. Mrs. Ghansari had made many disclosures for the public good and had made people aware of the corruption that was going on in the higher government.

A whistle blower who makes any disclosure in public interest to a competent authority deserves to be protected *in toto* by the Court.¹¹⁰ Here Mrs. Ghansari had made *bonafide* disclosures based on public interest. Hence, she must be protected under the Law for she was just exercising her right to free speech¹¹¹. As the disclosure by Mrs. Ghansari is made in public-interest and is *bona fide* in nature, then she ought to be protected under S.11 of the Act.¹¹² Good faith whistle

¹⁰⁵ Moot Compromis, ¶17.

¹⁰⁶ State of Karnataka v. Selvi J. Jayalalitha (2017) 6 SCC 263. See also: J. Jayalalitha v. Union of India, 1999 5 SCC 138, Dilip Parulekar v. Aresh Rodriguez, MANU/MH/2004/2018.

¹⁰⁷ Manoj H.Mishra v. Union Of India, MANU/SCOR/11105/2013.

¹⁰⁸ S. Rangarajan v. P. Jagjivan Ram, 1989 (2) SCC 574.

¹⁰⁹ Indirect Tax Practitioners Association v. R.K. Jain, AIR 2011 SC 2234.

¹¹⁰ Ibid.

¹¹¹ Art. 19(2), Constitution of India, 1950.

¹¹² Anil Agarwal v. The National Small Industries Corporation Ltd., MANU/CA/0429/2017.

blowers represent the highest ideals of public service and challenge abuses of power.¹¹³ No action can be taken against a whistle blower, which is an act of victimization of the person on account of his/her disclosures. Hence this is by default a defense under the Act.¹¹⁴ Therefore, it is submitted by the petitioners, that Mrs. Ghansari had made bona-fide revelations about the anti-secular agenda of the Ruling Party, in public interest. She also contended herself to be a whistle blower, thereby demanding for security under the Act. Thus, she deserves to be protected under the Act.¹¹⁵

Hence, in the light of the submissions made, it is humbly submitted by the Petitioners, that Mrs. Ghansari being a Whistle Blower is ought to be protected under the Act.

VII. WHETHER THE ARREST OF THE THREE LADIES WAS LEGALLY VALID?

It is humbly submitted, by the Petitioners, that the arrest of the three ladies, namely, Mrs. Garima Dhall, Mrs. Yamini Paul and Mrs. Mannat Raichandani, is legally. The petitioners submit the following argument to affirm the same.

1. The arrest of the three ladies was legally valid.

On 28th February, 2018, three social activists, 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 Indica, on the grounds of spying for and providing vital State Secrets to the enemy country of Indica. The Intelligence Agency had credible evidences behind the arrest. The reason of arrest was also disclosed to the arrestee.

The rights inherent in Art.22(1) of the Constitution require to be recognized and scrupulously protected.¹¹⁶ At the time of arrest, the police officer has to inform the arrestee the reason for arrest.¹¹⁷ It is further submitted that the Intelligence Agency has claimed that it has credible evidence and in the eventuality of display of violence or escape attempts or credible evidence, the person can be arrested and be detained.¹¹⁸ Therefore, since there is credible evidence against the arrestees, there is no reason for the arrest to be illegal.¹¹⁹ Every person who is being arrested

¹¹³179th Law Commission of India Report, *The Public Interest Disclosure And Protection Of Informers*, 40 (2001).

¹¹⁴Parveen v. The Secretary, Union Ministry of Environment, Forests and Climate Change, Original Appeal No. 4081 of 2015, (Central Administrative Tribunal,13.07.2016). See also: S.M. Matloob v. The Director General, ICCR, Original Appeal No. 1894 of 2014 (Central Administrative Tribunal, 11.12.2014).

¹¹⁵ Sri. Sharad Vithal Kohli v. State of Maharashtra, 2016 SCC OnLine Bom 12325; Wigmore, *Evidence Vol. 8*, S. 2378, 792 (McNaughton rev.1961).

¹¹⁶177th Law Commission of India Report, *Law Relating To Arrest*, 38 (2001), available at <http://lawcommissionofindia.nic.in/reports/177rpt1.pdf> , last seen on 01.09.2018.

¹¹⁷ DK Basu v. State of West Bengal, AIR 1997 SC 610; M.P. Jain, *Indian Constitutional Law*, (7th Ed., 2016).

¹¹⁸ Sunil Batra v. Delhi Administration & Ors., AIR 1980 SC 1579.

¹¹⁹ Shankarlal Gyarasilal Dixit v. State of Maharashtra, AIR 1981 SC 765.

should be made aware of the charges based on which he is being arrested. In other words, the grounds of arrest should be disclosed to the arrestee at the time of arrest.¹²⁰ Not just once, a person can be arrested more than once if the grounds of arrest are disclosed.¹²¹ The Government is bound to provide the reason for the arrest and the same was complied with, the arrest is thus valid.¹²² Without proper legal grounds, a person cannot be arrested. However, once credible evidence has been obtained, the person can be arrested.¹²³ Having credible evidence, the police may even have the power to arrest the person without a warrant.¹²⁴ Similarly, in the instant case, warrant was not issued and yet the people were arrested because there was credible evidences. If the arresting authority deems fit that the arrest is necessary on obtaining credible evidence, he may arrest the person under S.41 of the CrPC.¹²⁵ Thus, the acts of the police was in compliance to Art.22¹²⁶. Under these circumstances, it is humbly being submitted before this Hon'ble Bench that the arrest of the three civilians was legal as it was in compliance to all the aforementioned judicial precedents.

2. Right under Art.21 of the ladies are not infringed.

A person can be arrested only if there is credible evidence that the arresting authority has in hand. In the case of *A.K. Gopalan v. State of Madras*,¹²⁷ the SC held that in Art.21, the expression "Procedure established by Law" meant the procedure as laid down in the law was enacted by the Legislature and nothing more. Thus, a person could be deprived of his right to life and personal liberty only by a procedure established by Law¹²⁸ as the cause of arrest is provided.¹²⁹ In the instant case, the civilians were arrested and it was legal, since it was in conformity to the aforementioned judicial pronouncements and as by virtue of Art. 141¹³⁰, it is a known fact that judicial pronouncements are considered binding law of the land and also the CrPC along with Art.22 of the Constitution of India. Hence, in the light of the above submissions, it is further submitted that the civilians were legally arrested and for the very same reason there was no infringement of any right under Art. 21 of the Constitution of India.

¹²⁰ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

¹²¹ *State of Bombay v. Atma Ram Vaidya*, AIR 1951 SC 157.

¹²² Statement by Pocker Sahib Bahadur, Volume 7, CAD, 09.12.1948..

¹²³ *Ateek Ahmad v. State of Uttarakhand*, MANU/UC/0359/2017.

¹²⁴ *Lalit v. State of Uttarakhand*, MANU/UC/0490/2017.

¹²⁵ *Sangita Garg v. State of Uttaranchal*, 2017 (2) N.C.C.163.

¹²⁶ Art.22, Constitution of India, 1950.

¹²⁷ *Supra* 120.

¹²⁸ *M.S.M Sharma v. Krishna Sinha and Ors.*, AIR 1959 SC 395; In the matter of: Under Article 143 of the Constitution of India, AIR 1965 SC 745.

¹²⁹ *Subhash Popatlal Dave v. Union of India and Ors.*, AIR 2012 SC 3370.

¹³⁰ Art. 141, Constitution of India, 1950.

PRAYER

Wherefore in light of the issues raised, arguments advanced and authorities cited, it is humbly prayed that the Hon'ble Supreme Court may be pleased to hold, adjudge and declare that;

1. The Petitions are maintainable on grounds of public interest and that the Hon'ble Court has complete jurisdiction over the matter; and
2. The law providing 33% reservation to women in the Parliament and the Constitutional amendment to Article 19(2) be declared to be arbitrary and further violative of the concept of equality; and
3. The act of legislating a law providing reservation to women in the Parliament and the act of amending Article 19(2) of Indica is violative of the secular principles; and
4. A law that serves the motive of any foreign power or has aided communal disharmony on grounds is violative of the Constitutional provisions and thus, ought to be struck down; and that the Constitutional amendment to Article 19(2) is violative of the basic structure of the Constitution; and
5. The relevant authority must provide protection to Mrs .Ghansari under the Whistle Blower's Protection Act 2014, or any other allied law for the time being in force in Indica; and
6. The arrest of the three civilians is legal and therefore the concerned authority be directed to take appropriate steps as by procedure established by law;

AND/OR

Pass any order that it deems fit in the interest of Justice, Equity and Good Conscience. And for this act of kindness, the Petitioners as in duty bound, shall humbly pray.

Counsels for the Petitioners

MEMORANDUM OF ARGUMENTS FOR THE PETITIONER