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MOOT COURT SOCIETY

16TH GRAND INTRA MOOT COURT COMPETITION, 2022

MOOT PROPOSITION

SONABAI AND ANOTHER

V.

STATE OF CANDYLAND

Indica is a sovereign, socialist, secular and democratic republic. It is a developing country with a population over 1.2 billion, as per the Census conducted in 2011. Its population has increased more than threefold since it became independent in the late 1940s. Indica is a Union of States, one of which is Candyland. Candyland has a population over 110 million. It is largely rural, with its economy being primarily agrarian. Candyland is plagued by various socio-economic issues, including but not limited to widespread poverty, numerous instances of caste atrocities, a dwindling sex ratio owing to rampant female foeticide and infanticide, and burgeoning income inequalities. In 2005, the State of Candyland enacted the Candyland Panchayati Raj Act (hereinafter, "the Act") to constitute Gram Panchayats, Panchayat Samitis, and Zila Parishads for the better administration of rural areas. It sought to bring the law on rural local self-government institutions in conformity with Part IX of the Constitution of Indica. Section 53 of the Act prescribes certain disqualifications for elections to the office of Sarpanch and Panch of Gram Panchayats, and members of Panchayat Samitis and Zila Parishads. *Inter alia*, it provides that no person having more than two living children would be eligible to be elected or continue in the aforementioned positions. The relevant portion of Section 53 reads as under:

"53. No person shall be a Sarpanch or a Panch or a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who:

....

(8) has more than two living children;

Provided that a person having more than two children on or upto the expiry or one year of the commencement of this Act, shall not be deemed to be disqualified"



Sonabai is a homemaker and aspiring politician from the village of Pleasantville in Candyland. Desirous of contesting elections at the Gram Panchayat level, Sonabai was shocked to discover that she was subject to the disqualifications under Section 53 by virtue of the fact that she had three children, born in 2003, 2006 and 2008. Sonabai felt that given the limited say enjoyed by rural women with respect to the issue of family-planning, it was unfair to disqualify women under this provision. Frodo, a local farmer and aspiring politician from the same village belongs to the Kinabi community. Under the personal law of the Kinabi community, its male members are allowed to have up to four wives. Frodo has three wives, who he married in 2006, 2015 and 2022, respectively. He has one child each from his first two wives. Frodo felt that such a disqualification prevented him from leading a full family life guaranteed under the personal law of his faith. Frodo and Sonabai, upon understanding the nature of the disqualification under Section 53 (8) of the Act, approached a lawyer, upon whose advice, they filed a writ petition before the Supreme Court of Indica assailing the constitutional validity of the said statutory provision. The question of the constitutional validity of Section 53 (8) is now pending before a five-judge bench of the Supreme Court. The following issues have been framed as questions of law, with liberty being granted to the concerned parties to frame additional issues:

1. Whether the impugned provision is violative of, *inter alia*, the right to privacy and the right to health guaranteed under Article 21 of the Constitution of Indica?
2. Whether the impugned provision is violative of Articles 14 and 15 of the Constitution of Indica on account of effecting discrimination on the basis of sex and religion?
3. Whether the impugned provision violates the freedom of religion under Article 25 of the Constitution of Indica?

NOTE:

- *The laws of Indica are pari materia to those of India.*
- *The Statement of Objects and Reasons of the Candyland Panchayati Raj Act states that Section 53 (8) was inserted with a view to popularise family planning.*
- *Similar legislation exists with respect to municipalities of Candyland, but not with respect to its State Legislature.*
- *Counsels for both sides are required to address the issues and arguments specifically mentioned in the Proposition. However, they are free to frame sub-issues and make other arguments, that they deem fit.*
- *This moot proposition has been drafted by Shardool Kulkarni, Parasol Foundation International LL.M. Candidate, Tel Aviv University.*