
**IN THE
HON'BLE HIGH COURT OF NIRDHAN**

IN THE MATTERS OF:

PEOPLE'S UNION FOR LIBERTIES & DEMOCRATIC REFORMS.....PETITIONER 1

v.

REPUBLIC OF GARIBARESPONDENT 1

AND

JEOPARDY CONTRACTS INC.....PETITIONER 2

v.

MAXIS BANK.....RESPONDENT 2

ON SUBMISSION TO THE HONOURABLE HIGH COURT OF NIRDHAN

**MOST RESPECTFULLY SUBMITTED
COUNSEL FOR RESPONDENT**

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STATEMENT OF JURISDICTION

The Respondents 1 and 2 humbly submit to the Jurisdiction of this Hon'ble High Court of Nirdhan in response to a petition filed by the Petitioner 1 and 2.

STATEMENT OF FACTS

1. Jeopardy Contracts Inc. (Hereafter referred to as “JCI”) contracted with Jodhpur Gaon Panchayat Samiti (Hereafter referred to as “JGPS”) on 21.9.2011 for the construction of roads in Nirdhan. Disputes arose between the parties leading to the termination of the contract on 21.9.2013.
2. JCI sent a legal notice on 11.12.2014 for invoking arbitration in accordance with the contractual clause.
3. The arbitration culminated into an award dated 21.1.2015 in favour of JCI, which entitled JCI to the money under the performance bank guarantee.
4. On 24.1.2015, JCI wrote to Maxis Bank with a copy of the award, to return the money pertaining to the performance bank guarantee, with the interest accumulated thereon, which was thrice the principal.
5. Meanwhile JGPS filed a petition under Sec. 34 of the Act of 1996, before the High Court of Nirdhan, on 25.1.2015.
6. On 27.1.2015, Maxis Bank informed JCI that the admission of Petition under Sec. 34 amounts to an automatic stay on the award, and therefore until the final outcome of the Sec. 34 petition, it is not obliged to pay anything to JCI.
7. Realizing the difficulty, JCI challenged the constitutional validity of Sec. 34, by way of a writ petition.
8. The Governor of Nirdhan promulgated an Ordinance which amended the Nirdhan Panchayati Raj Act, 1994. This amendment provided for qualification for election as Panch or a member.

9. The Ordinance provided that in case of Zila Parishad or Panchyat Samiti he should pass examination of the Board of Secondary Education. And in case of Sarpanch in a Scheduled Area he should pass class V from a school in Nirdhan. But for Sarpanch in any other area he should pass class VIII from the school in Nirdhan.
10. Aggrieved by the Ordinance the People’s Union for Liberties and Democratic Reforms moved to the High Court during the winter holidays for listing the matter. The matter being urgent as the election notification was to be issued on 3rd of January, 2015. However the listing was denied by the High Court.
11. The People’s Union for Liberties and Democratic Reforms then moved to the Supreme Court under Article 32 of the Constitution through the Vacation Officer. After accepting the papers and affidavit the Vacation Officer informed the petitioner that the instructions from the Chief Justice are awaited.
12. However after 48 hours, repeated messages and reminders were sent to the PPS of the Hon’ble Chief Justice by the Registrar. But no listing was granted till the issuance of election notification. As soon as the election notification was issued the listing was granted and the matter could now be heard by the High Court of Nirdhan
13. A pro-bono petition was finally filed in the High Court challenging the non-availability of the vacation bench and a notified procedure during holidays. Further the Ordinance was being challenged for violating the Part IX of the Constitution and the basic structure of the Constitution along with certain fundamental rights in the petition.

STATEMENT OF ISSUES

A. WP NO. 999/2015.

- I. Whether section 34 is violative of Article 14 of the Constitution?**
- II. Whether pendency of Section 34 applications amounts to expropriation?**

B. WP (C) No. 1021/2015.

- III. Whether the non-availability of a notified vacation bench during any holidays is not unconstitutional?**
- IV. Whether the non-availability of a notified procedure for listing when the Court is not in session is not unconstitutional?**
- V. Whether the election can be questioned once the election notification has been issued?**
- VI. Whether the Ordinance is not ultra vires Part IX, and retroactive?**
- VII. Whether the Ordinance does not violate the basic structure, fundamental rights or any constitutional principles?**

SUMMARY OF ARGUMENTS

I. Section 34 is constitutionally valid.

A. Section 34 is not violative of Article 14.

The Act does not violate Article 14 of the Constitution. The automatic stay mechanism does not contravene the doctrine of reasonable classification and is not arbitrary. It falls within the ambit of permissible classification. It satisfies the dual test of intelligible differentia and rational nexus.

B. Pendency of Section 34 petitions does not amount to expropriation.

“Expropriation” refers to the taking over of an “investment”, by an act of the State, either directly or indirectly. During the pendency of a Section 34 proceeding the application has neither been disposed off nor set-aside. Thus, the Award has not been "taken" or set aside.

II. Non-Availability of a notified vacation bench during any holidays is unconstitutional.

Appointment of a vacation judge is a discretionary power of the Supreme Court. Such discretion being conferred by the Constitution itself, non-availability of a vacation bench cannot be unconstitutional.

III. Non-availability of a notified procedure for listing when the Court is not in session is not unconstitutional.

The Constitution itself gives the discretion to the Supreme Court to formulate its own rules and regulation for the practice and procedure of the Court. There exist rules, which guide the practice of Court for listing urgent matter during vacation. It does not in any way show that there is no procedure laid down for listing of matters when the court is not in session. Therefore the non-availability of a notified procedure for listing when the Court is not in session is not unconstitutional.

IV. Non-grant of listing before the issuance of election notification can affect the merits of the case.

If an election has to be questioned which may interrupt or obstruct the election proceeding, then the judicial remedy can be invoked only after the completion of election. Therefore, non-grant of listing can affect the merits of the case.

V. The Ordinance is not ultra vires Part IX, and retroactive.

Satisfaction of the Governor for promulgation of the Ordinance cannot be judicially reviewed. Article 243 O bars the court from interference in electoral matters. Disqualification is in consonance with Article 243 F and 243 G. Therefore, disqualification is not ultra vires part IX.

VI. The Ordinance does not violate the basic structure, fundamental rights or any constitutional principles.

Right to contest is merely a statutory right; it can be subject to reasonable restrictions. The disqualification satisfies the dual test of intelligible differentia and rational nexus. Therefore, Article 14 is not violated.

ARGUMENTS ADVANCED

I. Section 34 is not violative of Article 14 of the Constitution.

1. Article 14 of the Constitution grants equality before the law and equal protection of the laws.¹ The Supreme Court, through the evolution of case law, has established that Article 14 forbids class legislation, but not reasonable classification.² The two conditions for the test of permissible classification are: (i) Classification should not be arbitrary, artificial or evasive. It must be based on an intelligible differentia and (ii) the differentia must have a rational nexus with the object sought to be achieved by the statute in question.³
2. Section 34 of the Arbitration and Conciliation Act, 1996 (the ‘Act’) facilitates a challenge to the arbitral award on satisfaction of the narrow grounds set forth under the provision.⁴ Judicial review is limited to the decision making process.⁵ Courts play a restricted supervisory role in reviewing the award to ensure fairness to both parties.⁶
3. Under a Section 34 challenge, the Court is barred from interfering with the view of the arbitrator on factual findings. Even an erroneous finding of fact or interpretation of

¹ Article 14

² *Chiranjit Lal Chowdhuri v. The Union of India*, (1950) 1 S.C.R. 869; See also: *State of West Bengal v. Anwar Ali Sarkar*, (1952) Cri.L.J. 510 (para 25); *Budhan Choudhry and Ors v. State of Bihar*, (1955) 1 S.C.R. 1045 (para 7).

³ *State of West Bengal v. Anwar Ali Sarkar*, (1952) CriLJ 510 (para 58).

⁴ Section 34 Indian Arbitration and Conciliation Act, No. 26 of 1996.

⁵ *H.B.Gandhi v. Gopi Nath and Sons*. 1992 Sup 2 S.C.C. 312 (para 8).

⁶ *McDermott International v. Burn Standard Co.Ltd and Ors*. 2006 11 S.C.C. 181 (para 52).

documents/evidence by an arbitral tribunal cannot be interfered with.⁷ The Court is precluded from reappraising evidence.⁸

4. In contrast to Section 34 challenge, in an appeal under Section 96 of the CPC, it is the duty of the Court to adjudicate on merits. The Court must re-appreciate evidence and take cognizance of grounds taken and reasons advanced by the lower court for its finding.⁹ The first appellate Court is duty-bound to consider all evidence on record in its role as the final Court of facts.¹⁰
5. Where a petition is filed under Section 34, an automatic stay on execution of the award is granted. This stay mechanism operates on a strict construction of Section 36 of the Arbitration Act.¹¹ An award can be executed either at the expiry of the limitation period, or on rejection of a section 34 application. Therefore, no execution proceeding can be initiated to enforce any part of such an award during the pendency of a section 34 applications.¹² Thus it is section 36, which inevitably mandates an automatic stay during the pendency of a section 34 applications.
6. In divergence, under the CPC, filing of an appeal would not amount to automatic stay on the execution of the decree. During the pendency of the appeal, a decree holder may get the decree executed.¹³ A separate application must be made for a stay on execution.

The Applicant must satisfy the Court of: a) substantial loss on execution, b) no

⁷ *Associate Builders v. DDA*, 2014 (13) SCALE 226, (page 12).

⁸ *State of UP v. Allied Constrictions*, 2003 7 S.C.C.396, (para 4).

⁹ *Vinod Kumar v. Gangadhar* (2015) 1 S.C.C. 391, (para 19).

¹⁰ *Inbasegaran v. S. Natarajan*, (2014) 12 SCALE 435 (para 34).

¹¹ *National Building Construction Corporation v. Lloyds Insulation India Ltd.*, 2005 2 S.C.C. 367 (para 4).

¹² *Damodar Valley Corporation v. CESC Ltd.* A.I.R. 2005 Cal 67 (para 10)

¹³ Section 96 Indian Arbitration and Conciliation Act, No. 26 of 1996; *See also: Inderchand Jain v. Motilal*, 2009 14 S.C.C. 663 (para 22).

unreasonable delay and c) furnishing of security by the applicant for due performance of the decree.¹⁴

7. It is contended that this differential procedural mechanism for grant of stay is not violative of Article 14.

(i) **Classification is based on Intelligible Differentia**

8. There exists an intelligible differentia between a Section 34 challenge and an appeal under the CPC. For classification to be reasonable, it should be based on an intelligible differentia. The differentia must be based on a real and substantial distinction. It must not be arbitrary, artificial or evasive.¹⁵

9. Section 34 proceedings are neither in the nature of a suit nor an appeal.¹⁶ Through evolution of case law, Courts have repeatedly stressed on the considerable difference between a Section 34 challenge (Judicial Review) and an appeal.

10. Judicial review is an evaluation of the manner in which the award was made, not an appeal from the decision. It is only confined to assessing the decision making process. Factual accuracy or reasonableness of the award is not subject to review.¹⁷

11. The Court only plays a supervisory role to ensure fairness to either party.¹⁸ The scope of enquiry in a Section 34 proceeding is whether any of the grounds mentioned under

¹⁴ Order XLI, Rule 5, Civil Procedure Code, 1908.

¹⁵ *Javed v. State of Haryana*, A.I.R. 2003 S.C. 3057 (para 8).

¹⁶ *NHAI v. Oriental Structure Engineers*. A.I.R. 2013 Del 67 (para 6).

¹⁷ *H.B.Gandhi v. Gopi Nath and Sons*. 1992 Sup 2 SCC 312 (para 8).

¹⁸ *McDermott International v. Burn Standard Co.Ltd and Ors*. 2006 11 S.C.C. 181 (para 52).

Section 34(2) exist. Courts may *suo motu* set aside the Award on finding that such grounds exist.¹⁹

12. The Court is not at liberty to appreciate evidence unlike an Appeal under the CPC.²⁰ In an appeal, Courts may examine facts; take cognizance of grounds taken and reasons advanced by the lower court for its finding.²¹ Clearly, Section 34 proceedings are in complete contradistinction to an appeal under the CPC.

13. It is humbly asserted that an intelligible differentia exists between judicial review under Section 34 of the Arbitration Act and a first appeal under Section 96 of the CPC.

(ii) The differentia has a rational nexus with the object of the act

14. Intelligible differentia and rational nexus are the twin tests of reasonable classification.²² The differentia, which is the basis of the classification and the object of the Act are distinct, and it is necessary for a nexus to exist between them.²³

15. The differentia, it is contended, is in consonance with the objective of the Arbitration Act. Arbitration, as a concept, seeks to ensure expeditious disposal of cases and minimal judicial interference. Grant of an automatic stay ensures that parties avoid the procedural delays that are attributable to Court proceedings. Approaching the Court for a stay would result in increased judicial intervention. For assessing the satisfaction of the necessary conditions for grant of interim relief, facts would need to be examined. This would make the adjudicatory process more tedious and long drawn.

¹⁹ *Fiza Developers and Inter-Trade Private Limited v. AMCI (India) Private Limited and Another* 2009 17 S.C.C. 796, (para 21 and 22)

²⁰ *State of UP v. Allied Constructions*, (2003) 7 S.C.C. 396, (para 4)

²¹ *Vinod Kumar v. Gangadhar* (2015) 1 S.C.C. 391, (para 19)

²² *Budhan Choudhry and Ors v. State of Bihar*, (1955) 1 S.C.R. 1045 (para 7).

²³ *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors*, (1959) 1 S.C.R. 279 (page.296).

16. Further, stay cannot be granted in accordance with Order 41, Rule 5 of the CPC (unlike a Section 96 application). Such a stay would necessitate deposit of the decrrial amount. However, such deposit of arbitral award would tantamount to execution of the award despite it being statutorily unenforceable.²⁴
17. Clearly, an automatic stay is a necessary mechanism in ensuring expediency and minimal court intervention. Therefore, it is humbly contended, that the differentia has a rational nexus with the objective of the Arbitration Act.

II. Pendency of Section 34 petitions does not amount to expropriation.

18. “Expropriation” refers to the taking over of an “investment”, by an act of the State, either directly or indirectly. The acts of the judiciary are also attributable to the State. Thus, “judicial expropriation” could also fall within the ambit of the provision under consideration.²⁵
19. The relevant test as to whether expropriation has occurred is the effect of the government's action on the investor's investment. An expropriation should be identified by its impact on the value of an investment, or by its impact on the rights of the investor and the investment.²⁶
20. Substantial deprivation of an investor’s ability to enjoy the benefits of an Award is not sufficient to conclude that the courts’ intervention is tantamount to an expropriation. If this were true, any setting aside of an award could then found a claim for expropriation,

²⁴ *AFCONS v. Board of Trustees of the Port of Bombay*, 2014 (1) BomCR 794 (para 8 and 25).

²⁵ *Saipem v Bangladesh: ICSID Case No. ARB/05/07* (page 40)

²⁶ *Compania des An"ollo de Santa Elena v. Costa Rica Case No ARB/96/1*,(page 19).

even if the setting aside was ordered by the competent state court upon legitimate grounds.²⁷

21. During the pendency of a Section 34 application the value of neither an investment nor its rights under the Contract are substantially affected. The Indian Courts at this stage have neither disposed off nor set-aside the application. Thus, the Award has not been "taken" or set aside.

22. It is therefore humbly submitted that the pendency of an application is for the purpose of determining the validity of the award and does not amount to expropriation.²⁸

III. Non-availability of a notified vacation bench during any holidays is not unconstitutional.

23. The Supreme Court rules state that the offices of court that are open during the New Year would admit matters at a time, which the Chief Justice “may” direct.²⁹ Further they Chief Justice “may” appoint any judge during the vacation if there is an urgent matter. Thereafter a vacation judge sitting singly may decide the urgency of matters under Article 32.³⁰ Therefore the admittance, appointment, as well as listing is all discretionary.

24. There is an availability of Vacation Bench during the vacations as per the directions from the Chief Justice. The regulation of the procedure and practice of the Court being in the discretion of the Supreme Court cannot be held unconstitutional.

²⁷ *Saipem v Bangladesh: ICSID Case No. ARB/05/07*, (page 41).

²⁸ *White Industries v. The Republic of India*, UNCITRAL, Final Award (30-Nov-2011) (para 12.3.6)

²⁹ Order II Rule 2, Supreme Court Rules, 2013

³⁰ Order XXXVIII Rule 1(1), Supreme Court Rules, 2013

IV. Non-availability of a notified procedure for listing when the Court is not in session is not unconstitutional.

25. The Supreme Court in its rules provides for the procedure to list the matter during vacation if the matter is of urgent importance.³¹

26. Article 145 states that the Supreme Court “may” form rules from time to time to regulate the practice and procedure of the Court.³² This includes making rules as to the proceedings in the Court for the enforcement of rights conferred under Part III.³³

27. In the present case, the Constitution itself gives the discretion to the Supreme Court to formulate its own rules and regulation for the practice and procedure of the Court. The formulation of rules is not a right of an individual but the discretion of the Court. The Chief Justice does not have a constitutional mandate to appoint a judge over an urgent matter in specified time.

28. There exist rules, which guide the practice of Court for listing urgent matter during vacation. It does not in any way show that there is no procedure laid down for listing of matters when the court is not in session. Therefore the non-availability of a notified procedure for listing when the Court is not in session is not unconstitutional.

V. The election cannot be questioned once the election notification has been issued.

29. If an election has to be questioned which may interrupt or obstruct the election proceeding, then the judicial remedy can be invoked only after the completion of

³¹ Order II Rule 6, Supreme Court Rules, 2013

³² Article 145, Constitution of India, 1950

³³ Article 145 (1)(c), Constitution of India, 1950.

election.³⁴ The election process will commence on the date of issue of election notifications and completes after the election results are out.³⁵ Therefore any petition challenging the elections should file an election petition, to question the election, after the election process is over and not in the intermediate stage.³⁶

30. Further the election can be postponed only when there exist supervening difficulties like the natural calamities.³⁷ The courts have held that if the courts are approached to stall the election then grave injustice would be done to those voters who have the right to vote and be represented.³⁸ And the maxim “actus curiae neminem gravabit” implies an act of the court which shall not cause prejudice to anyone.

31. In the present case, listing of matters during vacation on the grounds of urgency is at the discretion of the court. The Apex Court is not under any statutory or constitutional obligation to list a matter within a certain period. The act of court has thus caused no prejudice to the petitioner as the act of the court was not to be complied with in a certain way. Further the matter was subsequently admitted by the Supreme Court; therefore the court has acted in the capacity it was expected to act. The petitioner also did not file for a stay to the elections when the Hon’ble Chief Justice was not responding. Therefore since the petitioner did not exhaust all possible remedies it can be concluded that the act of the court did not cause prejudice to anyone.

³⁴ *Election Commission of India Through Secretary v. Ashok Kumar*, A.I.R. 2000 S.C. 729(para 32).

³⁵ *Election Commission of India Through Secretary v. Ashok Kumar*, A.I.R. 2000 SC 729 (para 14).

³⁶ *Election Commission of India Through Secretary v. Ashok Kumar* A.I.R. 2000 SC 729 (para 30).

³⁷ *Secretary, State Election Commission v. Secretary, Panchayat Raj Department*, Decided on 21-04-2000 (para 50)

³⁸ *Anugrah Narain Singh v. State of U.P.*, (1996) 6 S.C.C. 303 (para 15).

32. Also since the election notification has been issued the petitioner can only postpone the election or challenge them after the results are out. The only way the election can be postponed is when it be proved that there exist supervening difficulties which is not the case in the present scenario. Therefore the petitioner without interrupting the election proceeding should question the same after the results are out. This is because if elections are halted for the petitioner then grave injustice will be done to those who want to vote and contest in the elections. Hence, the non-grant of listing before the issuance of election notification can affect the merits of the case as no prejudice is caused by the courts act.

VI. The Ordinance is not ultra vires Part IX, and retroactive

33. Article 213 and Article 123 confer power on the Governor and the President respectively to promulgate Ordinances. The exercise of power under his provision depends on the subjective satisfaction of the President/Governor regarding the existence of immediate circumstances.³⁹ The President/Governor exercises this power upon the aid and advice of his Council of Minister. Therefore if his satisfaction is based on an objective test then the Governor/President will have to reveal the facts under which they have acted. These facts cannot be disclosed and reviewed by the court under Article 75(4)/ Article 163(2) of the Constitution. The Governor/President is therefore the sole judge to decide whether there exist any circumstances to exercise the power to promulgate Ordinance.⁴⁰

³⁹ *Rustom Cavasjee Cooper v. Union of India*, A.I.R. 1970 S.C. 564, (para 237).

⁴⁰ *Shiv Ram v State of Rajasthan*, A.I.R. 2000 (Raj) 416, (para 9).

34. Article 243 O of the Constitution of India, bars the courts interference in electoral matters.⁴¹ The courts have therefore held that when any act of the Government regarding the elections is backed by law, then the courts interference is barred by the Constitution.⁴² In the case of *Shiv Ram v State of Rajasthan*, the courts held that Article 243 O of the Constitution bars the exercise of judicial review over election matter once the election process has started.⁴³
35. In the case of *Javed v State of Haryana*,⁴⁴ the amendment passed by the legislature laid disqualifications on the basis of number of children born. This was not held to be ultra vires of Part IX of the Constitution due to the following reasons. Firstly, Article 243 F lays gives the power to Legislature to disqualify any member by a law. Secondly, Article 243 G gives the Legislature the power to endow the Panchayat with the responsibility to prepare and implement schemes over matter under Eleventh Schedule. Since “Family Planning” was an item under the Eleventh Schedule, the courts read Article 243 F along with Article 243 G. It thus held that such disqualification provided for by the Legislature in the Act is not ultra vires of Part IX of the Constitution.
36. In the present case, firstly, the subjective satisfaction of the Governor cannot be subject to judicial review. The court should not check whether their exist circumstances to promulgate an Ordinance. The court is further is barred from interfering in the election process under Article 243O. Secondly, the amendment made

⁴¹Article 243, Constitution of India, 1950.

⁴² *Bhupendra Pratap v. State of Raj*, (DBCWP No 12960/ 2014), decided on 18-12-2014 (para 18, 22).

⁴³ *Shiv Ram v. State of Rajasthan*, A.I.R. 2000 (Raj) 416, (para 22).

⁴⁴ A.I.R. 2003 S.C. 3057 (para 38).

through this Ordinance is not ultra vires Part IX of Constitution. Under Part IX of the Constitution, the Legislature can make laws to lay down qualifications for the election. The Governor can promulgate Ordinance which may be necessary to implement and promote certain items under the Eleventh Schedule. Since “Education” is an item no “17” under the Eleventh Schedule, the Governor can promulgate Ordinance in furtherance with this objective. Therefore the Ordinance is not ultra vires of Part IX of the Constitution.

VII. The Ordinance does not violate the basic structure, fundamental rights or any constitutional principles.

37. Even though right elect is a fundamental concept in a democratic government it is purely a statutory right subject to statutory limitations.⁴⁵ A person can be deprived of his liberty in a reasonable manner only when the object is in a larger public interest.⁴⁶ Right to contest is not a fundamental right and is only a statutory right. Any statute which provides for the right to contest can also provide for necessary qualifications which might even disable him for holding the statutory post.⁴⁷ If one wants to exercise right to contest then he paying a little price is not unconstitutional and illegal if the objective has nexus with the disqualification.⁴⁸ The courts have found no harm in ensuring that criminals are disqualified in order to purify the democratic governance. The Ordinance was therefore not struck down for disqualifying people from contesting in Panchayat elections.⁴⁹

⁴⁵ *Javed v. State of Haryana*, A.I.R. 2003 S.C. 3057 (para 23).

⁴⁶ *Shiv Ram v. State of Rajasthan*, A.I.R. 2000 (Raj.) 416 (para 11).

⁴⁷ *Javed v. State of Haryana*, A.I.R. 2003 S.C. 3057 (para 22).

⁴⁸ *Javed v. State of Haryana*, A.I.R. 2003 S.C. 3057 (para 61).

⁴⁹ *Shiv Ram v. State of Rajasthan*, A.I.R. 2000 (Raj.) 416 (para 23).

38. In the present case, the Ordinance which provides for certain qualifications cannot be said to be violating any constitutional principle. Since right to contest is not a fundamental right and merely a statutory right, it can be subject to reasonable restrictions. It would be wrong to say that the disqualifications laid down violate any constitutional principles. And if people want to exercise their right contest, there is no harm in paying a little price and attaining certain requirements for the post they want to contest. Therefore the Ordinance does not violate any principle of a democratic government or constitutional principle.

39. Article 14 of the Constitution guarantee equal protection of law and before the law.⁵⁰ Equality forms the basic structure of the Constitution.⁵¹ In order to pass the test of reasonable the legislation should satisfy two conditions. Firstly that the classification should be based on some intelligible differentia. Secondly, it the classification should have some nexus with the object of the legislation.⁵² The courts have held that unless legislation is glaringly unconstitutional, the courts would not strike down the same.⁵³ Legislation suffers from un-reasonability and arbitrariness, under Article 14, when there is no political or constitutional logic for the act.⁵⁴

40. In *Javed v State of Haryana*, the courts held that disqualifying people on the basis of number of children born is not violative Article 14. The classification was based on the number of children born and the objective of the Act was to promote and popularize

⁵⁰ Article 14, Constitution of India, 1950.

⁵¹ *Indra Sawhney v. Union of India*, 1992 Supp (3) S.C.C. 217 (para 150).

⁵² *Dr. Subramanian Swamy v. Director, Central Bureau of Investigation*, A.I.R. 2014 S.C. 2140 (para 39).

⁵³ *Bhavesh D Parish v. Union of India*, A.I.R. 2000 S.C. 2047 (para 30).

⁵⁴ *K Nagraj v. State of Andhra Pradesh*, A.I.R. 1985 S.C. 551 (para 7).

family planning. The legislation did not fail in the nexus test. The classification did not suffer from arbitrariness.⁵⁵ The Legislation was thus not struck down

41. The courts have also held that retirement of airhostess on their third pregnancy sustains the nexus test. Because there is a reasonable nexus between the classification and object which was to promote family planning as India faces great population explosion. Therefore the object was desirable having a nexus with the legislation which classified the two.⁵⁶ Hence the legislation was not struck down.

42. In the present case, the Ordinance that was passed by the Governor of Nirdhan does not violate anyone's right to equality. As there is classification based on passing a particular grade in school. This classification has a nexus with the objective of the Act, i.e, to promote education and therefore not violative of the nexus test. Keeping in mind the skewed literacy and backwardness of Nirdhan, it is essential to promote Education among people in Nirdhan at the grass root level. The Ordinance does not suffer from arbitrariness and un-reasonability. Therefore the Ordinance does not violate any constitutional principle, fundamental right or the basic structure of the Constitution.

⁵⁵ *Javed v. State of Haryana*, A.I.R. 2003 S.C.3057 (para 8).

⁵⁶ *Air India v. Nergesh Mirza* (1981) I.I.L.L.J. 314 S.C para 41.

PRAYER

In the light of the arguments advanced it is humbly prayed before this Hon'ble High Court of Nirdhan that it may:

1. Adjudge that Section 34 of the Arbitration and Conciliation Act, 1996 is constitutional.
2. Adjudge that the non-availability of a vacation bench and a notified procedure during holidays is constitutional.
3. Adjudge that the elections cannot be challenged.
4. Adjudge that the Ordinance is constitutional.

For this the Respondents shall duty bound pray.

ALL OF WHICH IS HUMBLY SUBMITTED.