

Karnatak Law Society's
Raja Lakhamgouda Law College, Belagavi
Tilakwadi, Belagavi, Karnataka – 590006
(Affiliated to Karnataka State Law University, Hubballi)

10th M. K. NAMBYAR MEMORIAL
NATIONAL LEVEL MOOT COURT COMPETITION
MARCH 13th – 15th, 2020

Moot Proposition¹

Indian National Common Man Party v. Union of India

1. 'The Month' is a monthly magazine having widest circulation in India; it publishes diversified research articles written by acclaimed writers, philosophers and statesmen. It has its own research wing headed by Mr. Subramanya, who is a former Chairman of UGC. He was an acclaimed professor and known for his expertise knowledge in socio-legal research. Subramanya has published number of articles in International Journals. Further, his scientific and empirical research has very little rate of sample errors. Various States and the Central Government have formulated and reformulated policies, enacted and reformed statutes based upon the research work of Mr. Subramanya.

2. Mr. Subramanya was appointed as head of the *ad hoc* committee constituted by Central Government to prepare a policy document on Democratic Administration. The

¹ Identify not more than four questions of law and prepare arguments for both sides. The facts provided are hypothetical and same shall not be disputed and altered based on the real facts of India.

The moot proposition is prepared by Dr. S. G. Goudappanvar, Associate Professor and Dr. Manojkumar V. Hiremath, Assistant Professor, K.L.E. Society's Law College, Bengaluru. Any attempt to take assistance of the authors of the moot proposition attracts disqualification.

committee conducted extensive research and scientific sample survey of Representative of People, Panchayat members, voters, political party members, former Election Commissioners, retired judges of High Courts and Supreme Court, etc. on the varied aspects of elections. The committee submitted its recommendations to the Central Government.

3. The committee had used the data of Election Commission of India and of all the states for its empirical survey. The same is scientifically analysed. The analysis revealed that, 70% of the representatives of the people throughout the country are the 4th generation representatives of the people from the same family. Further data has revealed the disappointing fact that 50% of the representatives of the people never became ministers even after getting elected for more than 4 times.
4. *Inter alia* the Report recommended that in order to enhance the political inclusiveness, the family centric political representation has to be discouraged. The committee also felt that every member of the society must have the opportunity to become member of the legislative house. Therefore the committee recommended limitation on the number of terms for which a person may become a representative of the people. Further the committee has recommended prohibition of resignation of the representatives of the people to the Legislature with the twin objectives of ensuring a stable government and good governance. Whoever resigns from the legislature shall attract disqualification for life. The committee also recommended that it is need of the hour to bring changes in the qualification for the offices of the President and the Prime Minister.
5. The Government of India also felt that the recommendations of the committee are worth to be considered in the light of forthcoming elections to Parliament and different State Assemblies. Therefore the Central Government issued an ordinance on Democratic Reforms. The Ordinance provided that -

Rule 1. *No citizen shall become member of a legislative house for more than 4 terms.*

Rule 2. *No duly elected representative of any legislative house shall tender resignation to the membership of the house. Otherwise the resigned member shall be disqualified for contesting the elections for life.*

Rule 3. *No two persons from the same family shall contest for the election to the same legislative house at a time.*

(Family for the above purpose includes all the persons related by blood, marriage or adoption)

Rule 4. *No citizen shall become minister for more than two terms or ten years cumulatively.*

6. In due course of the time Parliament brought 104th amendment to the Constitution of India which has effected changes in the following Articles of the constitution –

Art. 57. Eligibility for re-election.—*A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.*

Provided, a person shall not hold the office for more than two terms.

Art. 58. Qualifications for election as President.—*(1) No person shall be eligible for election as President unless he*

*(a) is a **born** citizen of India*

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Art. 75. Other provisions as to Ministers.—*(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.*

Provided, no person shall be appointed as Prime Minister unless he is a born citizen of India.

Provided further that, no person shall be appointed as a Prime Minister for more than two terms.

7. The ordinance was challenged as unconstitutional by the Indian National Common Man Party (INC) in the Supreme Court of India. INC contended that the impugned ordinance is violative of fundamental rights of representative of the people and the central government lacks the competency to issue the same. Further, the 104th Amendment to the Constitution of India was challenged in Supreme Court of India as ultra vires by the President of INC who is a naturalized citizen of India. He was proposed as a Prime Ministerial candidate for the forthcoming parliamentary election. The Supreme Court of India clubbed both the petitions and posted them for the final hearing.