

Before the **Honourable Supreme Court of India**

No.

Petitioners:

1. Anil Chawla
s/o Mr. M. M. Chawla
Aged about 48 years
r/o 411-A, G3, Gulmohar,
E-8, Arera Colony,
Bhopal – 462 039

2. Vipin Dixit
s/o Late Shri B.L. Dixit,
Aged about 50 years
r/o Sixth Floor, Panchanan,
Roshanpura, Malviya Nagar,
BHOPAL – 462 003

vs.

Writ Petition / 1

Respondents: (1) Union of India,
Through The Cabinet Secretary,
Government of India,
NEW DELHI

(2) The Secretary,
Ministry of External Affairs,
Government of India,
NEW DELHI

Petition under Article 32 of The Constitution of India filed in Public Interest

The Petitioner begs to submit as under:

1. Particulars of the petitioners:

The petitioners are citizens of India.

Petitioner No. 1 works for his living in a group of companies, which is privately owned. He is an author and social activist concerned about the society and politics of the country. He is a law graduate (though not

registered as an advocate) and is aware of the Constitution and laws of the country.

Petitioner No. 2 is an agriculturist and is an active social activist.

Both petitioners have no vested or personal interest (as distinct from that of other citizens) in the subject matter of this petition. They are filing the petition purely as a matter of bona fide public interest.

2. Particulars of the respondents:

As given in the cause title

3. Particulars of the fundamental right infringed:

Fundamental right of life and personal liberty, as enshrined under article 21 of the Constitution, is founded on the sovereignty of the country as mentioned in the Preamble of the Constitution. Nuclear deal between India and USA, as is being negotiated in light of H.R. 5682 Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 duly enacted in United States of America, compromises the sovereignty of India and hence creates conditions that will infringe on fundamental right of life and personal liberty.

4. Whether petitioner has moved a High Court:-

The petitioner has not moved any High Court for relief in the matter.

5. Facts of the case:

The facts of the case are given below:

- 5.01 India and United States of America issued a Joint Statement on 18 July 2005 (Annexure P1).
- 5.02 The Joint Statement of 18 July 2005 states, “The Prime Minister conveyed that for his part, India would reciprocally agree that it would be ready to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States”.
- 5.03 The Joint Statement of 18 July 2005 further elaborates the “responsibilities and practices” to consist of the following:
- a) Identifying and separating civilian and military nuclear facilities and programs in a phased manner and filing a declaration regarding its civilians facilities with the International Atomic Energy Agency (IAEA);
 - b) Taking a decision to place voluntarily its civilian nuclear facilities under IAEA safeguards;
 - c) Signing and adhering to an Additional Protocol with respect to civilian nuclear facilities;
 - d) Continuing India’s unilateral moratorium on nuclear testing;

- e) Working with the United States for the conclusion of a multilateral Fissile Material Cut Off Treaty;
- f) Refraining from transfer of enrichment and reprocessing technologies to states that do not have them and supporting international efforts to limit their spread;
- g) And ensuring that the necessary steps have been taken to secure nuclear materials and technology through comprehensive export control legislation and through harmonization and adherence to Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines.

5.04 The commitments of United States of America as mentioned in the Joint Statement dated 18 July 2005 are as follows:

- a) President Bush conveyed his appreciation to the Prime Minister over India's strong commitment to preventing WMD proliferation and stated that as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states.
- b) The President told the Prime Minister that he will work to achieve full civil nuclear energy cooperation with India as it

realizes its goals of promoting nuclear power and achieving energy security.

- c) The President would also seek agreement from Congress to adjust U.S. laws and policies, and the United States will work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India, including but not limited to expeditious consideration of fuel supplies for safeguarded nuclear reactors at Tarapur.
- d) In the meantime, the United States will encourage its partners to also consider this request expeditiously.
- e) India has expressed its interest in ITER and a willingness to contribute. The United States will consult with its partners considering India's participation. The United States will consult with the other participants in the Generation IV International Forum with a view toward India's inclusion.

5.05 It is clear that commitments of Prime Minister of India are unilateral and categorical under the Joint Statement of 18 July 2005, while US President has only offered vague commitments, if at all whatever the US President has promised can be called commitments.

- 5.06 Indian Prime Minister's commitments are not incumbent on the President of USA fulfilling his promises. In other words, India will be bound to do all that it has declared even if the President of USA is unable or unwilling to deliver on any of his promises.
- 5.07 On 18 July 2005, Indian Prime Minister has effectively declared an end to further growth of Indian strategic nuclear programme by declaring unilaterally and without any conditions, timeframe or strings, "Continuing India's unilateral moratorium on nuclear testing".
- 5.08 An indefinite continuing moratorium on nuclear testing will adversely impact the nuclear deterrence that was built with great efforts over the years by Indian nuclear establishment.
- 5.09 In Unstarred Question No. 428, Mr. Dara Singh, Member of Rajya Sabha asked, "whether Government propose to obtain consensus on this issue by full discussion in Parliament during current session?". Minister of State in the Ministry of External Affairs stated in reply on 23 February 2006, "The Government is committed to take the Parliament in confidence, as was reflected in Prime Minister's suo moto statement in Parliament on 29 July 2005. The debate that followed in both the Houses of Parliament provided an occasion to discuss and clarify the issues involved in

the civil nuclear understanding. The Government remains committed to keep the Parliament informed. Prime Minister in his Press Conference on 1 February 2006 has stressed on the need for national consensus on this issue”. (Annexure P2)

5.10 On 27 February 2006, Prime Minister Dr. Manmohan Singh made a Suo Motu Statement in Parliament on Civil Nuclear Energy Cooperation with the United States (Annexure P3). Some relevant extracts from the Suo Motu Statement are as follows:

- a) *In the Joint Statement, the United States implicitly acknowledged the existence of our nuclear weapons programme. There was also public recognition that as a responsible State with advanced nuclear technologies, India should acquire the same benefits and advantages as other States which have advanced nuclear technology, such as the United States. The Joint Statement offered the possibility of decades-old restrictions being set aside to create space for India’s emergence as a full member of a new nuclear world order.*
- b) *Our doctrine envisions a credible minimum nuclear deterrent to inflict unacceptable damage on an adversary indulging in a nuclear first strike. The facilities for this, and the required*

level of comfort in terms of our strategic resilience have thus been our criterion in drawing up a separation plan. Ours is a sacred trust to protect succeeding generations from a nuclear threat and we shall uphold this trust.

c) The Separation Plan that is being outlined is not only consistent with the imperatives of national security, it also protects our vital research and development interests. We have ensured that our three-stage nuclear programme will not be undermined or hindered by external interference. We will offer to place under safeguards only those facilities that can be identified as civilian without damaging our deterrence potential or restricting our R&D effort, or in any way compromising our autonomy of developing our three stage nuclear programme.

d) The nation will be kept informed, through this august House.

5.11 On 2 March 2006, India and USA issued another Joint Statement (Annexure P4). With reference to the nuclear deal, Indo-US Joint Statement of 2 March 2006 stated, *“Consistent with this objective, the two leaders wish to highlight efforts the United States and India are making together in the following areas, where they have: Welcomed the successful completion of discussions on*

India's separation plan and looked forward to the full implementation of the commitments in the July 18, 2005 Joint Statement on nuclear cooperation. This historic accomplishment will permit our countries to move forward towards our common objective of full civil nuclear energy cooperation between India and the United States and between India and the international community as a whole". It is notable that in this Joint Statement, there was no mention of any of the promises that the US President had made in Joint Statement dated 18 July 2005. The focus was only on Separation Plan and the so-called "*implicit acknowledgment of India's nuclear programme*" (as mentioned by the Prime Minister in his Suo Motu Statement dated 27 February 2006 to the Parliament) was almost forgotten.

5.12 On 7 March 2006, Prime Minister Dr. Manmohan Singh made another "Suo-Motu Statement in Parliament on Discussions on Civil Nuclear Energy Cooperation with the US: Implementation of India's Separation Plan" (Annexure P5) Some relevant extracts from the statement are as flows:

a) *I have pleasure in informing the House that during President Bush's visit, as part of the process of promoting cooperation in civilian nuclear energy, agreement was reached between India and the United States on a Separation Plan.*

- b) *We have received commitments from the United States for the reliable supply of fuel to India for reactors that will be offered for safeguards.*
- c) *The United States has also reaffirmed its assurance to create the necessary conditions for India to have assured and full access to fuel for such reactors.*
- d) *Under the July 18 Joint Statement, the United States is committed to seeking agreement from its Congress to amend domestic laws and to work with friends and allies to adjust the practices of the Nuclear Suppliers Group to create the necessary conditions for India to obtain full access to the international market for nuclear fuel, including reliable, uninterrupted and continual access to fuel supplies from firms in several nations. This has been reflected in the formal understandings reached during the visit and included in the Separation Plan.*

5.13 Though the Prime Minister stated in Suo Motu statement dated 7 March 2006, “*agreement was reached between India and the United States on a Separation Plan*”, the said agreement has not been disclosed either to the Parliament or to the people of India. Similarly, it is not clear how and on what basis, the Prime

Minister said, “*We have received commitments from the United States for the reliable supply of fuel to India for reactors that will be offered for safeguards*”. No such commitments are obvious from Joint Statement dated 18 July 2005. This leads to a suspicion that there exist secret agreements that are not disclosed to the Parliament and people of India.

5.14 On 11 May 2006, Government submitted to the Parliament, “Implementation of the India-United States Joint Statement of July 18, 2005: India’s Separation Plan” (Annexure P6). From the separation Plan, it is clear that the Government of India is fulfilling its commitments under Joint Statement dated 18 July 2005, without making any mention of whether the President of USA had delivered on any of his commitments or not.

5.15 In reply to Unstarred Question No. 2203 answered in Lok Sabha on 06 December 2006 (Annexure P7), the Minister of External Affairs stated

a) *An amendment to the waiver Bill passed by the US Senate on November 16, 2006 to enable full civil nuclear energy cooperation with India envisages setting up of a cooperative threat reduction (CTR) programme to further common non-proliferation goals. No prior discussions on setting up such a*

programme have taken place between the two Governments. By its very nature, establishing such a programme would require the agreement of Government of India, which would take a decision after fully taking into account all aspects of our national security. In fact, US Congress had earlier legislated on establishing a CTR programme with India under the Department of Defense Appropriations Act 2002, which has not been implemented.

b) Government of India has conveyed its concerns with regard to current versions of the legislation to the US side. It is our position that the final legislation adhere as closely as possible to the understandings contained in the India-US Joint Statement of July 18, 2005 and the March 2006 Separation Plan.

5.16 US Congress has enacted, ‘Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006’ (hereinafter referred to as ‘Hyde Act’) (Annexure P8). Sec. 102 of the Hyde Act states:

It is the sense of Congress that--

(1) preventing the proliferation of nuclear weapons, other weapons of mass destruction, the means to produce them,

and the means to deliver them are critical objectives for United States foreign policy;

(2) sustaining the Nuclear Non-Proliferation Treaty (NPT) and strengthening its implementation, particularly its verification and compliance, is the keystone of United States nonproliferation policy;

(3) the NPT has been a significant success in preventing the acquisition of nuclear weapons capabilities and maintaining a stable international security situation;

(4) countries that have never become a party to the NPT and remain outside that treaty's legal regime pose a potential challenge to the achievement of the overall goals of global nonproliferation, because those countries have not undertaken the NPT obligation to prohibit the spread of nuclear weapons capabilities;

(5) it is in the interest of the United States to the fullest extent possible to ensure that those countries that are not States Party to the NPT are responsible in the disposition of any nuclear technology they develop;

(6) *it is in the interest of the United States to enter into an agreement for nuclear cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) with a country that has never been a State Party to the NPT if--*

(A) *the country has demonstrated responsible behavior with respect to the nonproliferation of technology related to nuclear weapons and the means to deliver them;*

(B) *the country has a functioning and uninterrupted democratic system of government, has a foreign policy that is congruent to that of the United States, and is working with the United States on key foreign policy initiatives related to nonproliferation;*

(C) *such cooperation induces the country to promulgate and implement substantially improved protections against the proliferation of technology related to nuclear weapons and the means to deliver them, and to refrain from actions that would further the development of its nuclear weapons program; and*

(D) *such cooperation will induce the country to give greater political and material support to the achievement of United States global and regional nonproliferation*

objectives, especially with respect to dissuading, isolating, and, if necessary, sanctioning and containing states that sponsor terrorism and terrorist groups that are seeking to acquire a nuclear weapons capability or other weapons of mass destruction capability and the means to deliver such weapons;

(7) the United States should continue its policy of engagement, collaboration, and exchanges with and between India and Pakistan;

(8) strong bilateral relations with India are in the national interest of the United States;

(9) the United States and India share common democratic values and the potential for increasing and sustained economic engagement;

(10) commerce in civil nuclear energy with India by the United States and other countries has the potential to benefit the people of all countries;

(11) such commerce also represents a significant change in United States policy regarding commerce with countries that are not States Party to the NPT, which remains the foundation of the international nonproliferation regime;

(12) any commerce in civil nuclear energy with India by the United States and other countries must be achieved in a manner that minimizes the risk of nuclear proliferation or regional arms races and maximizes India's adherence to international nonproliferation regimes, including, in particular, the guidelines of the Nuclear Suppliers Group (NSG); and

(13) the United States should not seek to facilitate or encourage the continuation of nuclear exports to India by any other party if such exports are terminated under United States law.

5.17 Sec. 103 STATEMENTS OF POLICY of the Hyde Act states as follows:

(a) In General- The following shall be the policies of the United States:

(1) Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of the NPT.

(2) Encourage States Party to the NPT to interpret the right to 'develop research, production and use of nuclear energy for peaceful purposes', as set forth in Article IV of the

NPT, as being a right that applies only to the extent that it is consistent with the object and purpose of the NPT to prevent the spread of nuclear weapons and nuclear weapons capabilities, including by refraining from all nuclear cooperation with any State Party that the International Atomic Energy Agency (IAEA) determines is not in full compliance with its NPT obligations, including its safeguards obligations.

(3) Act in a manner fully consistent with the Guidelines for Nuclear Transfers and the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology developed by the NSG, and decisions related to those guidelines, and the rules and practices regarding NSG decisionmaking.

(4) Strengthen the NSG guidelines and decisions concerning consultation by members regarding violations of supplier and recipient understandings by instituting the practice of a timely and coordinated response by NSG members to all such violations, including termination of nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient

until such time as a consensus regarding a coordinated response has been achieved.

(5) Given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India.

(6) Seek to prevent the transfer to a country of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source if nuclear transfers to that country are suspended or terminated pursuant to this title, the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law.

(b) With Respect to South Asia- The following shall be the policies of the United States with respect to South Asia:

(1) Achieve, at the earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China.

(2) *Achieve, at the earliest possible date, the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the United States and India become parties.*

(3) *Secure India's--*

(A) *full participation in the Proliferation Security Initiative;*

(B) *formal commitment to the Statement of Interdiction Principles of such Initiative;*

(C) *public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Control Lists of the Wassenaar Arrangement;*

(D) *demonstration of satisfactory progress toward implementing the decision described in subparagraph (C); and*

(E) *ratification of or accession to the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997.*

- (4) *Secure India's full and active participation in United States efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability and the capability to enrich uranium or reprocess nuclear fuel, and the means to deliver weapons of mass destruction.*
- (5) *Seek to halt the increase of nuclear weapon arsenals in South Asia and to promote their reduction and eventual elimination.*
- (6) *Ensure that spent fuel generated in India's civilian nuclear power reactors is not transferred to the United States except pursuant to the Congressional review procedures required under section 131 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2160 (f)).*
- (7) *Pending implementation of the multilateral moratorium described in paragraph (1) or the treaty described in paragraph (2), encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.*
- (8) *Ensure that any safeguards agreement or Additional Protocol to which India is a party with the IAEA can*

reliably safeguard any export or reexport to India of any nuclear materials and equipment.

(9) Ensure that the text and implementation of any agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) meet the requirements set forth in subsections a.(1) and a.(3) through a.(9) of such section.

(10) Any nuclear power reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements.

5.18 On 17 November 2006, External Affairs Minister, Shri Pranab Mukherjee issued an official statement, which said, “*We now expect that the final version of the legislation, which would emerge after the Joint Conference of the House and Senate, should adhere as closely as possible to the understandings incorporated in the July 18, 2005 Indo-US Joint Statement and the March 2006 Separation Plan, so that full civil nuclear cooperation between India and the US becomes a reality and*

contributes to India's energy security". (emphasis added)
(Annexure P9)

5.19 India has a hostile neighbourhood. China and Pakistan, though presently friendly with India, have fought wars with India in the past. Both, China and Pakistan, are nuclear states who have not signed Non-Proliferation Treaty. Pakistan has been accused, even by Government of India, of sponsoring terrorism in India. The threats that India faces in its neighbourhood are more than what USA faces in USA's neighbourhood.

5.20 Reputed strategic analysts, political thinkers, nuclear scientists, former ambassadors have criticized the emerging contours of Indo-US Nuclear Deal and have called it as a surrender of India's long term strategic interests by Government of India. (Annexures P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21 & P22)

5.21 In reply to unstarred question no. 168 answered in Lok Sabha on 05 December 2006, intended to be answered on 22.11.2006 (Annexure P23) Minister of External Affairs, Shri Pranab Mukherjee informed the august house about the "Current Status of Indo-US Nuclear Deal". Some relevant extracts are as follows:

- *The US Congress is currently considering amendment to US laws to enable full civil nuclear energy cooperation with India. On 26 June 2006, the US House International Relations Committee passed a Bill H.R. 5682 titled “United States and India Nuclear Cooperation Promotion Act of 2006” with a strong majority of 37-5. Later the Bill was passed with an overwhelming majority of 359-68 by the US House of Representatives on 26 July 2006. Similarly, US Senate Foreign Relations Committee approved by a vote of 16-2 its version of the Bill S.3709 entitled the “United States and India Peaceful Atomic Energy Cooperation Act” on June 29, 2006. On 16 November 2006, the US Senate in its lame duck session passed the Bill by an overwhelming majority of 85-12. A Conference will be convened shortly by the Congress to reconcile the House and Senate versions of the Bill which will then be voted upon in its final form by both chambers.*
- *India finalized its Separation Plan in March 2006 and it was tabled in the Parliament by the Prime Minister on March 7, 2006. The full and complete version of this plan was once again laid on the table of the Parliament by PM on 11 May 2006. The Separation Plan has laid out the schedule of*

placing India's nuclear reactors under safeguards beginning from 2007. As, Prime Minister stated in the Parliament, on 17 August 2006, India will not place its nuclear facilities under safeguards till all restrictions on India are lifted.

- *It is premature to speculate on the specific time by which supplies could commence as the process to enable full civil nuclear energy cooperation with India is still underway.*

5.22 Government of India is well aware of the “*fact that many nuclear experts in India have expressed their concern over the clause incorporated in the Bill related to the Indo-American nuclear deal passed recently by the American Senate*”, as was acknowledged by the reply dated 14 December 2006 to unstarred question no. 2448 (Annexure P24).

5.23 Nuclear deterrence is the best (and probably the only) guarantee of a nation's independence and sovereignty in the present times.

6. Grounds urged:

6.1. The Hyde Act runs against the statement dated 27 February 2006 of the Prime Minister of India (Annexure P3) that “*In the Joint Statement, the United States implicitly acknowledged the existence of our nuclear weapons programme. There was also*

public recognition that as a responsible State with advanced nuclear technologies, India should acquire the same benefits and advantages as other States which have advanced nuclear technology, such as the United States.”

- 6.2. The Hyde Act seeks to put restraints on India’s capability to produce and develop nuclear weapons. By The Hyde Act, the US Congress has directed the President to further the cause of non-proliferation, which is contrary to the Prime Minister’s statement about India acquiring the “*same benefits and advantages as other states which have nuclear technology, such as the United States*”.
- 6.3. USA does not accept any non-proliferation controls on herself while she seeks to impose such controls on all other countries, including India.
- 6.4. Nuclear weapons, in today’s world, have acquired the same importance that guns had a few centuries ago. Asia and Africa could be colonized since they did not have guns. Today, nuclear countries are wary of attacking non-nuclear states (like Iraq), but no one dare attack a country with demonstrated nuclear capability. Nuclear deterrence is hence the primary guarantee of a country’s sovereignty. Any action that compromises on India’s nuclear deterrence capability will jeopardize India’s sovereignty.

6.5. In Hyde Act, US Congress has made it explicit that “*the policies of the United States with respect to South Asia*” will be inter alia based on the following (quoted from the Hyde Act):

- *Achieve, at the earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India*
- *Achieve, at the earliest possible date, the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the United States and India become parties*
- *Secure India’s full participation in the Proliferation Security Initiative;*
- *Seek to halt the increase of nuclear weapon arsenals in South Asia and to promote their reduction and eventual elimination.*
- *encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.*

It is obvious that the policies of USA are aimed towards defanging India’s nuclear deterrent capabilities and making India dependent on USA for protection in case of any nuclear threat.

- 6.6. After the defanging of India's is complete, India will cease to be a sovereign state capable of taking her own decisions in matters of strategic interests. Historically, it has been seen that a country dependent on some other eventually loses her independence. Independent decision-making based on one's own self-interest is an essential prerequisite for existence of a country's democratic institutions. India cannot hope to exist as a "*sovereign, socialist, secular democratic republic*" if she does not have the capability to defend herself from attack against countries with well-developed nuclear capabilities. This is all the more true considering the fact that two of India's neighbours have nuclear weapons and have displayed a hostile temperament towards India in the past.
- 6.7. Separation of nuclear facilities and programmes based on civil and military use is likely to weaken India's nuclear weapon development programme. It will deprive nuclear weapon development of essential resources including the necessary radioactive materials. In due course, the nuclear development programme may just wither away, as is the intention of the USA, as can be guessed from the Hyde Act.
- 6.8. Indefinitely continuing India's unilateral moratorium on nuclear testing will deliver a crippling blow to India's nuclear weapon

development programme, and hence, in due course to India's nuclear deterrent capability.

6.9. The conclusion of a multilateral Fissile Material Cut off Treaty will also weaken India's nuclear weapon development programme, and hence, in due course cripple India's nuclear deterrent capability.

6.10. Though as mentioned in the Joint Statement dated 18 July 2005 President Bush stated that as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states, there is no evidence of intention of such a extension of benefits and privileges in either the Hyde Act or in any of the statements made by officials of USA.

6.11. Though it was mentioned in the Joint Statement dated 18 July 2005, that the President of USA would seek agreement from Congress to adjust U.S. laws and policies to enable full civil nuclear energy cooperation and trade with India, the President of USA has failed to get unconditional agreement from Congress in this regard. The Hyde Act imposes conditions and signals intentions, which go beyond and contrary to the understandings stated in the Joint Statement.

- 6.12. In short, it can be said that the nuclear deal between India and USA has serious security implications for India, while the deal does not affect USA in any way whatsoever. The deal only helps USA expand its area of influence further in South India and, in due course, would probably help USA create another subservient state whose policies administration of USA would be able to dictate as per their will.
- 6.13. Though the Government of India has talked about consensus on the issue and has stated that “*the nation will be kept informed*”, the Government has refused to take the approval of the Parliament for the proposed treaty that is said to be negotiated between India and USA on the basis of Joint Statements and Hyde Act. Being “*kept informed*” is derogatory to the role of the Parliament.
- 6.14. Under Article 253 of The Constitution of India, “*Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any country or countries or any decision made at any international conference, association or other body.*” This article is an enabling provision that gives power to Parliament. It does not permit the executive to act independent of the Parliament. In *Maganbhai Ishwarbhai Patel v. Union of India* (1970) 3 SCC 400; AIR 1969 SC 783, it was stated that if in consequence of the

exercise of executive power, rights of citizens or others are restricted or infringed or laws modified by the exercise of power, such restriction, infringement or modification must be supported by legislation; where there is no such restriction or infringement of the rights or modification of the laws, the executive is competent to exercise the power. In other words, treaty making powers can be exercised by the executive only when there is no restriction or infringement of rights or when there is no modification of laws.

- 6.15. The proposed Indo-USA nuclear treaty and Joint Statements evidencing the agreements between governments of India and USA, when viewed in the light of the Hyde Act, have a potential to subvert or reduce or restrict India's sovereignty. In other words, this is a matter whose impact is likely to be more damaging than limited scope of the words "*restriction or infringement of the rights or modification of the laws*". Any act, which would make India's sovereign status under threat, is a threat to India's constitution. By no stretch of imagination, one can extend the treaty making power of the executive of Union of India to signing treaties that put the independence and hence Constitution of India under threat.

6.16. In Reference in the matter of Berubari Union and Exchange of Enclaves, decided on 1 April 1959, (Annexure P 25) the Honourable Supreme Court had said, *“Therefore our conclusion is that it would not be competent to Parliament to make a law relatable to Art. 3 of the Constitution for the purpose of implementing the Agreement. ... We have already held that the Agreement amounts to a cession of a part of the territory of India in favour of Pakistan; and so its implementation would naturally involve the alteration of the content of and the consequent amendment of Art. 1 and of the relevant part of the First Schedule to the Constitution, because such implementation would necessarily lead to the diminution of the territory of the Union of India. Such an amendment can be made under Art. 368. This position is not in dispute and has not been challenged before us; so it follows that acting under Art. 368 Parliament may make a law to give effect to, and implement, the Agreement in question covering the cession of a part of Berubari Union No. 12 as well as some of the Cooch-Bihar Enclaves which by exchange are given to Pakistan. Parliament may however, if it so chooses, pass a law amending Art. 3 of the Constitution so as to cover cases of cession of the territory of India in favour of a foreign State. If such a law is passed then Parliament may be competent to make a*

law under the amended Art. 3 to implement the Agreement in question. On the other hand, if the necessary law is passed under Art. 368 itself that alone would be sufficient to implement the Agreement’.

6.17. While agreement with Pakistan over Berubari and other enclaves related to only a part of India’s territory and to Article 3, the Indo-US nuclear agreement has the potential to affect the whole of the territory of India and relates to the provisions of the Preamble of the Constitution, which surely is the basic foundation of the structure of Constitution. An agreement of such wide import being signed on behalf of the country without express approval of the country’s Parliament is a violation of the spirit of the Constitution and is a gross misuse of the limited treaty making powers available to the executive of the Union of India under Article 253.

6.18. Notwithstanding the fact that executive of Union of India has no power to sign and execute the proposed nuclear deal with USA, if the Government of India signs the nuclear deal even without approval or ratification of Parliament, it will be argued on international fora that the deal is binding on India and all future generations of Indian people. The violation of constitutional provisions is likely to be viewed by international bodies as a

matter of internal details. Given such a scenario, the nuclear deal will be irrevocably binding on all future governments and Parliaments of India. In case any future Government or Parliament of India decides to revoke the deal, USA will consider herself to be fully within its rights to use armed force to act against the Government or Parliament of India, as per the accepted norms of international law as interpreted by successive USA administrations.

6.19. Fundamental rights, as enshrined in the Constitution, are based on the existence of India as a “*sovereign, socialist, secular democratic republic*”. Any threat to the existence of India as a “*sovereign, socialist, secular democratic republic*” is a threat to the fundamental rights of the people of India. By creating a threat to India’s sovereignty the agreement between India and USA, a threat is being created for the basic constitutional setup of the country and hence to the fundamental rights of the people of India.

6.20. The petitioners are aggrieved in their capacity as citizens of India. They have no other personal interest in the matter.

Competence of the Honourable Court

6.21. The Honourable Supreme Court of India has the power and competence to issue directions or orders or writs on this matter under Article 32 of the Constitution of India.

Locus Standii

6.22. The petitioners are citizens of India and hence have the fundamental right under Art. 32 of the Constitution to move the Honourable Supreme Court in this matter, which affects fundamental rights of the citizens of India at large.

7. Relief(s) sought:

In light of the above-mentioned premises, the petitioners most humbly and respectfully pray that the Honourable Supreme Court may be pleased to:-

- a. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing that the Joint Statements between India and USA be duly put up before the Parliament for approval and that a Joint Statement will be null and void unless duly approved by the Parliament;
- b. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing that the Separation Plan of nuclear establishments on the basis of civil

and military use be declared against national security interests and hence be abandoned;

- c. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing that any future deal on nuclear facilities, programmes and weapons be subject to approval as per prescribed procedure of the Constitution, with the condition imposed that the deal should not create environment that puts national security at risk or has the potential to adversely affect the sovereignty of the country;
- d. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing that the approvals of treaties with potential to effect constitutional provisions or legislative / executive powers of future generations should be approved by the Parliament after following the procedure as prescribed under Article 368 of the Constitution;
- e. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing prescribing and clarifying the treaty making powers of the Executive wing of the Union of India under the provisions of the Constitution of India;

- f. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing prescribing and clarifying the treaty making powers of the Legislative wing of the Union of India under the provisions of the Constitution of India;
- g. Kindly issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing prescribing and clarifying that any treaty with any foreign state that violates or puts at risk sovereignty of India or is against any of the provisions or spirit of the Constitution will be null and void ab initio, even if the treaty is signed by the Executive wing of the Union of India and approved by the Parliament of India; and the final decision in respect of risk-to-sovereignty and constitutionality of a treaty will rest with the Honourable Supreme Court of India;
- h. Kindly issue such other writ, orders or directions as the Honourable Court deems fit in the interest of justice and nation;
- i. Any other relief that the Honourable Court may kindly grant.

8. Interim Relief, if any prayed for:-

Pending final decision of the petition, the petitioners most humbly and respectfully seek issue of the following interim order:-

- a. That the operation of the Joint Statements in respect of India-USA nuclear deal and Separation Plan regarding separation of nuclear facilities and programmes on the basis of civil and military use be stayed;
- b. That the Honourable Court stays the negotiations, which are in process between the two countries,
- c. That the Honourable Court issues direction to the respondents to abstain from making any commitments to the United States of America till this petition is duly decided upon by the Honourable Court.
- d. Any other relief that the Honourable Court may kindly grant.

9. Details of remedies exhausted:

The petitioners have not moved any High Court or any other authority in the matter. The petitioners have not filed any such petition before the Honourable Court earlier.

Place: Bhopal

Date:.....

PETITIONERS