REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 55 of 2019

JANHIT ABHIYAN ..... APPELLANT

VERSUS

UNION OF INDIA .... RESPONDENT

WITH

T.C. (C) No.8/2021, W.P. (C) No. 596/2019, W.P. (C)No. 446/2019, W.P. (C) No. 427/2019, W.P. (C) No. 331/2019, W.P.(C) No. 343/2019, W.P.(C) No. 798/2019, W.P.(C) No. 732/2019, W.P.(C) No. 854/2019, T.C.(C) No. 12/2021, T.C.(C) No. 10/2021, T.C.(C) No. 9/2021, W.P.(C) No. 73/2019, W.P.(C) No. 72/2019, W.P.(C) No. 76/2019, W.P.(C) No. 80/2019, W.P.(C) No. 222/2019, W.P.(C) No. 249/2019, W.P.(C) No. 341/2019, T.P.(C) No. 1245/2019, T.P.(C) No. 2715/2019, T.P.(C) No. 122/2020, SLP(C) No. 8699/2020, T.C.(C) No. 7/2021, T.C.(C) No. 11/2021, W.P.(C) No. 69/2019, W.P.(C) No. 122/2019, W.P.(C) No. 106/2019, W.P.(C) No. 95/2019, W.P.(C) No. 133/2019, W.P.(C) No. 178/2019, W.P.(C) No. 182/2019, W.P.(C) No. 146/2019, W.P.(C) No. 168/2019, W.P.(C) No. 212/2019, W.P.(C) No. 162/2019, W.P.(C) No. 419/2019, W.P.(C) No. 473/2020, W.P.(C) No. 493/2019

J U D G M E N T

BELA M. TRIVEDI, J.

1. I have had the benefit of perusing the opinion of my learned Brother Dinesh Maheshwari, J. and I am in respectful agreement with him. However, having

regard to the importance of the constitutional issues involved, I deem it appropriate to pen down my few views, in addition to his opinion.

2. For the sake of brevity, the divergent and irreconcilable submissions made by the Learned Counsels for the parties and the propositions of law laid down by this Court from time to time on the issues involved, are not repeated, the same having already been narrated in the opinion of my learned Brother.

3. Since the advent of the Constitution, there is a constant churning process going on to keep alive the spirit of its Preamble and to achieve the goal of establishing a Welfare State, adhering to the inherent elements of the Constitutional morality and Constitutional legality. As a result thereof about 105 amendments have been made so far, in the Constitution. We have been called upon to examine the constitutional validity of the Constitution (One hundred and third Amendment) Act, 2019.

4. For ready reference, the impugned 103rd Amendment along with the Statement of Objects and Reasons is reproduced:-

"MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 12th January, 2019/Pausha 22, 1940 (Saka)

The following Act of Parliament received the assent of the President on the 12th January, 2019, and is hereby published for general information:—

THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019

[12th January, 2019.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Constitution (One Hundred and Third Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of article 15.

2. In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

‘(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so

far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.’.

Amendment of article 16.

3. In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

"(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in

clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.".

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DR . G. NARAYANA RAJU,
Secretary to the Govt. of India."

"STATEMENT OF OBJECTS AND REASONS

At present, the economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of article 15 and clause (4) of article 16 are generally unavailable to them unless they meet the specific criteria of social and educational backwardness.

2. The directive principles of State policy contained in article 46 of the Constitution enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

3. Vide the Constitution (Ninety-third Amendment) Act, 2005, clause (5) was inserted in article 15 of the Constitution which enables the State to make special provision for the advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, clause (4) of article 16 of the Constitution enables the State to make special provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

4. However, economically weaker sections of citizens were not eligible for the benefit of reservation. With a view to fulfil the mandate of article 46, and to ensure that economically weaker sections of citizens to get a fair chance of receiving higher education and participation in

employment in the services of the State, it has been decided to amend the Constitution of India.

5. Accordingly, the Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019 provides for reservation for the economically weaker sections of society in higher educational institutions, including private institutions whether aided or unaided by the State other than the minority educational institutions referred to in article 30 of the constitution and also provides for reservation for them in posts in initial appointment in services under the State.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 7th January, 2019. THAAWARCHAND GEHLOT"

5. The legal and constitutional history of India depicted through the erudite, scholarly and authoritative opinions pronounced by this Court in the past, has always been very educative and interesting. The wide spectrum and perspectives of the contours of the Constitution of India laid down therein, have actually worked at the fulcrum and have guided us as a laser beam in the interpretation of the Constitutional provisions. The sole fountainhead of the constituent power conferred upon the Parliament to amend the provisions of the Constitution is Article 368 thereof. It is very well-established proposition of law that it is the Constitution and not the constituent power which is supreme. The Constitution which reflects the hopes and aspirations of people, also provides for the framework of the different organs of the State viz. the Executive, the Legislature and the Judiciary. The Judiciary is entrusted with

the responsibility of upholding the supremacy of the Constitution. That does not mean that such power of judicial review makes the judiciary supreme. The Constitution itself has created a system of checks and balances by which the powers are so distributed that none of the three organs it sets up, can become so predominant as to disable the others from exercising and discharging powers and functions entrusted to them.[1] Yet the power of judicial review is provided expressly in our Constitution by means of Articles 226 and 32, which is one of the features upon which hinges the system of checks and balances. This power is of paramount importance in a federal Constitution like ours and is the heart and core of the democracy.

6. It is axiomatic that the Parliament has been conferred upon the constituent power to amend by way of addition, variation or repeal any provision of the Constitution under Article 368 of the Constitution, and the same is required to be exercised in accordance with the procedure laid down in the said Article. The Constitution is said to be a living document or a work in progress only because of the plenary power to amend is conferred upon the Parliament under the said provision. Of course, as laid down in plethora of judgments, the said power is subject to the constraints of the basic structure theory. Deriving inspiration from the Preamble and the whole scheme of the Constitution, the

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[1] ***Kesavananda Bharati vs. State of Kerala & Anr***. (1973) 4 SCC 225 (Para 577)

majority in ***Kesavananda Bharati*** case held that every provision of the Constitution can be amended so long as the basic foundation and structure of the Constitution remains the same. Some of the basic features of the constitutional structure carved out by the Court in the said judgment were, the supremacy of the Constitution, Republican and democratic form of government, separation of powers, judicial review, sovereignty and the integrity of the nation, Federal Character of Government etc. A multitude of features have been acknowledged as the basic features in various subsequent judicial pronouncements. Accordingly, any amendment made by the Parliament is open to the judicial review and is liable to be interfered with by the Court on the ground that it affects one or the other basic feature of the Constitution.

7. In case of ***Kihoto Hollohan vs. Zachillhu & Ors***.[2] the Court explaining the limitations imposed on the constituent power observed that the limitations imposed are substantive limitations and procedural limitations. Substantive limitations are those which restrict the field of exercise of the amending power and exclude some areas from its ambit. Therefore, violation of the basic structure of the Constitution would be a substantive limitation restricting the field of exercise of the amending power under Article 368 of the Constitution.

[2] (1992) Suppl. 2 SCC 651

Procedural limitations are those which impose restrictions with regard to the mode of exercise of the amending power. Both these limitations touch and affect the constituent power itself, the disregard of which invalidates its exercise. In ***Kesavananda Bharati***[3] Case, it has been observed that while examining the width of the constituent power, it is essential to see its limits, the maximum and the minimum; the entire ambit and the magnitude of it. It has been further observed that Parliament could under Article 368 amend Article 13 and also the fundamental rights; and that the power of amendment under Article 368 is wide, but it is not wide enough to totally abrogate any of the fundamental rights or other essential elements of the basic structure of the Constitution and destroy its identity[4].

8. In the light of afore-stated legal position, let us examine whether the impugned amendment has disregarded any of the limitations - substantive or procedural. The gravamen of the submissions made by the learned counsels for the petitioners is that the Equality clause as interpreted in catena of decisions is the most important and indispensable feature of the Constitution, and the destruction thereof will amount to changing the basic structure of the Constitution. The bone of contention raised by them is that the exclusionary

[3] Ibid (Para-524-525)

[4] Ibid (Para-1162)

clauses contained in Articles 15(6) and 16(6) keeping out the backward classes and SCs/STs from having the benefits of the economic reservation, are discriminatory in nature and violate the equality code and in turn the basic structure of the Constitution.

9. At the outset, very relevant and apt observations made by Krishna Iyer, J. in ***Maharao Sahib Shri Bhim Singhji vs. Union of India & Ors.***[5]***,*** with regard to the breach of equality code, deserve reference.

"Every breach of equality cannot spell disaster as a lethal violation of basic structure. Peripheral inequality is inevitable when large scale equalization processes are put into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality their genius will let them down if the essay is to avoid even peripheral inequalities. Every large cause claims some martyr, as sociologists will know. Therefore, what is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscionable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far, it shakes the democratic foundation and must suffer the death penalty."

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[5] (1981) 1 SCC 166

10. In an another interesting opinion by Justice Mathew in ***Indira Nehru Gandhi Vs. Raj Narain***[6], it was observed that: -

> "334. Equality is a multi-coloured concept incapable of a single definition. It is a notion of many shades and connotations. The preamble of the Constitution guarantees equality of status and of opportunity. They are nebulous concepts. And I am not sure whether they can provide a solid foundation to rear a basic structure. I think the types of equality which our democratic republic guarantees are all subsumed under specific articles of the Constitution like Articles 14, 15, 16, 17, 25 etc. and there is no other principle of equality which is an essential feature of our democratic polity."

11. The seven-judge Bench of this Court in ***State of Kerala & Anr. vs. N.M. Thomas & Ors.***[7]**,** stated that Article 16(1) is only part of comprehensive scheme to ensure equality in all spheres and is an instance of larger concept of equality of law. Article 16(4) cannot be viewed as an exception to Article 16(1), but only as something which logically emanates from Article 16(1).

12. In ***Waman Rao & Ors. Vs. Union of India & Ors.***[8], it was observed that every case in which the protection of a fundamental right is withdrawn will not necessarily result in damaging or destroying the basic structure of the Constitution. The question as to whether the basic structure is damaged or destroyed in any given case would depend upon which particular Article of

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[6] (1975) Suppl. SCC 1
[7] (1976) 2 SCC 310
[8] (1981) 2 SCC 362

Part III is in issue and whether what is withdrawn is quintessential to the basic structure of the Constitution.

13. The case of ***M. Nagraj & others Vs. Union of India***[9], classifies equality into two parts - "Formal equality" and "Proportional equality". Proportional equality is equality "in fact", whereas Formal equality is equality "in law". Formal equality exists in the rule of law. In case of Proportional equality, the State is expected to take affirmative steps in favour of disadvantaged sections of the society within the framework of liberal democracy. Egalitarian equality is proportional equality. The Constitution Bench in the said case was called upon to examine the constitutional validity of Article 16(4A) and 16(4B) as well as the 77th, 82nd and 85th amendments of the Constitution. While unanimously upholding the validity of the said Amendments, it was observed that-

> "118. The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to be decided on case-to-case basis."

[9] (2006) 8 SCC 212

14. In ***State of Gujarat and Another vs. & The Ashok Mills Co. Ltd. Ahmedabad and Another***[10]**,** it was observed: -

> "53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. And the very idea of classification is that of inequality. In tackling this paradox, the Court has neither abandoned the demand for equality nor denied the legislative right to classify. It has taken a middle course. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification.
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> 54. A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase 'similarly situated' mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good."

15. What is discernible from the above cited decisions is that the concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Equality is violated if it rests on unreasonable classification. A reasonable classification is permissible, which includes all who are similarly situated, and none who are not. Discrimination is the essence of classification. Those who are similarly circumscribed are entitled to an equal treatment. Classification has to be founded on substantial

[10] (1974) 4 SCC 656

differences which distinguish persons grouped together from those left out of the groups, and such differential attributes must bear a just and rational relation to the object sought to be achieved.

16. The Preamble, the Part III-Fundamental Rights and the Part IV-Directive Principles of State Policy- the Trinity are the conscience of the Constitution. The Preamble visualises to remove economic inequalities and to secure to all citizens of India, Justice - Social, Economic and Political, which is the sum total of the aspirations incorporated in Part IV. Economic empowerment to the weaker sections of the society is the fundamental requirement for ensuring equality of status and to promote fraternity assuring dignity as visualised by the framers of our Constitution. And therefore any positive discrimination in favour of the weak or disadvantaged class of people by means of a valid classification has been treated as an affirmative action on the part of the State. The Preamble to the Constitution and the Directive Principles of the State Policy give a positive mandate to the State and the State is obliged to remove inequalities and backwardness from the society.

17. As observed in ***Ashok Kumar Thakur***[11]***,*** while considering the constitutionality of social justice legislation, it is worthwhile to note the objectives which have been incorporated by the Constitution makers in the

[11] Ibid. (2008) 6 SCC 1

Preamble of the Constitution and how they are sought to be secured by enacting Fundamental Rights in Part-III and Directive Principles of State Policy in Part-IV of the Constitution. The Fundamental Rights represent the civil and political rights and the Directive Principles embody social and economic rights. Together they are intended to carry out the objectives set out in the Preamble to the Constitution. Article 46 enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation. The theory of reasonable classification is implicit and inherent in the concept of equality. Equality of opportunity would also mean a fair opportunity not only to one section or the other but to all sections by removing the handicaps if a particular section of the society suffers from the same.

18. Justice Krishna Iyer in ***N.M. Thomas***[12] has beautifully explained what is "social engineering"

> "**119.** Social engineering — which is law in action — must adopt new strategies to liquidate encrusted group injustices or surrender society to traumatic tensions. Equilibrium, in human terms, emerges from release of the handicapped and the primitive from persistent social disadvantage, by determined, creative and canny legal manoeuvres of the State, not by hortative declaration of arid equality. "To discriminate positively in favour of the weak may sometimes be promotion of genuine equality before the law" as Anthony Lester argued in his talk in the B.B.C. in 1970 in

[12] Ibid (1976) 2 SCC 310

> the series: *What is wrong with the law* [Published in book form —Edited by Micheel Zander — BBC, 1970 — quoted in Mod Law Rev Vol 33, Sept 1970, pp. 579, 580] . "One law for the Lion and Ox is oppression". Or, indeed, as was said of another age by Anatole France:
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> "The law in its majestic equality forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread. "

19. As transpiring from the Statements of Objects and Reasons for introducing the Bill to the impugned amendment, the Parliament has taken note that the economically weaker sections of the citizens have largely remained excluded from attaining the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under Clauses(4) and (5) of Article 15 and Clause(4) of Article 16 are generally unavailable to them unless they meet with the specific criteria of social and educational backwardness. It has been further stated that vide the Constitution (Ninety-third Amendment) Act, 2005, Clause(5) was inserted in Article 15 of the Constitution which enables the State to make special provision for the advancement of any social and educational backwardness of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, Clause(4) of Article 16 of the Constitution enables the State to make special provision for the reservation of

appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State. However, economically weaker sections of citizens were not eligible for the benefit of reservation. Therefore, with a view to fulfil the ideals lying behind Article 46, and to ensure that economically weaker sections of citizens to get a fair chance of receiving higher education and participation in employment in the services of the State, it was decided to amend the Constitution of India.

20. As well settled, it must be presumed that the legislature understands and appreciates the needs of its own people. Its laws are directed to the problems made manifest by experience, and its discriminations are based on adequate norms. Therefore, the constitutional amendment could not be struck down as discriminatory if the state of facts are reasonably conceived to justify it. In the instant case, the Legislature being aware of the exclusion of economically weaker sections of citizens from having the benefits of reservations provided to the SCs/STs and SEBCs citizens in Clauses(4) and (5) of Article 15 and Clause(4) of Article 16, has come out with the impugned amendment empowering the State to make special provision for the advancement of the "economically weaker sections" of citizens other than the classes mentioned in Clauses(4) and (5) of Article 15 and further to make special provision for

the reservation of appointments or posts in favour of the economically weaker sections of the citizens other than the classes mentioned in Clause(4) of Article 16. The impugned amendment enabling the State to make special provisions for the "economically weaker sections" of the citizens other than the scheduled castes/schedules tribes and socially and educationally backward classes of citizens, is required to be treated as an affirmative action on the part of the Parliament for the benefit and for the advancement of the economically weaker sections of the citizens. Treating economically weaker sections of the citizens as a separate class would be a reasonable classification, and could not be termed as an unreasonable or unjustifiable classification, much less a betrayal of basic feature or violative of Article 14. As laid down by this Court, just as equals cannot be treated unequally, unequals also cannot be treated equally. Treating unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

21. The Scheduled Castes/Scheduled Tribes and the backward class for whom the special provisions have already been provided in Article 15(4), 15(5) and 16(4) form a separate category as distinguished from the general or unreserved category. They cannot be treated at par with the citizens belonging to the general or unreserved category. The impugned amendment creates a

separate class of "economically weaker sections of the citizens" from the general/unreserved class, without affecting the special rights of reservations provided to the Scheduled Caste/Scheduled Tribe and backward class of citizens covered under Article 15(4), 15(5) and 16(4). Therefore, their exclusion from the newly created class for the benefit of the "economically weaker sections of the citizens" in the impugned amendment cannot be said to be discriminatory or violative of the equality code. Such amendment could certainly be not termed as shocking, unconscionable or unscrupulous travesty of the quintessence of equal justice as sought to be submitted by the Learned Counsels for the petitioners.

22. The sum and substance is that the limitations – substantive or procedural – imposed on the exercise of constituent power of the State under Article 368 could not be said by any stretch of imagination, to have been disregarded by the Parliament. Neither the procedural limitation i.e. the mode of exercise of the amending power has been disregarded nor the substantive limitation i.e. the restricted field has been disregarded, which otherwise would invalidate the impugned amendment. What is visualised in the Preamble and what is permissible both in Part-III and Part-IV of the Constitution could not be said to be violative of the basic structure or basic feature of the Constitution. In absence of any obliteration of any of the constitutional provisions and in

absence of any alteration or destruction in the existing structure of equality code or in the basic structure of the Constitution, neither the width test nor the identity test as propounded in ***Kesavananda*** could be said to have been violated in the impugned Amendment. Accordingly, the challenge to the constitutional validity of the 103rd Amendment fails, and the validity thereof is upheld.

23. Before parting, let me say something on the time span of the reservation policy.

24. It is said that no document can be perfect and no ideals can be fully achieved. But does that mean we should have no ideals? No vision? Sardar Patel had said [13] - "But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country; that in India there is only one community…"

25. Can we not move towards an ideal envisaged by the framers of our Constitution to have an egalitarian, casteless and classless society? Though difficult, it is an achievable ideal. Our Constitution which is a living and organic document continuously shapes the lives of citizens in particular and societies in general.

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[13] CAD Vol. VIII P.272, 25 May 1949

26. At this juncture, some of the very apt observations made by the Constitution Bench in ***K.C. Vasanth Kumar***[14] are worth noting-

Per D.A. Desai, J.

> "**30.** Let me conclude. If economic criterion for compensatory discrimination or affirmative action is accepted, it would strike at the root cause of social and educational backwardness, and simultaneously take a vital step in the direction of destruction of caste structure which in turn would advance the secular character of the Nation. This approach seeks to translate into reality the twin constitutional goals: one, to strike at the perpetuation of the caste stratification of the Indian Society so as to arrest regressive movement and to take a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the mainstream of life which means eradication of poverty.
>
> **31.** Let me make abundantly clear that this approach does not deal with reservation in favour of Scheduled Castes and Scheduled Tribes. Thousands of years of discrimination and exploitation cannot be wiped out in one generation. But even here economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefited by it and improved their position. <u>And finally reservation must have a time span otherwise concessions tend to become vested interests."</u>

Per E.S. Venkataramiah, J.

> "**150.** At this stage it should be made clear that if on a fresh determination some castes or communities have to go out of the list of backward classes prepared for Article 15(4) and Article 16(4), the Government may still pursue the policy of amelioration of weaker sections of the population amongst them in accordance with the Directive Principle contained in Article 46 of the Constitution. "

[14] (1985) Suppl. SCC 714

In the said judgment, Chief Justice Y.V. Chandrachud, as he then was, had proposed thus:-

> "**2.** I would state my opinion in the shape of the following propositions:
>
> (1) The reservation in favour of Scheduled Castes and Scheduled Tribes must continue as at present, there is, without the application of a means test, for a further period not exceeding fifteen years. Another fifteen years will make it fifty years after the advent of the Constitution, a period reasonably long for the upper crust of the oppressed classes to overcome the baneful effects of social oppression, isolation and humiliation.
>
> (2) The means test, that is to say, the test of economic backwardness ought to be made applicable even to the Scheduled Castes and Scheduled Tribes after the period mentioned in (1) above. <u>It is essential that the privileged section of the underprivileged society should not be permitted to monopolise preferential benefits for an indefinite period of time.</u>
>
> (3) Insofar as the other backward classes are concerned, two tests should be conjunctively applied for identifying them for the purpose of reservations in employment and education: One, that they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness; and two, that they should satisfy the means test such as a State Government may lay down in the context of prevailing economic conditions.
>
> (4) The policy of reservations in employment, education and legislative institutions should be reviewed every five years or so. That will at once afford an opportunity (*i*) to the State to rectify distortions arising out of particular facets of the reservation policy and (*ii*) to the people, both backward and non-backward, to ventilate their views in a public debate on the practical impact of the policy of reservations."

27. The concern for continuing the reservation as an affirmative action only for a limited period was also expressed by this Court in "***Ashok Kumar Thakur vs. Union of India***"[15]

> "**666.** Caste has divided this country for ages. It has hampered its growth. To have a casteless society will be realisation of a noble dream. To start with, the effect of reservation may appear to perpetuate caste. The immediate effect of caste-based reservation has been rather unfortunate. In the pre-reservation era people wanted to get rid of the backward tag—either social or economical. But post reservation, there is a tendency even among those who are considered as "forward", to seek the "backward" tag, in the hope of enjoying the benefits of reservations. When more and more people aspire for "backwardness" instead of "forwardness" the country itself stagnates. Be that as it may. Reservation as an affirmative action is required only for a limited period to bring forward the socially and educationally backward classes by giving them a gentle supportive push. But if there is no review after a reasonable period and if reservation is continued, the country will become a caste divided society permanently. Instead of developing a united society with diversity, we will end up as a fractured society forever suspicious of each other. While affirmative discrimination is a road to equality, care should be taken that the road does not become a rut in which the vehicle of progress gets entrenched and stuck. Any provision for reservation is a temporary crutch. Such crutch by unnecessary prolonged use, should not become a permanent liability. It is significant that the Constitution does not specifically prescribe a casteless society nor tries to abolish caste. But by barring discrimination in the name of caste and by providing for affirmative action Constitution seeks to remove the difference in status on the basis of caste. When the differences in status among castes are removed, all castes will become equal. That will be a beginning for a casteless egalitarian society."

[15] (2008) 6 SCC 1

28. What was envisioned by the framers of the Constitution, what was proposed by the Constitution Bench in 1985 and what was sought to be achieved on the completion of fifty years of the advent of the Constitution, i.e. that the policy of reservation must have a time span, has still not been achieved even till this day, i.e. till the completion of seventy-five years of our Independence. It cannot be gainsaid that the age-old caste system in India was responsible for the origination of the reservation system in the country. It was introduced to correct the historical injustice faced by the persons belonging to the scheduled castes and scheduled tribes and other backward classes, and to provide them a level playing field to compete with the persons belonging to the forward classes. However, at the end of seventy-five years of our independence, we need to revisit the system of reservation in the larger interest of the society as a whole, as a step forward towards transformative constitutionalism.

29. Be it noted that as per Article 334 of the Constitution, the provisions of the Constitution relating to the reservation of seats for the SCs and the STs in the House of the People and in the Legislative Assemblies of the States would cease to have effect on the expiration of a period of eighty years from the commencement of the Constitution. The representation of Anglo-Indian community in the House of the Parliament and in the Legislative Assemblies of the States by nomination, has already ceased by virtue of the 104th

Amendment w.e.f. 25.01.2020. Therefore, similar time limit if prescribed, for the special provisions in respect of the reservations and representations provided in Article 15 and Article 16 of the Constitution, it could be a way forward leading to an egalitarian, casteless and classless society.

..…………………………...J.
[BELA M. TRIVEDI]

NEW DELHI;
07.11.2022