

SYNOPSIS & LIST OF DATES

The petitioner is presenting this petition to challenging the constitutional validity of Constitution (103rd Amendment) Act, 2019 (hereinafter referred as "said Act") which violates several basic features of the Constitution and exceeds the maximum limit of reservation as put by this Hon'ble Court in M R Balaji v Mysore AIR 1963 SC 649 and also upheld the same in case Indra Sawhney & Ors v. Union of India. AIR 1993 SC 477: 1992 Supp (3) SCC 217. The said Act passed by both Houses of Parliament in the First week of January, 2019 and notified on 12.01.2019 in the official gazette by the government of India.

Both Houses of the Parliament passed the 124th constitutional amendment bill to provide 10 % reservation in jobs and educational institutions to the economically weaker sections on 09.01.2019 and enacted as Constitution (One Hundred and Third Amendment) Act, 2019 to enable the State to make reservations based on the economic criterion alone. The Act received the assent of the Hon'ble President on 12.01.2019 and was published in the Gazette on the same day. Through Constitution (One Hundred and Third Amendment) Act, 2019; clause (6) was inserted in Article 15 and 16 of the Constitution. Clause (6) as inserted in the Article 15 of the through The Constitution (One Hundred and Third Amendment) Act, 2019 reads as follows:

(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 in 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 purpose 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.'

Similarly, Clause (6) was inserted into the Article 16 and it reads as follows

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor 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.

The 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.

It is submitted that the said Act violates Article 14 (equality before law) and Article 15 (prohibition of discrimination on the basis of religion, race, caste, sex or place of birth) of the Constitution of India. It is stated that In Re Indra Sawhney & Ors Vs. Union of India. AIR 1993 SC 477: 1992 Supp (3) SCC 217 this Hon'ble Court ruled out:

1. That the total number of reserved seats /places / positions shall not exceed 50% of seats as available, and
2. That under the constitutional scheme of reservation, economic backwardness alone could not be a criterion to reserve seats.

It is humbly submitted that reservation under the Constitution scheme is prescribed only on the basis of social and educational backwardness and not economic backwardness. The nine-judge bench of this Hon'ble Court in 1993 while delivering judgement observed that:

"Reservation being extreme form of protective measure or affirmative action it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50%".

Thus this Hon'ble Court however rejected the idea of reservation on the basis of economic criteria.

It is also humbly submitted that so far, 27 per cent quota is given to OBCs and 22 per cent to SC/STs for their social and educational backwardness. The new quota of 10% reservation on the basis of economic takes

the total reservation to approx 60 per cent which go against the basic structure of the Constitution of India.

It is also humbly submitted that reservation has been approved only for social and educational backwardness and none of them included economic criteria. This Hon'ble court and several High Courts have strike down the reservations which are exceeded the cap of 50% limit on the basis of the "Indra Sawhney Judgment such as in the Maratha and Patidar quota cases.

Further, though Article 15 (4) was added by an amendment to the Constitution, the idea of making "special provisions" or "reservations" in favour of 'backward classes' was discussed in detail in the constituent assembly debates. Dr. B.R. Ambedkar was one of the many who fought passionately and fervently to include Article 16 (4) in the Constitution despite of opposed by many members who believed that reservations offended the equality clause. During one such debate, a question was posed as to whether the term backward class referred to in Article 16 (4) was based on economic status or caste. Dr. Bhimrao Ramji Ambedkar explained the intention of the drafters. Dr. Bhimrao Ramji Ambedkar said that "Drafting Committee had to produce a formula which would reconcile these points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration."

Hence, it is clear that the concept of reservation itself is not with reference to the economic status of a person but rather with reference to the community to which he belongs, with an idea to integrate that community into the mainstream system of education and employment.

It is also important to mention that subsequently, due to some decisions of the Hon'ble Supreme Court, a question arose about the competence of the State to prescribe for reservations in private and minority institutions in the cases of P. A. Inamdar and T.M.A. Pai. To overcome these difficulties, the Parliament again amended Article 15 by way of the Constitution (Ninety-third Amendment) Act, 2005 to add Article 15 (5) which reads as under:

“(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes 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.”

It is submitted that the Parliament while inserting Article 15(5) maintained reservation based on socially backward community which in the present amendment has totally deviated from the Constitutional Scheme and hence creates the jolt to the basic structure of Constitution. It has never been the intention of the framers of the constitution to make reservations solely based on economic status of an individual not it is in accordance with Constitutional Morality.

09.01.2019 The 124th constitutional amendment bill was introduced in the parliament on 09.01.2019. Both Houses of the Parliament passed the 124th constitutional amendment bill to provide 10 % reservation in jobs and educational institutions to the economically

weaker sections on 09.01.2019.

12.01.2019 The Parliament enacted the Constitution (One Hundred and Third Amendment) Act, 2019 to enable the State to make reservations based on the economic criterion alone. The Act received the assent of the Hon'ble President on 12.01.2019 and was published in the Gazette on the same day. Through Constitution (One Hundred and Third Amendment) Act, 2019; clause (6) was inserted in Article 15 and 16 of the Constitution. Clause (6) as inserted in the Article 15 of the through The Constitution (One Hundred and Third Amendment) Act, 2019. Copy of the Constitution (One Hundred and Third Amendment) Act, 2019, is enclosed herewith as ANNEXURE P-1 (Pages

21.01.2019 The Present Writ Petition is being filed.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____/2019

IN THE MATTER OF:

Reepak Kansal,

Petitioner

Versus

Union of India through Secretary,
Ministry of Law & Justice, 4TH
Floor, A- Wing, Shastri Bhavan,
New Delhi-110001.

Respondent

To,

Hon'ble the Chief Justice of India
and His Companion Justices of
The Supreme Court of India;

The humble petition of the Petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is filing this Writ Petition in public interest under Article 32 read with Article 21 of the Constitution of India.
2. That, the Petitioner is constrained to file this petition before the Hon'ble Supreme Court of India as relief(s) have been claimed to stuck down a central legislation for which this Hon'ble Court only has the jurisdiction.
3. That, the Petitioner is constrained to file the above writ petition before this Hon'ble Court as it has no other efficacious remedy.
4. The Petitioner is an Advocate and member of the SCBA The Petitioner has no personal gain, private motive or oblique reason in filing the present writ petition.
5. The Petitioner states that no civil, criminal or revenue litigation involving the Petitioner or which has or could have a legal nexus with the issue involve in the present writ petition.
6. That, the Petitioner is citizen of India and filing the present writ petition for the common cause and the benefits of the society at large. The Petitioner has been taking up public causes through various petitions

before the Courts and before authorities by way of applications under Right to Information Act, 2002.

7. There is violation of Articles 14, 19, 21 of the Constitution of India.
8. That the Petitioner states that he has not approached any of the court (s) earlier for the relief sought in this petition.
9. That the Petitioner has not filed any similar petition previously before this Hon'ble Court or before any High Court.
10. That this petition is preferred without prejudice to each other inter alia on the following grounds :-

GROUND OF THE WRIT PETITION

- A. Because Article 21 of the Indian Constitution recognizes every individual's right to life and liberty, which includes right to get justice through procedure established by law and as per the interpretation of this Hon'ble Court any law shall be considered to fulfill this requirement only when it is just, fair and reasonable and not absurd.
- B. The impugned Constitution (One Hundred and Third Amendment) Act, 2019 are unconstitutional and violate the basic feature of the Constitution.
- C. B. The concept of reservation on Economic basis alone cannot be the basis of reservation as per the framer of the constitution and held by this Hon'ble Court.

- D. C Because, there is already approximately 50% limit of reservation existing in the State(s) therefore, exceeding 50% limits abrogate the basic structure of the constitution. It is pertinent to note that there are some states in India where the reservation is crossing the limit and is approximately 70% and therefore such kind of reservation policy along with the existing norms of reservation would actually close the doors of other people for employment and opportunity; therefore denied the fundamental right of equality of opportunity. It is also significant that there is also vertical reservation along with horizontal therefore practically it is closure of opportunity in employment and threat to basic structure of Constitution.
- E. D Because, power to amend the Constitution is subjected to the 'basic feature doctrine' as propounded by the Hon'ble Supreme Court in the case of Keshavnanda Bharati vs. State of Kerala.
- F. E Because, the said Act is unconstitutional, violates the basic feature of the Constitution, and is ultra vires of Articles 14, 15, 16, 19, 29, 30 and 368 of the Constitution of India.
- G. F Because, as per the decision of the Hon'ble Supreme Court in the case of Indra Sawhney vs. Union of India, economic status cannot be the sole criterion for reservation.
- H. G. Because As per the ratio in Indira Sawhney vs. Union of India and the decision in M. Nagaraj vs. Union of India & Ors., the reservation cannot be beyond 50% of the available seats or posts at a given point in time. The said Act enable for

reservation above the cap of 50% reservation therefore, violate basic feature of the Constitution hence it is unconstitutional.

- I. H. Because, It is well settled that the cap of 50% in reservation is also part of the basic structure and has been asserted by the Supreme Court in the decision in M. Nagaraj. This view has been affirmed subsequently by several decisions of the Hon'ble Supreme Court and by several High Courts across the country.
- J. G. It is well settled that the power to amend the Constitution is traceable to Article 368 of the Constitution of India and as per the decision in Keshavnanda Bharati vs. State of Kerala, (1973) 4 SCC 225 the power to amend the Constitution is subject to the limitation that the basic feature of the Constitution cannot be destroyed by such amendments, which however is being done through the present Amendment Act by exceeding the 50% limit of reservation as prescribed by this Court.
- K. Because there is already in reservation of 69% in states like Tamil Nadu and therefore more 10% reservation on the basis of economic status would close the doors of other aspirants not falling in the non reserved class. It is effectually a denial of employment, directly affecting the Fundamental Right guaranteed under Article 19 of the Constitution.
- L. The Supreme Court in the case of I.R. Coelho vs. State of Tamil Nadu, (2007) 2 SCC 1 has categorically held that Article 15 of Constitution along with Articles 14, 19 and 21 constitute the 'core values' which cannot be abrogated.

M. I. In the case of Ashok Thakur vs. Union of India, the Constitution Bench of the Supreme Court has held that in the case of private institutions and unaided institutions, the State cannot thrust reservation on them and such reservations violate the basic structure by obliterating the right under Article 19(1)(g).

PRAYER

It is, therefore, most respectfully prayed that your lordships may be pleased to allow this writ petition and may further be pleased:-

- (i) to issue a Writ, Order or Direction in the nature of Writ of Mandamus declaring The Constitution (One Hundred And Third Amendment) Act, 2019 as unconstitutional and void; and/or
- (ii) to pass such other writ(s), order(s) or direction(s) as is deemed fit and proper in the premises of the case, which is not specifically prayed for hereinabove.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

Drawn by:
Dr. Ashutosh Garg &
Reepak Kansal

Filed by:

(DR. ASHUTOSH GARG)
Advocate for the Petitioner

Date of drafting: 18.01.2019

Date of filing: 21.01.2019

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) No. _____/2019

IN THE MATTER OF:

Reepak Kansal

...Petitioner

Versus

Union of India

...Respondent.

AFFIDAVIT

I, Reepak Kansal do hereby solemnly affirm and state as under:

- 1 I am Petitioner in the aforesaid matter and I am fully conversant with the facts and circumstances of the case.
- 2 The contents of the synopsis from pages B to , writ petition from pages 1 to , and paper -book has total .. pages have understood by me and I say that the facts mentioned therein are true to my personal knowledge and record.
- 3 The Petitioner has no personal gain, private motive or oblique reason in filing the present writ petition.

Deponent

Verification

Verified at Delhi on this 21ST January, 2019 that the contents of the paragraphs in the above affidavit from para 1 to 3 are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed there from.

Deponent

APPENDIX

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO._____/ 2019
(Writ Petition Under Article 32 Of The Constitution Of India)

In the matter of:

Reepak Kansal

...Petitioner

Versus

Union of India.

...Respondent

Index

1.	Writ Petition with affidavit	1+1	520/-
2.	Vakalatnama	1	10/- 530/-

Dr. Ashutosh Garg
Advocate on Record