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SPECIAL ISSUE

LEGISLATIVE CIRCUMVENTION OF JUDICIAL RESTRICTIONS ON RESERVATIONS: POLITICAL IMPLICATIONS

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I. Introduction

The strength of a judicial system lies in its ability to correct its own errors of interpretation from time to time and move forward. By trial and error, the Supreme Court has been shaping the Constitution in the right direction. Much has been accomplished during the 54 years since the dawn of Indian Republic in 1950 by liberal interpretation of Article 21; much more needs to be done to give a push to the upliftment of weaker sections of society whose interests were upper-most on the mind of the framers of the Constitution. The country has never witnessed a galaxy of stalwarts such as those who had adorned the Constituent Assembly in terms of their stature, experience, vision and ability to work as a team. Though not elected on the basis of adult franchise, the representative-character of the Assembly was much more than any general election of the kind held these days could have produced.

The founding fathers tried to incorporate the main provisions of the Universal Declaration of Human Rights in the Constitution. The most basic rights among them, which every human being in a civilized State

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ought to enjoy, have been put in Part III as Fundamental Rights and others like right to education, right to work, right to health, right to public assistance in case of undeserved want etc. that needed to be secured gradually were included in Part IV as Directive Principles of State Policy. The Directive Principles of State Policy are fundamental in the governance of the country, with a firm mandate to the State to apply these principles in making laws. It took over two decades for the Supreme Court to declare that it shall be the duty of the Judiciary as well to apply these principles in the declaration of law while interpreting the Constitution and the laws. It follows that the responsibility of raising the level of weaker sections so as to enable them to enjoy the right to equality of opportunity like others rests on all the three wings of the State.

Judges of the Federal Court were appointed as Judges of the Supreme Court under the Constitution of India. They took considerable time to appreciate the dynamic character of the new Constitution having a socio-economic agenda that necessitated sustained State action. Zamindari abolition and other agrarian reforms, abolition of untouchability and upliftment of weaker sections by providing them free education, employment and by other measures of affirmative State action were part of the national agenda of the Freedom struggle.

The Directive Principles of State Policy warranted innovative interpretation of the Constitution. The inability of the Court to rise to the occasion came to light in the very first case involving the question of discrimination on the prohibited grounds of caste and community. In *State of Madras* v. *Champakam Dorairajan,*[1] the issue involved was simple. The Government Order (G.O.) provided apportionment of seats for non-Brahmins (Hindus), backward Hindus, Brahmins, Harijans, Anglo-Indians and Christians and Muslims for admission into Government Medical and Engineering Colleges in the prescribed ratio. Articles 15(1) and 29(2) do not permit such discrimination. As the classification was based on religion, race and caste, the G.O was liable to be quashed as unconstitutional. To save the G.O., the Advocate-General for the State relied on Article 46 of the Constitution, which requires the State to promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. The

[1] State of Madras v. Champakam Dorairajan AIR 1951 SC 226 (Supreme Court of India).

Court could have rejected this contention outright stating that Article 46 did not require classification of citizens with reference to their religion, race or caste and there was no conflict between Article 46 and Articles 15(1) and 29(2). However, the Court needlessly declared that the Directive Principles of State Policy, which by Article 37 are made unenforceable by a court, cannot override the provisions of Part III which are expressly made enforceable by appropriate writs, orders or directions under Article 32.[2] This initial error affecting the basic structure of the Constitution stalled the socio-economic change contemplated by Part IV.[3] Another reason given for rejecting the argument founded on Article 46 was the absence of a provision like Article 16(4) in Article 29 that enabled the State to protect the interests of backward classes of citizens through reservation of seats for admission into educational institutions. The Parliament responded to these judicial pronouncements by the First Amendment to the Constitution that inserted clause (4) in Article 15 on the lines of clause (4) of Article 16, amended clauses (2) and (6) of Article 19 and inserted. Articles 31-A and 31-B along with the Ninth Schedule, besides other changes. Moving the Amendment Bill, Prime Minister Nehru said:

> *"It is all very well to talk about the equality of law for the millionaire and the beggar but the millionaire has not much incentive to steal a loaf of bread, while the starving beggar has. This business of the equality of law may very well mean, as it has come to mean often enough, the making of existing inequalities rigid by law. This is a dangerous tiling and it is still more dangerous in a changing society. It is completely opposed to the whole structure and method of this Constitution and what is laid down in the Directive Principles."*[4]

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[2] This is no longer good law.

[3] Similar altitude of Courts had led to the striking down of Zamindari Abolition Acts at a time when Parliament was eager to push through radical reforms. The Court's insistence on payment of market value for the properties subjected to land reforms resulted in disfiguring the Constitution by the insertion of Arts. 31-A and 31-B and the Ninth Schedule containing a list of Acts which could not be challenged on the ground of violation of any provision of Part III. Initially the Schedule contained only 13 enactments and today there are as many as 284 Acts in it including the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994), reserving 69% of the posts for Backward classes including Scheduled Castes and Scheduled Tribes contrary to the ceiling of 50% indicated by a nine-Judge Bench in Indra Sawhney v. Union of India, (1992) Supp 3 SCC 217 (Supreme Court of India).

[4] Jawahar Lal Nehru's speech in Parliament, delivered on May 29, 1951.

II. Backward Classes and Castes

M.R. Balaji v. *State of Mysore*[5] is the next landmark case in this area of affirmative action. A Constitution Bench of the Supreme Court grappled with the question whether "backward classes" mean 'backward castes'. The Court held that a class does not mean a caste or a community. In the words of the Court: *"If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the castes themselves."*[6] However, the Court held that it might not be irrelevant to consider the caste of the group for deciding the question whether it is a backward class of citizens. It is a matter of concern that a majority of the nine Judges in *Indra Sawhney* v. *Union of India*[7] has endorsed the relevance of caste in the matter of classification of backward classes notwithstanding the secular character of the Constitution.

However, a few Judges did appreciate the potential of caste to impede the evolution of a unified and casteless society. Kuldip Singh, J., held: *"secularism is the basic feature of the Indian Constitution. It envisages a cohesive, unified and casteless society ... Caste poses a serious threat to the secularism and as a consequence to the integrity of the country ... Castes cannot be adopted as collectivities for the purpose of identifying "backward class" under Article 16(4)".*[8] R.M. Sahai, J. held that under a secular Constitution, caste, like religion and race, cannot furnish the basis for reservation of posts in service. According to him, uplifting the backward class of citizens, promoting them socially and educationally and taking care of weaker sections of society by special programmes and policies is the primary concern of the State. However, the majority of Judges without pointedly answering the question, whether in a secular

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[5] M.R. Balaji v. State of Mysore AIR 1963 SC 649 : (1963) Supp 1 SCR 439 (Supreme Court of India).

[6] M.R. Balaji v. State of Mysore AIR 1963 SC 649 : (1963) Supp 1 SCR 439, 461 (Supreme Court of India).

[7] Indra Sawhney v. Union of India (1992) Supp 3 SCC 217 (Supreme Court of India). The majority opinion was given by Jeevan Reddy, J., speaking for M.H. Kania C.J., M.N. Venkatachaliah, J., A.M. Ahmadi, J, and himself. Separate concurring opinions were delivered by Ratnavel Pandian. J., and P.B. Sawant, J. Thommen, J., Kuldip Singh, J., and R.M. Sahai, J., gave separate dissenting opinions.

[8] Indra Sawhney v. Union of India (1992) Supp 3 SCC 217 (Supreme Court of India). The majority opinion was given by Jeevan Reddy, J., speaking for M.H. Kania C.J., M.N. Venkatachaliah, J., A.M. Ahmadi, J, and himself. Separate concurring opinions were delivered by Ratnavel Pandian. J., and P.B. Sawant, J. Thommen, J., Kuldip Singh, J., and R.M. Sahai, J., gave separate dissenting opinions at 472.

polity envisaged by the Constitution, identification of backward classes on the basis of or with reference to caste was permissible at all as that would only perpetuate the caste system and generate antagonism and antipathy between castes, declared: *"identification of backward classes can certainly be done with reference to castes among, and along with, other occupational groups, classes and sections of people".*[9]

It is not easy to reconcile this view with the declaration of law in *S.R. Bommai* v. *Union of India.*[10] There the majority queried: *"How is this equal treatment (contemplated by secularism) possible, if the State were to prefer or promote a particular religion, race or caste which necessarily means a less favourable treatment of all other religions, races and castes? How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements?"*[11] Nani A. Palkhivala's comments on the judgment in *Indra Sawhney* are profound:

> *"The basic structure of the Constitution envisages a cohesive, unified, casteless society. By breathing new life into casteism, the judgment fractures the nation and disregards the basic structure of the Constitution. The decision would revitalise casteism, cleave the nation into two — forward and backward — and open up new vistas for internecine conflicts and fissiparous forces, and make backwardness a vested interest. It will undo whatever has been achieved since independence towards creating a unified, integrated nation. The majority judgments will revive casteism which the Constitution emphatically intended to end; and the pre-independence tragedy would be re-enacted with the roles reversed — the erstwhile underprivileged would now become the privileged."*[12]

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[9] Indra Sawhney v. Union of India, (1992) Supp 3 SCC 217, 727(Supreme Court of India).
[10] S.R. Bommai v. Union of India (1994) 3 SCC 1 (Supreme Court of India).
[11] *Id.* The nine-judge Bench expressed itself through six opinions. The majority view can be taken to be shared by Pandian, J., Sawant and Kuldip Singh, JJ., and Jeevan Reddy and Agrawal, JJ. Other opinions were given by Ahmadi, J., Verma and Yogeshwar Dayal, JJ., and Ramaswamy, J. at 233, as per Jeevan Reddy, J., speaking for Agrawal, J., and himself.
[12] Nani A. Palkhivala, We, the Nation 179 (1994).

Dr. B.R. Ambedkar had said in the Constituent Assembly that castes were anti-national. *"In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation."*[13] He was apprehensive about the future of India. *"Will Indians place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost forever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood."*[14]

Earlier, in *R. Chitralekha* v. *State of Mysore,*[15] another Constitution Bench had held that a valid classification of backward classes could be made without reference to caste. In *K.C. Vasanth Kumar* v. *State of Karnataka,*[16] judicial opinion had been divided. D.A. Desai, J. was against making caste the basis for recognizing backwardness. He commended the economic criterion for compensatory discrimination or affirmative action for achieving two constitutional goals:

> *"One, to strike at the perpetuation of the caste stratification of Indian society so as to arrest progressive movement and to make 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."*[17]

Justice C.V. Rane Commission had no difficulty in identifying backward classes with reference to caste in Gujarat. Occupation, income, level of literacy of the family members and the locality where they resided would be reliable indicators of backwardness. The list of backward classes in operation in all the States and the Union Government's list prepared by the Mandal Commission which was upheld by the Supreme Court in *Indra*

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[13] 11 Constituent Assembly Debates 980.
[14] *Id.*
[15] R. Chitralekha v. State of Mysore AIR 1964 SC 1823 (Supreme Court of India).
[16] K.C. Vasanth Kumar v. State of Karnataka AIR 1985 SC 1495 (Supreme Court of India).
[17] *Id*, at 1507.

Sawhney, all contain only names of castes subject to exclusion of the creamy layer in each class from the ambit of reservations made in public employment and educational institutions as directed by the Court in *Indra Sawhney.*

In *Ashoka Kumar Thakur* v. *State of Bihar*[18] constitutional validity of the criteria for identification of 'creamy layer' laid down by the States of Bihar and Uttar Pradesh came up for consideration before the Supreme Court. Despite Supreme Court's observation in *Indra Sawhney* that children of officers of IAS, IPS and other All India Services are to be denied benefits of reservation, these States added further conditions such as income, educational qualifications, and extent of property-holding for such children to fall within the 'creamy layer' category. Similarly, for professionals the upper income limit was fixed at Rs. 10 lakhs per annum along with which further educational and land-holding criteria were also prescribed. In short, the fixation of criteria was done in such a manner that socially and economically advanced members of the backward classes would still be eligible for reservation benefits. The Supreme Court took strong exception to this and quashed the criteria prescribed by these two States as arbitrary and violative of Articles 14 and 16(4).

In *Indra Sawhney* v. *Union of India,*[19] the State of Kerala, without even appointing a Commission for the purpose of identification of 'creamy layer' among backward classes, passed an Act in 1995 declaring in S. 3 that there were no socially advanced sections among the backward classes of Kerala who had acquired the capacity to compete with forward classes. This attitude by the State prompted the Supreme Court to issue instructions to the Chief Justice of Kerala High Court for setting up a High Power Committee for the purpose of identification of 'creamy layer' in the State. The validity of Ss. 3, 4 and 6 of the Act was challenged before the Supreme Court on the touchstone of Articles 14, 16(1) and 16(4) contending that any refusal to exclude 'creamy layer' would violate these Articles. The Supreme Court after considering the recommendations of the High Power Committee came to the conclusion that there indeed was a 'creamy layer' in Kerala. The declaration in clause (a) of section 3 of the Act was not based upon any 'known facts'. Since clause (b) of section 3 did

[18] Ashoka Kumar Thakur v. State of Bihar (1995) 5 SCC 403 (Supreme Court of India).
[19] Indra Sawhney v. Union of India (1992) Supp 3 SCC 217 (Supreme Court of India).

not provide any valid explanation or justification for the non-exclusion of 'creamy layer', the entire section was struck down as violative of Articles 14, 16(1) and 16(4). Section 4 of the Act purported to validate and continue the pattern of reservations made prior to *Indra Sawhney* and *Ashoka Kumar Thakur*. Section 4 was enacted to overcome the effect of these two decisions. Supreme Court struck down this section also as violative of the same provisions. Section 6 also met with the same fate. The Court observed that the whole system of reservations would be rendered farcical and a negation of constitutional provisions if Governments unreasonably refuse to exclude the creamy layer or include more and more castes in the list of backward classes without adequate enquiry and based on irrelevant considerations. It was finally hoped that *"constitutional provisions would not be converted into citadels for unjustified patronage."*[20]

III. Extent of Reservation

In *M.R. Balaji's case*,[21] the Supreme Court held that the reservations under Article 15(4) cannot exceed 50% of the seats - *"Speaking generally and in a broad way, a special provision should be less than 50%, how much less than 50% would depend upon the relevant prevailing circumstances in each case."*[22] The Court was of the view that clause (4) of Article 15, being an exception to clause (1) of Article 16, had to be construed narrowly. In *State of Kerala* v. *N.M. Thomas*,[23] a Bench of seven Judges overruled this proposition and held that Article 16(4) is not an exception but a facet of Article 16(1). Article 16(1) itself permitted reasonable classification between dissimilarly situated citizens and the equality of opportunity guaranteed by Article 16(1) was interpreted to be not merely formal or legal equality but *'proportional equality'* or *'progressive elimination of pronounced inequality'*. This interpretation gave more power to the Executive and Legislature to prefer members of backward classes even after entry into the service. However, the debates in the Constituent Assembly with regard to this provision clearly reveal that Article 16(4) was intended to be an exception to the generic principle laid down in Article 16(1) read with Article 16(2).

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[20] Indira Sawhney v. Union of India (2000) 1 SCC 168 (Supreme Court of India).
[21] M.R. Balaji v. State of Mysore AIR 1963 SC 649 : (1963) Supp 1 SCR 439 (Supreme Court of India).
[22] *Id*, at 470.
[23] State of Kerala v. N.M. Thomas (1976) 2 SCC 310 (Supreme Court of India).

In *Indra Sawhney case*[24] also, the Court did not agree that clause (4) is an exception to clause (1) of Article 16. Even so, it declared that the extent of reservation cannot ordinarily exceed 50%, but in rural and remote areas some relaxation could be made if the situation so warranted. The Court also indicated that having regard to Article 335 it may not be advisable to provide for reservation in certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit alone counts.[25]

Notwithstanding the law so declared, the State of Tamil Nadu has provided for reservation to the extent of 69%, which is far in excess of the limit of 50% permitted by the Supreme Court in *Balaji case*[26] and subsequently in *Indra Sawhney case*. The State of Tamil Nadu not only obtained the assent of the President to the Tamil Nadu Backward Classes, Scheduled Castes and Schedules Tribes (Reservation of Seats in Educational Institutions and all appointments or posts in the Services under the State) Act, 1993 but also got it inserted as item 257-A in the Ninth Schedule.[27] Reservations fetch votes. Greater the reservation, more the votes.

The providers of reservations are unconcerned with the consequences. Informed and enlightened public opinion is against perpetuation of reservations. The Constitution lays emphasis on raising the level of weaker sections as a whole by effectively promoting their educational and economic interests in a big way as mandated in Article 46. The provisions for reservation of jobs in public employment and seats in educational institutions for the backward classes were intended as a transitional measure. The period of 10 years mentioned in Articles 330 and 332 in the context of reservation of seats for Scheduled Castes and Scheduled Tribes in the House of People and in the Legislative Assemblies of the States respectively reveals the mind of the Constitution-makers about the

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[24] Indra Sawhney v. Union of India (1992) Supp 3 SCC 217 (Supreme Court of India).

[25] *Id*, at 752. In this case, by way of illustration, the Supreme Court mentioned that provision for reservation would be inadvisable in technical posts in research and development organisations/departments/ institutions, in specialities and super specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. The same was held to be the case with posts at the higher echelons e.g. Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application.

[26] M.R. Balaji v. State of Mysore AIR 1963 SC 649 : (1963) Supp 1 SCR 439 (Supreme Court of India).

[27] Its validity is under challenge.

temporary character of reservations. Whether mechanical extension of the said period every 10 years is a fraud on the Constitution is debatable. Such a mechanical extension appears to militate against the object of promoting among all the people of India fraternity, assuring the dignity of the individual and the unity and integrity of the nation mentioned in the forefront of the Constitution.

IV. Reservation in Promotion

In *The Southern Railway* v. *Rangachari,*[28] a sharply divided Supreme Court by a majority of 3:2 permitted the State to make provisions for reservations not only in appointments but also in promotions under Article 16(4). This was overruled in *Indra Sawhney* v. *Union of India.*[29] The Court declared that Article 16(4) does not permit reservations in the matter of promotions and made the declaration effective after five years, in order to enable the authorities to revise, modify or reissue the relevant rules suitably. However, the Parliament inserted clause (4A) to Article 16 by the 77th Constitution Amendment Act, 1995. It reads:

> *"Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."*

The Statement of Objects and Reasons of this Amendment is illuminative.[30]

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[28] The Southern Railway v. Rangachari AIR 1962 SC 36 (Supreme Court of India).

[29] Indra Sawhney v. Union of India (1992) Supp 3 SCC 217 (Supreme Court of India).

[30] Statement of Objects and Reasons of the Constitution (Seventh-seventh Amendment) Act, 1995:

"The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November, 1992 in the case of *Indra Sawhney* v. *Union of India,* however, observed that reservation of appointments or posts under Article 16(4) is confined to initial appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since their representation in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the government has

Reservation in promotion with consequential seniority was causing serious prejudice to the members of the general category. This came to light in the Supreme Court decision in *R.K. Sabharwal* v. *State of Punjab.*[31] In this case, some members of the Scheduled Castes and Scheduled Tribes got promotion to the senior grade after superseding several of their senior colleagues. These promotions were challenged before the Supreme Court. Two contentions were raised on behalf of the petitioners. The first contention that even members of reserved categories who had got in through the merit category should be counted for the purpose of calculating the percentage of reserved candidates was rightly rejected by the Supreme Court. The second contention was that the operation of the roster system should be halted as and when the reserved vacancies are filled up by the candidates belonging to the reserved categories: promotions were being made to higher posts on the basis of reservations even after the prescribed representation in the service or posts was secured. This resulted in a situation where the number of reserved candidates exceeded their quota. Supreme Court held that the roster system is a running account which is to operate only till the quota provided under the instructions is reached and nor thereafter. Once the prescribed percentage of representation is secured the numerical test of adequacy would be satisfied and henceforth the roster would not survive. Thus, the Supreme Court ensured maintenance of balance between the reserved category and the general category.

Granting of seniority to those members who had been promoted to higher grade by virtue of reservation in promotion following the roster system created a serious problem. This was highlighted in the case of *Union of India* v. *Virpal Singh Chauhan.*[32] In the case of non-selection posts in Railway Service, the reserved candidates who had been promoted out of turn against reserved posts were further promoted, superseding the general category employees who were senior to them initially. These further promotions were sought to be justified on the basis that the reserved promotees had been promoted to the previous grade prior to

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decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this it is necessary to amend Article 16 of the Constitution by inserting a new clause (4A) in the said article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes."
M.V. Pylee Constitutional Amendments in India 318 (2002).

[31] R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745 (Supreme Court of India).

[32] Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684 (Supreme Court of India).

the general category employees. The contention of the general category employees was that the roster could be used only for the purpose of reservation in promotion and on the basis of such out of turn promotions they were not entitled to any seniority on the higher posts. Seniority in the initial grade should remain unaffected. Supreme Court accepted this contention and held that a candidate promoted earlier by virtue of rule of reservation shall not be entitled to seniority over his general category senior in the feeder category and that the erstwhile general candidate who was senior would regain his seniority the moment he is promoted to the same higher grade.

This was followed by the decision in *Ajit Singh Januja* v. *State of Punjab.*[33] The question raised was whether promotees from reserved categories could claim further promotion to still higher grades on the basis of seniority obtained due to accelerated promotion to the present grade because of reservations. Even after the reserved quota in the higher grade was filled, promotions were being given to the reserved categories from the lower grade on the basis of their seniority in the feeder post. The Supreme Court rejected the contention that reserved promotees could be considered against posts meant for general category candidates merely because they have become senior on the basis of accelerated promotions as it would amount to circumventing the law laid down by the Constitution Bench in *R.K. Sabharwal.*[34] Therefore, the Court held that validity of conferring seniority should be looked at independent of any circular or rule and purely on the basis of whether it was permissible under the Constitutional scheme. Supreme Court declared that application of the roster even for conferring seniority is violative of the guarantee provided to all citizens under Article 16(1). Moreover, the principal object of a promotion system is to secure the best possible incumbents for the higher position while maintaining the morale of the organisation. Due consideration had to be given to efficiency in administration. As a result, members of the general category will regain their seniority as and when they are promoted to the same higher grade as compared to the reserved promotees who had been promoted earlier.

Since a different view was taken in the case of *Jagdish Lal* v. *State of Haryana,*[35] the same issue came up for consideration before a Constitution

[33] Ajit Singh Januja v. State of Punjab (1996) 2 SCC 715 (Supreme Court of India).
[34] R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745(Supreme Court of India).
[35] Jagdish Lal v. State of Haryana (1997) 6 SCC 538 (Supreme Court of India).

Bench in *Ajit Singh* v. *State of Punjab*.[36] The Supreme Court, in this case, reasoned that the right to be considered for promotion is a fundamental right guaranteed by the equal opportunity clause in Article 16. It was observed that the rule of continuous officiation while determining reservation was a statutory rule that was applicable in the general scheme of recruitment and it could not be delinked and applied to roster-point promotions. This would be the correct approach for balancing the fundamental rights under Articles 14 and 16(1) on the one hand and the provisions relating to reservation on the other. This Bench also affirmed the decision in *Ajit Singh Januja case*.[37] To overcome the effect of these decisions, the Constitution (Eighty-fifth Amendment) Act, 2001, was enacted by the Parliament. All this is evident again from the Statement of Objects and Reasons.[38]

V. Conclusions

Initially, the Parliament used to amend the Constitution to facilitate socio-economic reforms for the benefit of the toiling masses. However, in recent years, the power to amend the Constitution is used to nullify sound decisions of the Supreme Court which strengthen the basic structure of the Constitution and further its objects, only for the purpose of gaining electoral advantage.

Reservations act like opium. The suppliers and consumers want more and more, unmindful of the law declared by the Judiciary. This brief study reveals that the attitude of the Legislature and the Executive towards the people of India (the authors of the Constitution) and their problems makes a world of difference. The first phase of post-revolutionary era always facilitated radical reforms. It was a crucial period of India too for laying the foundations for rebuilding. The then Legislature and the Executive were keen to improve the lot of the people by redeeming the promises made for socio-economic changes during the struggle for Independence. The Judiciary lagged behind and, in fact, unwittingly obstructed the pace of land reforms. Studies made by sociologists, political scientists and

[36] Ajit Singh v. State of Punjab (1999) 7 SCC 209 (Supreme Court of India).
[37] Ajit Singh Januja v. State of Punjab (1996) 2 SCC 715 (Supreme Court of India).
[38] Both the Seventy-seventh Amendment of 1995 and the Eighty-fifth Amendment of 2001 are under challenge in a batch of writ petitions in the Supreme Court which stand referred to a Constitution Bench.

lawyers consistently show that perpetuation of reservations will seriously damage the prospects of forging unity among all sections. Reservations were to serve a limited purpose, while massive social reconstruction of India went on.

Unfortunately, the Legislature and the Executive have undergone a sea change over the years. The incumbents care more for votes and power rather than the voters and the people of India, it is often said that the British followed the principle of divide and rule. However, it would be trite to say that they have not divided the country as much as their remote successors have done in the last three decades and still continue to do. What is needed is upliftment of all weaker sections by massive affirmative action giving the highest priority to the lowest strata, which is too weak to avail the reservations made in the name of Scheduled Castes, Scheduled Tribes and the backward classes, keeping in view the relevant Directive Principles.

Article 41 enjoins upon the State to secure the right to work, to education and to public assistance in cases of unserved want. Article 43 calls upon the State to secure a living wage and conditions of work ensuring a decent standard of life etc. Article 45 requires free and compulsory education to be provided for all children. Article 46 requires the State while implementing the above-mentioned Directive Principles to take special care of the weaker sections. Unless free and compulsory education is provided for every child and simultaneously the schemes for upliftment of all weaker sections of the society are implemented irrespective of race, religion, caste or language or place of birth, it is not possible to remove backwardness and assure the dignity of the individual and promote unity among the citizens.

Reservations are nor a solution, they have become a problem. Prof Andre Beteille says:

> "what has gone wrong with our thinking on the backward classes is that we have allowed the problem to be reduced largely to that of job reservation. The problems of the backward classes are too varied, too large and too acute to be solved by job reservation alone. The point is not that job reservation has contributed so little to the solution of these problems but, rather, that it has diverted attention

> from the masses of harijans and adivasis who are too poor and too lowly even to be candidates for the jobs that are reserved in their names. Job reservation can attend only to the problems of middle class harijans and adivasis; the overwhelming majorities of adivasis and harijans, like the majority of the Indian people, are outside this class and will remain outside it for the next several generations. Today, job reservation is less a way of solving age old problems than one of buying peace for the moment."[39]

The weakness of Indian democracy is lack of strong leadership with requisite vision and drive to attain the Constitutional goals. Group leaders who thrive on caste and community, royalties with sectarian agenda strutting on the political stage today relying on money power and muscle power are hardly the kind who can deliver the goods. More and more criminals, industrialists and businessmen are seen entering Parliament and State Legislatures. Corruption is institutionalized. Non-governance/ mis-governance is seen in most parts of the country. Crime rate is rising, but not the rate of conviction. Terrorism is unabated. Problems of poverty, illiteracy and unemployment, scarcity of potable water, health care and electricity suffered by rural masses need urgent attention. Radical electoral reforms are needed to revamp the system. Political parties lack the will to carry out the promised electoral reforms.

E.S. Venkataramiah, J. indicated the affirmative action to be taken to begin with in *K.C. Vasanth Kumar* v. *State of Karnataka:*

> "There are in all castes and communities poor people who if they are given adequate opportunity and training may be able to compete successfully with persons belonging to richer classes. The government may provide for them liberal grants of scholarships, free studentship, free boarding and lodging facilities, free uniforms, free mid-day meals etc. to make the life of poor students comfortable. The Government may also provide extra tutorial facilities, stationery and books free of cost and library facilities. These and other steps should be taken in the lower classes so that by the time a student appears

[39] Andre Beteille, The Backward Classes in Contemporary India 42 (1992).

> for the qualifying examination he may be able to attain a higher degree of proficiency in his studies."[40]

Almost two decades have gone by. No Government and no Legislature in the country has ever attempted to follow this path.

[40] K.C. Vasanth Kumar v. State of Karnataka, 1985 Supp SCC 714 : AIR 1985 SC 1495, 1558 (Supreme Court of India).