

THE CONSTITUTION (SEVENTY-SIXTH AMENDMENT) ACT, 1994

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Statement of Objects and Reasons appended to the Constitution (Eighty-fifth Amendment) Bill, 1994 which was enacted as THE CONSTITUTION (Seventy-sixth Amendment) Act, 1994

STATEMENT OF OBJECTS AND REASONS

The policy of reservation of seats in Educational Institutions and reservation of appointments of posts in public services for Backward Classes, Scheduled Castes and Scheduled Tribes has had a long history in Tamil Nadu dating back to the year 1921. The extent of reservation has been increased by the State Government from time to time, consistent with the needs of the majority of the people and it has now reached the level of 69 per cent. (18 per cent. Scheduled Castes, 1 per cent. Scheduled Tribes and 50 per cent. Other Backward Classes).

2. The Supreme Court delivered its judgment in Indira Sawhney and others Vs. Union of India and Others (AIR 1993 SC 477) on 16th November, 1992, holding that the total reservations under article 16(4) should not exceed 50 per cent.
3. The issue of admission to educational institutions for the academic year 1993-94 came up before the High Court of Madras in a writ petition. The High Court of Madras held that the Tamil Nadu Government could continue its reservation policy as hitherto followed during that academic year and that the quantum of reservation should be brought down to 50 per cent. during the academic year 1994-95. The Government of Tamil Nadu had filed a Special Leave Petition against the High Court of Madras in order that the present reservation policy of the State Government should be reaffirmed so as to ensure to continue advancement of the Backward Classes. However, the Supreme Court of India passed an interim order reiterating that the reservation should not exceed 50 per cent. in the matter of admission to educational institutions.
4. In the special Session of Tamil Nadu Legislative Assembly held on 9th November, 1993, it had been unanimously resolved to call upon the Central Government to take steps immediately to bring a suitable amendment to the Constitution of India as to enable the Government of Tamil Nadu to continue its policy of 69 per cent. reservation in Government Services and for admission in Educational Institutions as

at present. An all parties meeting had also been held on 26th November, 1993 in Tamil Nadu urging that there should not be any doubt or delay in ensuring the continued implementation of 69 per cent. reservation for the welfare and advancement of the backward classes.

5. The Tamil Nadu Government enacted a legislation namely Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institution and of appointments or posts in the Services under the State) Bill, 1993 and forwarded it to the Government of India for consideration of the President of India in terms of article 31-C of the Constitution.

6. In view of the importance and sensitive nature of the matter, the Union Home Minister held meetings with the leaders of Political Parties on 13th July, 1994 to discuss the provisions of the Bill. The general consensus among the leaders was that the Bill should be assented to. Accordingly, the President gave his assent to the Bill on 19th July, 1994.

7. The Tamil Nadu Government accordingly notified the Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointment or posts in the Services under the State) Act, 1993 as Act No. 45 of 1994 on 19th July, 1994.

8. The Tamil Nadu Government requested the Government of India on 22nd July, 1994 that the aforementioned Tamil Nadu Act 45 of 1994 be included in the Ninth Schedule to the Constitution of India for the reasons given below:-

"The said Act attracts article 31C of the Constitution, as falling within the purview of clauses (b) and (c) of article 39 and articles 38 and 46 of the Constitution-vide section 2 of the Act. The Act has been passed relying on the directive principles of State Policy enshrined in Part IV of the Constitution and in particular, articles 38, 39 (b) and (c) and 46 of the Constitution. As the Act is to give effect to the directive principles of State Policy contained, inter alia, in article 39(b) and (c), the said Act will get the protection of article 31C of the Constitution and therefore, cannot be challenged under articles 14 and 19 of the Constitution, with reference to which article 14, the reservation exceeding 50 per cent. has been struck down by the Supreme Court. Now it has been decided to address the Government of India for including the Act in the Ninth Schedule to the Constitution, so that the law cannot be challenged as violative of any

of the fundamental rights contained in Part III of the Constitution including articles 15 and 16, and gets protection under article 31B of the Constitution."

9. The Government of India has already supported the provision of the State legislation by giving the President's assent to the Tamil Nadu Bill. As a corollary to this decision, it is now necessary that the Tamil Nadu Act 45 of 1994 is brought within the purview of the Ninth Schedule to the Constitution so that it gets protection under article 31B of the Constitution in regard to the judicial review.

10. The Bill seeks to achieve the aforementioned objective.

NEW DELHI; SITARAM KESRI.

The 23rd August, 1994.

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[31st August, 1994.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:-

1. Short title.-This Act may be called the Constitution (Seventy-sixth Amendment) Act, 1994.

2. Amendment of the Ninth Schedule.-In the Ninth Schedule to the Constitution, after entry 257 and before the Explanation, the following entry shall be inserted, namely:-

"257A. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institution and of Appointments or Posts in the Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994).".