

In *Vijaya Manchanda v. M/s Graphline Computer Pvt. Ltd.*,⁶ where in a case of cheque dishonour proceeding against a company the petitioner alleging no concern with cheque or company shown as principal accused, the Court held that no requisite averments were made against, in relation to the person being a director and person incharge and in control and responsible to company for conduct of its business the order taking cognizance and issuing summons to the petitioner liable to be quashed.

In a case between *Director Maruthi Foods and Farms Pvt Ltd v. Basanna Pattekar*,⁷ where in the proceeding under Section 138 of Negotiable Instruments Act where the complainant is a company and it was pleaded before the Court that the complainant is a Director of a company authorize to depose on behalf of the company where no documentary evidence was produced to show that he is the Director of the company and he has been authorized to depose on behalf of the company and even the resolution contending his authority to depose on behalf

of the company is not produced and he himself has plead ignorance about the resolution passed by the board the Court finally acquitted the accused.

In another case between *K.P.G. Nair v. State*,⁸ where in a proceeding under Section 141 of the Negotiable Instruments Act averments made against the executive officer of a company were held to be insufficient to show that he was incharge of and was responsible to the company for conduct of business of the company. Held the order issuing summons to the executive liable to be quashed.

In view of the above cases the factual situation in terms of judicial opinion is that in case of a dishonoured cheque issued by an individual to that of a cheque dishonoured issued by a company, they stand statically on different footings. The practical suggestion given by the author to amend Section 141 to synchronizing the amendment which has come in 2002 barring Government Directors from liability.

RESERVATION UNDER INDIAN CONSTITUTION

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Introduction

The concept of “reservation” is one of the crucial factors in the Constitution of India to secure socio-economic justice to the downtrodden people and to bring them to the mainstream of the National life. The political, social and economic inequalities, which existed in our country prior to our

Constitution came into being made many revolutionary and social thinkers to agitate for securing socio-economic and political justice. Consequently, when the Constitution of India was being drafted, the Constitution-makers inserted the concept of ‘equality’ so that no individual shall be treated unequally. They thought that the meaning of ‘equality’ based upon individual achievement was too

6. AIR 2008 NOC 137 (DEL)

7. AIR 2008 NOC 140 (KAR)

8. AIR 2008 NOC 424 (DEL)

hypocritical in our caste-ridden society where group identification had been historically used for the purposes of discrimination and separateness. Therefore, the makers of the Constitution adopted a policy of 'preferential treatment' in favour of certain weaker sections of the society to offset the effects of inherited inequalities and remedy historic injustice. Besides, the Constitution in its preamble also secures to all citizens: Justice: Social, Economic and Political. Equality: of status and opportunity and it also guarantees to all persons a right to equality and secures Freedom from discrimination on grounds of religion, race, caste, language, sex *etc.* Further, the state is also prevented from discriminating any citizen on the grounds of place of birth, caste, residence, language and sex. Besides, in order to achieve socio-economic equality among all citizens, state is required to follow various directive principles of State policy. So far as Scheduled Castes and Scheduled Tribes are concerned, the Constitution provides for reservation in educational institutions, legislatures and Government services. Further, the Government has undertaken various programmes and schemes under the reservation policy for the upliftment of the weaker sections of the society, including Scheduled Castes and Scheduled Tribes, such as provision for housing, scholarship, free coaching, abolition of bonded labour system, *etc.* The Constitution of India also abolishes 'Untouchability' and any person who performs Untouchability in any form will be seriously punished under the law. The main object of this Article *i.e.*, 17 is to remove Untouchability from our society, which has been in existence in the Hindu society since many centuries, and to create a society in which all people, including the Scheduled Castes and Scheduled Tribes, should get full benefits of life and Governmental programmes.

Reservation under the Constitution

The policy of reservation under the Constitution of India operates in three different fields:

- (a) Legislature
- (b) Services under the state
- (c) Educational Institutions

To understand and appreciate the policy of reservation, there is a need to look into the following provisions of the Constitution and their implementation.

1. Preamble:

'We the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens; Justice: social, economic and political;

Liberty : of thought, expression, belief, faith and worship; Equality : of status of opportunity and to promote among them all

Fraternity : assuring the dignity of the individual and the unity and integrity of the Nation.

2. Right to Equality

Article 14 says 'the State shall not deny to any person equality before the law or the equal protection of the laws.

Article 15 speaks about the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

- (a) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (b) No citizen shall, on grounds only of religion, race, caste sex, place of birth or any of them, be subject to any disability, liability, restriction or conditions with regard to:—
 - (i) access to shops, public restaurants, hotels and places of public entertainments; or

- (ii) the use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of State funds or dedicated to the use of general public.
- (c) Nothing in this Article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

3. Right to have equal opportunity in matters of public employment

Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State’.

- (i) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.
- (ii) Nothing in this Article shall prevent the State from making any provision for the reservation of appointment 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. Abolition of Untouchability

Article 17 contemplates that Untouchability is abolished and practice in any form is forbidden. The enforcement of disability

arising out of Untouchability shall be an offence punishable in Accordance with law.

Conclusion

The present Articles 15(4), 16(4) and 29(2) have not imposed any positive obligation on the State to make any special provision for the advancement of backward classes including Scheduled Castes and Scheduled Tribes. Therefore, these Articles should be amended immediately so that positive obligation shall be imposed on the State to implement the reservation policy for the benefit of backward classes including Scheduled Castes and Scheduled Tribes.

The 50% rule of reservation laid down by the Supreme Court in *Balaji's* case and which continues to be in vogue has to be modified and Parliament itself should make an amendment to the Constitution fixing the percentage of reservation to 65. This is due to the growth of the backward class population since 1963.

An amendment should also be made to Article 335 of the Constitution by removing the phrase, ‘efficiency’ in administration. Because, the provision of Article 335 is applicable only to Scheduled Castes and Scheduled Tribes and not to others. Therefore, in order to make Articles 15(4), 16(4) and 29(2) meaningful, Article 335 should be suitably amended to secure justice to the Scheduled Castes and Scheduled Tribes. Otherwise, even after 50 years, the conditions of the Scheduled Castes and Scheduled Tribes would not be improved and the justice provided in the Preamble of the Constitution cannot be secured to them.