

Legislative Councils. In these fields, no reservation is being followed since 1950. As such there is no representation given to Scheduled Castes and Scheduled Tribes in the above fields. If this is not provided, then the essence of Articles 14, 15(4), 16(4) would be meaningless.

4. As far as possible, the State shall adopt one-time reservation benefit for the members of Scheduled Castes and Scheduled Tribes enables the State Governments to extend the reservation benefits for the others who really need such benefits.

RESERVATION POLICY FOR OBCS UNDER THE INDIAN CONSTITUTION – A PERSPECTIVE

By

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Introduction:

Equality, justice, liberty and fraternity are the chief objectives enshrined in the Preamble to the Constitution of India. Our founding fathers wished to build an edifice of democracy wherein those noble objectives might be materialized in regard to the entire Indian Society which includes communities which had hitherto remained disadvantaged and under-developed due to historical discriminations perpetrated in the name of caste, creed, race or the like. They therefore resolutely embodied certain provisions in the Constitution which conferred special favours and protection to the backward classes of citizens with a view to uplift them to levels of equality with the rest of the society. The Indian Constitution embodies manifold concessions, preferences, exemptions and above all reservations as the means of achieving social justice. The backward of all sections viz., Scheduled Castes and Scheduled Tribes are provided reservation in Central and State legislative bodies as a manifestation of political justice, whereas they are provided along with other Backward Classes reservations and other special favours in

numerous areas including in employments and admissions, as measures of social justice. Our Constitution has the unique distinction of outlining an extensive scheme for the advancement of the Backward Classes of citizens.

OBC Reservation under the Indian Constitution:

Whereas Article 14 of the Indian Constitution prohibits the State from denying “equality before the law” and “equal protection of laws” to any person. Articles 15 and 16 are concerned specially with citizens. Article 15(1) prohibits discrimination against any citizen by the State on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(4) enable the State notwithstanding Articles 15(1) and 29(2) to make any special provision for the advancement of any socially and educationally Backward Classes of citizens; or for the Scheduled Castes or Scheduled Tribes. Article 16(1) guarantees equality of opportunity for all citizens in employment or appointment and Article 16(2) prohibits discrimination in this matter against any citizen on any ground

enumerated in Article 15(1) or on the ground of descent. Article 16(4) empowers the State to make 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. Article 46 directs the State to promote the educational and economic interests of the weaker sections of the people, and Article 335 cautions it to consider the claims consistently with the maintenance of administrative efficiency. The President of India is authorized under Article 340 to appoint Commissions to investigate conditions of socially and educationally backward classes and make recommendations for their welfare.

The Criteria for Backwardness:

Identification of Backward Classes for the purpose of reservation necessarily raises the questions as to what are the criteria for identifying backwardness. The Constitution nowhere defines the expression “backward classes,” nor even the debates in the Constituent Assembly give any guidance in the matter as is evident from the reply given any guidance in the matter as is evident from the reply given to a similar question by the Chairman of the Drafting Committee, Dr. B.R. Ambedkar that “A backward community is a community which is backward in the opinion of the Government.” Various Commissions appointed for the purpose have used many criteria such as caste, poverty, occupation, education, residence, etc. The Apex Court has from time to time tested the Constitutional validity of these criteria in a galaxy of decisions.

Caste as Criterion:

In Champakam Dorairajan and Periakaruppan the Supreme Court struck down Government orders reserving seats for certain “castes” as backward and held that such identification is inconsistent with the fundamental right to equality. In Balaji Jayasree and Pradeep Tandon the Apex Court accepted

caste as a relevant factor for ascertaining social backwardness but opined against accepting caste as the sole or dominant criterion.

This in *Indra Sawhney* the Court upheld the methodology adopted by the Mandal Commission in identifying Backward Classes on the basis of caste. The majority Judges were however unconvinced that caste may ever be a valid criteria in view of express prohibition against any discrimination based on caste. In the words of *Sabai, J.* “Caste is a reality. Undoubtedly so are religion and race.” “If caste is treated as a valid criterion,” the learned Judge cautioned “then tomorrow the identification of Backward Classes among other communities, where caste does not exist, on race or religion coupled with these very considerations cannot be avoided.

Conclusion:

Reservation for the other Backward Classes has come to stay for good, no matter what its critics might argue. The political firmament in India shows great allegiance to this policy and to its professing and proliferation that has its own dividends at the hustings. The superior Courts in India have been adjudicating plenty of cases on different aspects of the matter, especially since the Mandal Commission Report was implemented by the Central Government in 1990, and have sought to bring certainty in the law thereon. Yet as observed before, many new facts come to the force calling for further contemplation and decision. Recently the inclusion of ‘JATs’ under the category of OBC by some State Government has arisen a controversy about the validity of their action. The President of India was on record advocating reservation for Backward Classes in higher Judiciary; and created ripples in the intellectual circles. On the other hand, some decisions by various Benches of the Apex Court recently have resulted in resentment in political circles by modifying the law on certain aspects of reservation. For instance, in one

decision reservation for superspeciality courses in medicine have been held as invalid and impermissible. In another decision, it has been held that at the time of second promotion the seniority between reserved category candidate and general candidate shall be governed by their panel position prepared at the time of initial appointment/selection. These

and other decisions have circumscribed the expanding dimensions of OBC-reservation due to which another constitutional amendment nullifying their effects is in the pipeline. One must hope that the recently declared Commission for Constitutional Review would look into the hitherto performance of this remarkable vehicle of social justice.

**SHORT NOTE ON BALAMANI V. SENIOR SUPERINTENDENT OF
POST OFFICES AND OTHERS, AIR 2008 AP 181 = 2008 (4) ALD 401**

By

—Justice P.S. NARAYANA,
High Court of A.P.,
Hyderabad

In this matter the writ petitioner filed a writ petition praying for issuance of writ of *mandamus* directing respondents 1 and 2 to accord registration of the Journal “Law Animated World” being published by the writ petitioner and certain other appropriate reliefs.

The learned Judge of the A.P. High Court had dealt with Section 9 of the Post Office Act, 1898, and came to the conclusion that the grievance of the writ petitioner that the publication of the writ petitioner had not been allowed the benefit as a registered newspaper is thoroughly justified and accordingly allowed the writ petition. The learned Judge observed that the expression “news” need not be confined for the purpose of appreciation as only relating to topics of political interests/questions or political debates. Any information on recent events and current affairs is liable to be understood as “news”. Undoubtedly, law being an embodiment of moral sentiment of the people, anything concerning it, becomes a matter of news. Since good laws make it easier to do certain things right and also simultaneously make harder to do certain things, which are wrong, it evokes and

generates lot of public interest. In that sense of the matter, any event of reporting about such information, which is hitherto not known either in such complete form or shape, also answers the definition of “news”. The learned Judge also had referred to certain definitions under sub-section (2) of Section 9 of the Act aforesaid and also further referred to Sections 4 and 7 of the Act apart from Section 9 of the Act and further had dealt with the meaning of the expression “news” in the context of dictionary meaning as well and ultimately arrived at the conclusion that the writ petitioner is entitled for the reliefs prayed for in the writ petition.

Journalism is an important intellectual field and Legal Journalism is no exception thereto. Legal Journalism is having several peculiarities when compared to the Journalism in ordinary sense. The importance of the Law Reports reporting of judgments had fallen for consideration before Courts only in a couple of decisions. This decision is an important decision in the context of Legal Journalism.

I have been in the habit of visiting respective Courts in different States of this