

# N.J.Y. National Moot Court Competition 2021

## ICFAI UNIVERSITY TRIPURA

### MOOT COURT PROPOSITION

#### **Introduction:**

*The facts of the case have been mentioned below, all the participants are requested to go through these facts.*

#### **FACTS:**

The Republic of India is a 'Union of States' that is self-governing. There are 28 states and 9 Union Territories in the Union of India. The diversity of cultural features such as religion, language, and traditions, among others, is absolutely astounding. In 1947, it declared independence from British rule. The Constitution of India<sup>1</sup> was properly drafted by its Constituent Assembly, drawing inspiration from the constitutions of the world's largest democracies. The Constitution's core values are democracy, equality, and secularism. It is based on the principles of Human Dignity and Equality. It provides certain fundamental rights to its citizens, the scope of which is significantly expanded by the Supreme Court of India's dynamic judgments. Reservation is also a unique aspect in India's constitution.

Reservation in India refers to the practise of reserving seats in government offices, educational institutions, and even legislatures for certain sections of the population. The reservation policy is also known as affirmative action, and also deemed as positive discrimination.

According to India's constitution, there are two basic goals for providing reservation:

- a. Upliftment of Scheduled Castes (SC) and the Scheduled Tribes (ST) OR any socially and educationally backward classes of citizens (Example: Other Backward Classes) – Article 15 (4), Article 15 (5).
- b. To ensure adequate representation of any backward class of citizens in the services under the State. – Article 16 (4).

In January 2019, the government introduced the 104<sup>th</sup> Amendment to the Constitution, which extends the reservation policy. The measure was passed with 229 votes in favour and 10 votes

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<sup>1</sup> The Constitution of India is *para materia* to the Constitution of India, 1950

against in the Lok-Sabha. The measure was then passed by the Rajya-Sabha with 156 votes in favour and only 27 votes against it. It guarantees job reservations in both the federal government and government educational institutions. It applies to citizens from the unreserved category who are economically disadvantaged. It applies to citizens from the unreserved category who are economically disadvantaged. This reservation is in addition to the existing reservation scheme and is limited to a (10%) ten percent reservation. People from economically weaker sections of society have been generally barred from higher educational institutions and public jobs, according to the Bill's Statement of Objects and Reasons, due to their financial inability to compete with those who are economically more affluent.

The bill claims to be drafted with the intent of enforcing Article 46 of the Indian Constitution, a Directive Principle that requires the government to defend the educational and economic interests of the poor. While socially disadvantaged groups have benefited from employment in government services, economically disadvantaged groups have not received the same advantage.

#### **AMENDED ARTICLES:**

1. Article 15 (6) is inserted to offer reservations to Economically weaker section for admission in educational institutions, including private educational institutions, whether sponsored or unaided by the state, other than the minority educational institutions mentioned in clause (1) of Article 30. The amendment attempts to give those who do not come under 15 (5) or 15 (4) a reservation (effectively, SCs, STs and OBCs).
2. Article 16 (6) is inserted to offer reservations in government jobs for people from economically disadvantaged groups.
3. According to the explanation, "economic weakness" will be determined based on "family income" and other "economic disadvantage factors."

Ms. Moumita Saha, a prominent legal activist, has petitioned the Supreme Court to declare the 104th Constitutional Amendment unconstitutional. In the *Jarnail Singh* case<sup>2</sup>, a five-judge Supreme Court Constitutional panel declared in September 2018 that the "creamy layer exclusion" theory can be applied to Scheduled Castes (SCs) and Scheduled Tribes (STs) to deny quota to the "elite" within the two deprived categories. Following that, the Court ordered

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<sup>2</sup> his Judgment is *Pari materia* to *Jarnail Singh vs Lachhmi Narain Gupta*, 2018.

the government to issue adequate guidelines for using the creamy layer principle in SC/ST reservations.

Mr. Shubham Anand has now filed a lawsuit in the Supreme Court over the government's failure to act on the directive. He claims that, due to political reasons, the government has yet to issue any rules or criteria that would prohibit economically well-off SC/STs from reservation benefits. According to the government, the creamy layer notion was first implemented in the context of OBCs solely. This 5 judge bench decision violates the Anindita Sawhney<sup>3</sup> decision of a 9-judge Constitutional bench from 1993 by extending it to SC/ST reservation.

Registration link:

[https://docs.google.com/forms/d/e/1FAIpQLScESZVduOEPIUdyv690RxObqeM3\\_IcfpVSV\\_oP8BHDrHsFljw/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLScESZVduOEPIUdyv690RxObqeM3_IcfpVSV_oP8BHDrHsFljw/viewform?usp=sf_link)

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<sup>3</sup> This Judgment is *Pari materia* to Indra Sawhney Judgment of 1993.