



# INDIAN INSTITUTE OF LEGAL STUDIES

## INTRA MOOT COURT COMPETITION, 2023

### [MOOT PROPOSITION FOR SEMI-FINALS]

**Date: - 19<sup>th</sup> May, 2023**

1. The Republic of Bharat is an independent 'Union of States'. It consists of 28 states and 9 Union Territories. The diversity in cultural aspects like religion, language, traditions etc. is truly a remarkable feature. It got its independence from British Rule in 1947. The country of Bharat is proud of the fact that they got their independence by non-violent revolution. Taking inspiration from the constitutions of the major democracies of the world, the Constitution of Bharat was wisely drafted by the members of its Constituent Assembly. Democracy, Equality and Secularism are the essence of the Constitution. It encompasses the values of Human Dignity and Equality. It guarantees to its citizens certain fundamental rights - the scope of which is considerably enlarged by the dynamic judgments of the Supreme Court of a Bharat. The Constitution of Bharat has unique feature of reservation also.
2. Reservation in Bharat is about reserving access to seats in the government jobs, educational institutions, and even legislatures to certain sections of the population. Also known as affirmative action, the reservation is also seen as

positive discrimination.

3. The two main aims to provide reservation as per the Constitution of Bharat are:
  - a. Advancement of Scheduled Castes (SC) and the Scheduled Tribes (ST)  
OR any socially and educationally backward classes of citizens (E.g.: OBC) – Article 15 (4), Article 15 (5).
  - b. Adequate representation of any backward class of citizens in the services under the State. – Article 16 (4).
4. Extending the policy of Reservation, in January 2019 the Government brought 103<sup>rd</sup> Amendment of the Constitution. The bill was passed in Lok Sabha by 323 members voting in favor and 3 members against the bill. It was subsequently passed by Rajya Sabha with 165 members in the favor and only 7 members against the bill. It provides reservation of jobs in central government as well as government educational institutions. It applies to citizens belonging to the economically weaker sections from the unreserved category. This reservation is over and above the existing reservation scheme and subject to a maximum of ten per cent. The Statement of Objects and Reasons of the Bill states that people from economically weaker sections of the society have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged.
5. The bill states that it is drafted with a will to mandate Article 46 of the Constitution of Bharat, a Directive Principle that urges the government to protect the educational and economic interests of the weaker sections of society. While socially disadvantaged sections have enjoyed participation in the employment in the services of the state, no such benefit was provided to the economically weaker sections.

**AMENDED ARTICLES:** - Article 15 (6) is added to provide reservations to economically weaker sections for admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. The amendment aims to provide reservation to those who do not fall in 15 (5) and 15(4) (effectively, SCs, STs and OBCs).

Article 16 (6) is added to provide reservations to people from economically weaker sections in government posts.

An *explanation* states that "economic weakness" shall be decided on the basis of "family income" and other "indicators of economic disadvantage."

6. Ms. Ginny Potter, a leading legal activist has filed a petition in Supreme Court challenging the constitutional validity of the 103<sup>rd</sup> Constitutional Amendment.
7. In September, 2018, a five-judge Constitutional bench of the Supreme Court in *Karnail Singh case*<sup>1</sup> ruled that the "creamy layer exclusion" principle can be extended to Scheduled Castes (SCs) and Scheduled Tribes (STs) to deny reservation to the "elite" among the two underprivileged communities. Subsequently the Court also ordered the Government to notify appropriate norms for application of creamy layer principle in SC/ST reservation.
8. Now Mr. Ron Weasley has approached the Supreme Court against the inaction of the government regarding the said order. He argues that due to its political considerations, till date, government has not notified any norms or criteria to exclude economically well-off SC/ST from the benefits of reservation system. Government on its part claim that creamy layer principle was originally introduced in context of OBCs only. By extending it to SC/ST reservation, this 5-judge bench judgment is itself in violation of *Mandira Sawhney*<sup>2</sup> judgment of

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<sup>1</sup> This Judgment is Pari materia to Jarnail Singh vs Lachhmi Narain Gupta, 2018.

<sup>2</sup> This Judgment is Pari materia to Indra Sawhney Judgment of 1993.

9 judge Constitutional bench of 1993.

9. The Chief Justice of Bharat's Supreme Court has setup a 11 judge Constitutional bench to decide these legal questions:

- I. Whether the 103<sup>rd</sup> Constitutional Amendment is Constitutionally valid or not?
- II. Whether the *Karnail Singh* Judgment is in violation of *Mandira Sawhney* Judgment of 1993 or not?
- III. Whether the "creamy layer exclusion" principle should be extended to Scheduled Castes (SCs) and Scheduled Tribes (STs) reservation or not?

***Note: The laws, reports, data and statistics are pari-materia to the Union of India.***

