

**IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2019
(Under Article 32 of the Constitution of India)**

IN THE MATTER OF:

YOUTH FOR EQUALITY & Anr., ...Petitioners

VERSUS

UNION OF INDIA & ORS., ...Respondents

PAPER BOOK
(FOR INDEX PLEASE SEE INSIDE)

WITH:
I.A.No. ____/2019: Application for Stay

ADVOCATE FOR THE PETITIONERS: Senthil Jagadeesan

INDEX OF RECORD OF PROCEEDINGS

Sr. No.	Date of Record of Proceedings	Page
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

INDEX

S. NO	Particulars of the documents	Page number of part to which it belongs		Remark
		Part-I (Contents of Paper Book)	Part-II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1	Listing Proforma	A-A1	A-A1	
2	Cover Page- Paper Book			
3	Record of Proceedings			
4	Defect List			
5	Note Sheet			
6	Synopsis & List of Dates			
7	Writ Petition & Affidavit			
8.	<u>Annexure P-1</u> : A true copy of the News Report of the Hindu dated 07.01.2019			
9.	<u>Annexure P-2</u> : A true copy of the News Report of Times of India dated 08.01.2019			
10.	<u>Annexure P-3</u> : A true copy of the 124 th Constitution Amendment Bill, 2019.			
11.	F/M			
12.	V/A			

13.	I.A.No.____/2018: Application for Stay			
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PERFORMA FOR FIRST LISTING

Section:

The case pertains to (Please tick / check the correct box):

- Central Act: Constitution of India, 1950,
- Section: Articles 14, 15, 16, 19 and 21 of the Constitution;
- Central Rule: N/A
- Rule No: N/A
- State Act: N/A
- Section: N/A
- State Rule: N/A
- Rule No: N/A
- Impugned Interim Order: N/A
- Impugned Final Order / Decree: N/A
- High Court: N/A
- Name of Judges: N/A
- Tribunal / Authority Name : N/A

1. Nature of Matter: Civil
2. (a) Petitioner / Appellant :Youth For Equality, Through President, Dr. Kaushal Kant Mishra
(b) Email ID: N/A
(c) Phone No: N/A
3. (a) Respondent: Union of India
(b) Email ID: N/A
(c) Phone No: N/A
4. (a) Main Category:
(b) Sub Category:
5. Not to be listed before: N/A
6. Similar/Pending matter: N/A
7. Criminal Matters: N/A
(a) Whether accused / convicted has surrendered: N/A

(b) FIR / Complaint No: N/A

(c) Police Station: N/A

(d) Sentence Awarded: N/A

(e) Period of Sentence Undergone including period of detention/custody under gone: N/A

8. Land Acquisition Matters:

(a) Date of Section 4 Notification: N/A

(b) Date of Section 6 Notification: N/A

(c) Date of Section 17 Notification: N/A

9. Tax Matters: State the Tax Effect: N/A

10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters): N/A

12. Decided Cases with Citation: N/A

Date:_____.01.2019

Senthil Jagadeesan
ADVOCATE FOR PETITIONERS

SYNOPSIS

The Constitution (103rd Amendment) Act, 2019 which has been swiftly piloted through both Houses of Parliament and passed with little debate in the first week of January 2019 is the subject matter of the present challenge on the ground that it violates several basic features of the Constitution.

This Amendment essentially inserts Articles 15(6) and 16(6) in the Constitution which permit the following:

- a. The State to provide for special provisions / reservations for any *economically weaker sections* of citizens.
- b. These economically weaker sections to be of those *other than* the backward classes or SCs/STs.
- c. These measures to be to a maximum of 10% of seats/posts *in addition* to the existing reservations.
- d. The reservations in Article 15(6) to be for *unaided institutions* as well, notwithstanding the provisions of Articles 19(1)(G) & 29(2).

Each of the above 4 aspects violate one or other of the basic features of the Constitution, and hence such a manifest and obvious violation of the Constitution ought to be prevented.

I. Economic criteria cannot be the sole basis for reservation

In *Indira Sawhney Vs. Union of India*, 1992 Supp. 3 SCC 217, the Constitution Bench specifically stated that the economic criteria cannot be the sole basis for reservations under the Constitution. The majority holds as follows in Para 799:

“It follows from the discussion under Question No. 3 that a backward class cannot be determined *only and exclusively* with reference to economic criterion. It may be a consideration or basis along with and in addition to social backwardness, but it can never be the sole criterion. This is the view uniformly taken by this Court and we respectfully agree with the same.”

Concurring with the above view, Justice Sawant says at Para 481:

“Thus, not only the concept of “weaker sections” under Article 46 is different from that of the “backward class” of citizens in Article 16(4), but the purpose of the two is also different. One is for the limited purpose of the reservation and hence suffers from limitations, while the other is for all purposes under Article 46, which purposes are other than reservation under Article 16(4). While those entitled to benefits under Article 16(4) may also be entitled to avail of the measures taken under Article 46, the converse is not true. If this is borne in mind, the reasons why mere poverty or economic consideration cannot be a criterion for identifying backward classes of citizens under Article 16(4) would be more clear.”

In addition, Justice Sahai records at Para 627:

“But any reservation or affirmative action on economic criteria or wealth discrimination cannot be upheld under doctrine of reasonable classification. Reservation for backward class seeks to achieve the social purpose of sharing in services which had been monopolised by few of the forward classes. To bridge the gap, thus created, the affirmative actions have been upheld as the social and educational difference between the two classes furnished reasonable basis for classification. Same cannot be said for rich and poor. Indigence cannot be a rational basis for classification for public employment.”

The above Constitution Amendment completely violates the Constitutional norm that economic criterion cannot be the only basis of reservation as has been laid down by the 9 judges in Indira Sawhney, without removing the basis of the judgement. Such an Amendment is hence, vulnerable and ought to be struck down as it merely negates a binding judgement.

II. The economic reservation cannot be limited to the general categories

Repeatedly, this Hon’ble Court has upheld the equality code as one of the foremost basic features of the Constitution. From Maneka Gandhi, (1978) 1 SCC 248 and I.R.Coelho, (2007) 2 SCC 1 to Shayara Bano,

(2017) 9 SCC 1, the value of equality has been repeatedly emphasized to ensure that equals are not treated unequally. By way of the present amendments, the exclusion of the OBCs and the SCs/STs from the scope of the economic reservation essentially implies that only those who are poor from the general categories would avail the benefits of the quotas. Taken together with the fact that the high creamy layer limit of Rs.8 lakh per annum ensures that the elite in the OBCs and SCs/STs capture the reservation benefits repeatedly, the poor sections of these categories remain completely deprived. This is an overwhelming violation of the basic feature of equality enshrined in Article 14 of the Constitution and elsewhere.

III. The 50% ceiling limit cannot be breached

This Hon'ble Court, speaking through the Constitution Bench in the case of M.Nagaraj Vs. Union of India &Ors., (2006) 8 SCC 212, upheld the Constitutional validity of Article 16(4A) and the proviso to Article 335 in the following words:

“We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.”

In Para 104, the Court specifically states that “*As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate.*”

Thus, the 50% ceiling limit of reservations has been engrafted as a part of the basic structure of the Constitution's equality code. This has in fact been reiterated by the Constitution Bench recently in Jarnail Singh

Vs. Lachhmi Narain Gupta, (2018) 10 SCC 396, which declined to refer the correctness of the dicta laid down in Nagaraj to a larger bench.

IV. Imposing reservations on unaided institutions is manifestly arbitrary

Both the Constitution Bench judgements in T.M.A.Pai Foundation, (2002) 8 SCC 481 and P.A.Inamdar, (2005) 6 SCC 537 make it clear that the State's reservation policy cannot be imposed on unaided educational institutions, and as they are not receiving any aid from the State, they can have their own admissions provided they are fair, transparent, non-exploitative and based on merit.

While the impugned amendment attempts to overcome the applicability of Articles 19(1)(G) and 29(2), it remains completely silent on Article 14, which right protects the citizens from manifestly arbitrary State action. The majority in Shayara Bano, (2017) 9 SCC 1 has specifically held manifest arbitrariness as a facet of Article 14. Hence, the effective nationalization of unaided institutions to the extent of economic reservation is violative of Article 14 of the Constitution on plain terms and also of the basic features of autonomy and equity.

On these and other grounds, including the undefined "economically weaker sections" as well as the ambiguous "State" that would define it, the impugned Amendment ought to be quashed with the same being stayed pending the disposal of the present Petition.

LIST OF DATES

16.11.1992	<p>Towards the implementation of the recommendations of the Mandal Commission, certain Office Memoranda were issued by the Government of India, which provided for reservations for the backward classes of citizens in services under the State.</p> <p>When these were challenged before this Hon'ble Supreme Court, the Petitions were heard by the Constitution Bench in a batch of matters led by Indra Sawhney Vs. Union of India, 1992 Supp. (3) SCC 217. While the OMs were sustained, the Court significantly stated that sole economic criteria could not be a basis for reservation and that the 50% ceiling limit ought not to be crossed.</p>
1995	<p>By way of the Constitution (77th Amendment) Act, 1995, Article 16(4A) was inserted in the Constitution permitting reservation in promotions for those Scheduled Castes and Scheduled Tribes who are, in the State's opinion, not adequately represented in the services under the State. This provision was later amended to include consequential seniority by way of the Constitution (85th Amendment) Act, 2001.</p>
2000	<p>By way of the Constitution (81st Amendment) Act, 2000, Article 16(4B) is inserted in the Constitution</p>

	<p>providing for carrying forward reserved vacancies in promotions and to treat them as a separate class to be filled up the following year.</p> <p>Separately, by way of the Constitution (82nd Amendment) Act, 2000, a proviso is inserted in Article 335 to provide for relaxations in qualifying marks for promotion to any class or post connected with the affairs of the Union or a State.</p>
19.10.2006	<p>A Constitution Bench of this Hon'ble Court in the case of M.Nagaraj Vs. Union of India & Ors., (2006) 8 SCC 212 upholds the constitutional validity of Art 16(4A), 16(4B) and the Proviso to Article 335 of the Constitution of India, subject to certain conditions laid down therein directing for proper exercises to be conducted by the State to show that there is in fact an inadequacy of representation. Significantly, one of the basic features as enunciated is the ceiling limit of 50% on reservations.</p>
07.01.2019	<p>The Hindu carries a news report that reveals that the Union Cabinet has approved a Constitution Amendment Bill to provide 10% reservation to economically backward sections in the general category and this would be over and above the existing 49.5% reservation provided to SCs/STs and OBCs.</p>

08.01.2019	The Constitution 124 th Amendment Bill is passed the following day by the Lok Sabha with 323 members voting in favour of the same.
09.01.2019	With the Parliamentary session extended by a day, the Rajya Sabha passes the Constitution 124 th Amendment Bill with 165 'ayes'.
___ .01.2019	Aggrieved by the manner in which the equality code is being breached and the basic structure of the Constitution altered, the Petitioners herein prefer the present Writ Petition in public interest challenging the Constitution 103 rd Amendment Act, 2019.

MOST RESPECTFULLY SHOWETH:

1. The present Writ Petition under Article 32 of the Constitution of India is being filed in public interest against the Constitution (103rd Amendment) Act, 2019 which provides for the insertion of Articles 15(6) and 16(6) in the Constitution so as to alter the basic structure of the Constitution and to annul binding judgements of the Supreme Court without removing the basis thereof.
2. Petitioner No.1 is Youth for Equality, an organization that has been a Petitioner before this Hon'ble Court on several occasions, opposing caste-based quotas and seeking transparency in judicial administration. It is an organization of students, teachers and professionals formed to uphold the Constitution and protect the nation from populist measures that harm its social fabric. Youth for Equality has already been a Petitioner before this Hon'ble Court in W.P.(c) No.598/2007 in the batch of cases led by Ashok Kumar Thakur Vs. Union of India, reported in (2008) 3 SCC 1, which also challenged the provisions for reservations in Central Educational Institutions. Petitions filed by the present Petitioner before this Hon'ble Court which are pending include a challenge to the marital rape exception in the Indian Penal Code and seeking accountability and transparency in appointment processes of the CBI, CVC and CIC.
3. Petitioner No.2 is the President of Petitioner No.1, who has in his independent capacity as well been part of earlier litigation before

this Hon'ble Court challenging the populist caste-based quota measures that harm the social fabric of the community. Petitioner No.2 is a senior orthopaedic surgeon, formerly at AIIMS, and presently at the super-specialty Primus Hospital, Chanakyapuri. Both the Petitioners are citizens of India and have no personal interest in the present litigation, but are agitating the present issues in wider public interest and to protect the Constitution of India and the social fabric of the nation from politically motivated initiatives that harm the unity and integrity of the country.

4. The Respondents herein are the proper authorities representing the Government of India that is responsible for the impugned Constitution Amendment. They are all covered by the definition of 'State' in Article 12 of the Constitution, and as such, the present Petition is maintainable against them.
5. The Brief Facts giving rise to the present petition are as follow:-
 - a. Towards the implementation of the recommendations of the Mandal Commission, certain Office Memoranda were issued by the Government of India in 1990, which provided for reservations for the backward classes of citizens in services under the State.
 - b. When these were challenged before this Hon'ble Supreme Court, the Petitions were heard by the Constitution Bench in a batch of matters led by Indra Sawhney Vs. Union of India, 1992 Supp. (3) SCC 217. While the OMs were sustained, the Court significantly

stated that sole economic criteria could not be a basis for reservation and that the 50% ceiling limit ought not to be crossed.

- c. By way of the Constitution (77th Amendment) Act, 1995, Article 16(4A) was inserted in the Constitution permitting reservation in promotions for those Scheduled Castes and Scheduled Tribes who are, in the State's opinion, not adequately represented in the services under the State. This provision was later amended to include consequential seniority by way of the Constitution (85th Amendment) Act, 2001.
- d. By way of the Constitution (81st Amendment) Act, 2000, Article 16(4B) is inserted in the Constitution providing for carrying forward reserved vacancies in promotions and to treat them as a separate class to be filled up the following year.
- e. Separately, by way of the Constitution (82nd Amendment) Act, 2000, a proviso is inserted in Article 335 to provide for relaxation in qualifying marks for promotion to any class or post connected with the affairs of the Union or a State.
- f. A Constitution Bench of this Hon'ble Court in the case of M.Nagaraj Vs. Union of India & Ors., (2006) 8 SCC 212 upholds the constitutional validity of Art 16(4A), 16(4B) and the Proviso to Article 335 of the Constitution of India, subject to certain conditions laid down therein directing for proper exercises to be conducted by the State to show that there is in fact an inadequacy of representation. Significantly, one of the basic features as enunciated is the ceiling limit of 50% on reservations.

- g.** On 07.01.2019, the Hindu carries a news report that reveals that the Union Cabinet has approved a Constitution Amendment Bill to provide 10% reservation to economically backward sections in the general category and this would be over and above the existing 49.5% reservation provided to SCs/STs and OBCs. A true copy of the news report of the Hindu dated 07.01.2019 is annexed herewith and marked as **Annexure P-1 (pp. - ___)**
- h.** The Constitution 124th Amendment Bill is passed the following day by the Lok Sabha with 323 members voting in favour of the same. A true copy of the news report of the Times of India dated 08.01.2019 is annexed herewith and marked as **Annexure P-2 (pp. -)**
- i.** With the Parliamentary session extended by a day, the Rajya Sabha on the following day, i.e.09.01.2019 passes the Constitution 124th Amendment Bill, 2019 with 165 'ayes'. A true copy of the Constitution (124th Amendment) Bill, 2019 which is now the Constitution (103rd Amendment) Act, 2019 is annexed herewith and marked as **Annexure P-3 (pp. -)**
- j.** Aggrieved by the manner in which the equality code is being breached and the basic structure of the Constitution altered, the Petitioners herein prefer the present Writ Petition in public interest challenging the Constitution (103rd Amendment) Act, 2019.
- 6.** Hence, being aggrieved by the populist acts of the Respondents which have no legal sanctity, the Petitioner submits this petition under Article 32 of the Constitution of India, *inter alia* on the

following grounds which are set out herein below without prejudice to each other.

GROUNDS

- A. The impugned Constitution Amendment violates the equality code of the Constitution and is hence, in breach of the basic structure of the Constitution.
- B. The impugned Constitution Amendments fail to consider that Articles 14 and 16 form the basic feature of equality, and that they have been violated with the doing away of the restraints that were imposed on the reservation policy, i.e. the 50% ceiling limit and the exclusion of economic status as a sole criterion.
- C. This Hon'ble Court, speaking through the Constitution Bench in the case of M.Nagaraj Vs. Union of India & Ors., (2006) 8 SCC 212, upheld the Constitutional validity of Article 16(4A) and the proviso to Article 335 in the following words:

“We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.”

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recently in *Jarnail Singh Vs. Lachhmi Narain Gupta*, (2018) 10 SCC 396, which declined to refer the correctness of the dicta laid down in *Nagaraj* to a larger bench.

D. In *Indira Sawhney Vs. Union of India*, 1992 Supp. 3 SCC 217, the Constitution Bench specifically stated that the economic criteria cannot be the sole basis for reservations under the Constitution. The majority holds as follows in Para 799:

“It follows from the discussion under Question No. 3 that a backward class cannot be determined *only and exclusively* with reference to economic criterion. It may be a consideration or basis along with and in addition to social backwardness, but it can never be the sole criterion. This is the view uniformly taken by this Court and we respectfully agree with the same.”

Concurring with the above view, Justice Sawant says at Para 481:

“Thus, not only the concept of “weaker sections” under Article 46 is different from that of the “backward class” of citizens in Article 16(4), but the purpose of the two is also different. One is for the limited purpose of the reservation and hence suffers from limitations, while the other is for all purposes under Article 46, which purposes are other than reservation under Article 16(4). While those entitled to benefits under Article 16(4) may also be entitled to avail of the measures taken under Article 46, the converse is not true. If this is borne in mind, the reasons why mere poverty or economic consideration cannot be a criterion for identifying backward classes of citizens under Article 16(4) would be more clear.”

In addition, Justice Sahai records at Para 627:

“But any reservation or affirmative action on economic criteria or wealth discrimination cannot be upheld under doctrine of reasonable classification. Reservation for backward class seeks to achieve the social purpose of sharing in services which had been monopolised by few of the forward classes. To bridge the

gap, thus created, the affirmative actions have been upheld as the social and educational difference between the two classes furnished reasonable basis for classification. Same cannot be said for rich and poor. Indigence cannot be a rational basis for classification for public employment.”

The above Constitution Amendment completely violates the Constitutional norm that economic criterion cannot be the only basis of reservation as has been laid down by the 9 judges in Indira Sawhney, without removing the basis of the judgement. Such an Amendment is hence, vulnerable and ought to be struck down as it merely negates a binding judgement.

E. Repeatedly, this Hon'ble Court has upheld the equality code as one of the foremost basic features of the Constitution. From Maneka Gandhi, (1978) 1 SCC 248 and I.R.Coelho, (2007) 2 SCC 1 to Shayara Bano, (2017) 9 SCC 1, the value of equality has been repeatedly emphasized to ensure that equals are not treated unequally. By way of the present amendments, the exclusion of the OBCs and the SCs/STs from the scope of the economic reservation essentially implies that only those who are poor from the general categories would avail the benefits of the quotas. Taken together with the fact that the high creamy layer limit of Rs.8 lakh per annum ensures that the elite in the OBCs and SCs/STs capture the reservation benefits repeatedly, the poor sections of these categories remain completely deprived. This is an overwhelming violation of the basic feature of equality enshrined in Article 14 of the Constitution and elsewhere.

F. Both the Constitution Bench judgements in T.M.A.Pai Foundation, (2002) 8 SCC 481 and P.A.Inamdar, (2005) 6 SCC 537 make it clear that the State's reservation policy cannot be imposed on unaided educational institutions, and as they are not receiving any aid from the State, they can have their own admissions provided they are fair, transparent, non-exploitative and based on merit. While the impugned amendment attempts to overcome the applicability of Articles 19(1)(G) and 29(2), it remains completely silent on Article 14, which right protects the citizens from manifestly arbitrary State action. The majority in Shayara Bano, (2017) 9 SCC 1 has specifically held manifest arbitrariness as a facet of Article 14. Hence, the effective nationalization of unaided institutions to the extent of economic reservation is violative of Article 14 of the Constitution on plain terms and also of the basic features of autonomy and equity.

G. It is further submitted that the use of the expression "economically weaker sections" remains undefined by the amendment and is left to be notified by "the State". Not only is it unclear whether the Central Government and State Governments can both define the expression separately, but they both may define it differently. This level of untrammelled vagueness makes the insertion arbitrary and unworkable.

H. By virtue of the non-obstante clause, the State is permitted to define "any" economically weaker "section", i.e. Hindu washermen earning below Rs.100 a day, Muslim weavers earning less than Rs.2 lakh a month, etc., which would normally be hit by

the provisions of Articles 15(1) and 16(2) as well as the secular feature of the Constitution. It is imperative that Articles 15(1) and 16(2) be treated as part of the basic structure of the Constitution brooking no exception at all.

- I. Just as with women and persons with disabilities, the economic criterion ought to have been applied horizontally as economic backwardness is found across all castes and groups. This would have ensured that the reservation remained within the 50% limit while in fact subserving the purpose of Article 46 of the Constitution.
- J. Instead of exploring other alternatives as directed by this Hon'ble Court, the Respondents have taken to amending the Constitution repeatedly so that a populist measure can be permitted to flourish with a clear eye on the vote bank. It is necessary and incumbent on the Respondents to explain as to what other measures have been even remotely explored by them to obtain the social objectives outlined in the Constitution.
- K. As stated in Nagaraj and reiterated in several judgments of the Supreme Court and the High Courts, it is now imperative that in order for reservations to be imposed, there be some sort of quantitative exercise undertaken in advance. There has been absolutely no such attempt made to arrive at the ad-hoc 10% figure that is now introduced in the Constitution and this is manifestly arbitrary and violative of the basic feature of non-arbitrariness.

7. The Petitioners submit that they have not filed any other Petition arising out of the same cause of action or facts before this or any other Court in the country.
8. The Annexures P-1 to P-3 produced along with the Writ Petition are true copies of their respective originals.
9. The Petitioners have no other better or more efficacious remedy available than to file the instant Writ Petition in public interest under Article 32 of the Constitution since the issue concerns a Constitutional Amendment that affects the whole country and is of overarching importance which requires the urgent intervention of this Hon'ble Court.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue a writ of mandamus or any other appropriate writ quashing the Constitution (103rd) Amendment Act, 2019 as violative of the basic structure of the Constitution;
- b) Issue a writ of mandamus or any other appropriate writ staying the Constitution (103rd) Amendment Act, 2019 pending the hearing and disposal of the present Writ Petition;
- c) Any other relief which this Hon'ble Court may be pleased to grant in the interests of justice;

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL
AS IN DUTY BOUND EVERY PRAY.

DRAWN BY:

Aishwarya Kane &
Gayatri Verma
Advocates,
Supreme Court of India

FILED BY:

SENTHIL JAGADEESAN
Advocate for the Petitioners

SETTLED BY:

Gopal Sankaranarayanan
Advocate, Supreme Court of India

DRAWN ON: 10.01.2019

FILED ON: __.01.2019

IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO _____ OF 2019

IN THE MATTER OF:

YOUTH FOR EQUALITY & Anr., ...Petitioners

VERSUS

UNION OF INDIA & ORS., ...Respondents

AFFIDAVIT

I, Dr.Kaushal Kant Mishra, s/o. Shri K.K.Mishra, r/o. Flat No.2, 2nd Floor, SRK Apartments, Sultanpur, Mehrauli, New Delhi – 110030 do hereby solemnly affirm and state as under:

1. That I am the President and authorized signatory of the Petitioner herein and as such I am well conversant with the facts and circumstances of the present case and am competent to swear to this affidavit.
2. That I have perused the accompanying Synopsis and List of Dates at Pages B to_ and Writ Petition in Paras 1 to_ and state that the averments contained therein are true and correct to my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.
3. That the documents annexed to the accompanying Petition are true copies of their respective originals.

DEPONENT

VERIFICATION

Verified at New Delhi on this the 10th day of January, 2019 that the contents of the above Affidavit are true to the best of my knowledge and belief and no part thereof is false and nothing material has been concealed therefrom.

DEPONENT

**IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION**

I.A.No._____of 2019

IN

WRIT PETITION (CIVIL) No _____of 2019

IN THE MATTER OF:

Youth for Equality & Anr., ...Petitioners/Applicants

Versus

Union of India & Ors., ...Respondents

APPLICATION FOR STAY

The Hon'ble Chief Justice of India

And his companion judges of

The Hon'ble Supreme Court of India

The Petitioner hereinabove named

Most Respectfully Showeth:

1. The present Writ Petition under Article 32 of the Constitution of India is being filed in public interest against the Constitution (103rd Amendment) Act, 2019 which provides for the insertion of Articles 15(6) and 16(6) in the Constitution so as to alter the basic structure of the Constitution and to annul binding judgements of the Supreme Court without removing the basis thereof.
2. The contents of the accompanying Writ Petition may be read as a part of the present Application seeking urgent stay of the impugned Constitution (103rd) Amendment Act, 2019 which has been passed in a hurry over barely 3 days by both Houses of Parliament as a populist measure and which breach fundamental features of the Constitution.

3. Ex-facie, there are 2 immediate violations of the basic structure of the Constitution:
 - a. Permitting the reservation to exceed the limit of 50% which has been laid down in Indira Sawhney and which is reiterated in Nagaraj as a basic feature which saved amendments there from being quashed.
 - b. The exclusion of the economically weaker sections of the OBC/SC/ST from the scope of the economic reservation which is a fundamental violation of the equality code.
4. Even earlier, when the Central Educational Institutions (Reservations in Admissions) Act was challenged in this Hon'ble Court, the operative provision of the same was stayed at the interim stage pending the hearing of the final matter in Ashoka Kumar Thakur. This was also the case with the OMs impugned in Indira Sawhney. It is thus with strong precedent value on the subject of reservations that the present impugned enactment ought to be stayed.
5. It is submitted that if these illegal provisions are not stayed and admissions / appointments were to take place under them, they would be irreversible and cause great injustice and disgruntlement to those who are justly entitled. As nearly 70 years have passed without this type of reservation, it would be appropriate to keep it in abeyance until the hearing of the present petition is concluded.

PRAYER

In light of the arguments advanced, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i. **STAY** the operation of the Constitution (103rd) Amendment Act, 2019; and
- ii. **PASS** any other orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

Senthil Jagadeesan
ADVOCATE FOR THE PETITIONERS

Date: 10.01.2019
Place: New Delhi