

## Moot Problem II

Both Houses of the Parliament passed the 124<sup>th</sup> Constitutional Amendment Bill to provide 10 % reservation in government jobs and educational institutions in favour of economically weaker sections on 09<sup>th</sup> January 2019 and enacted as Constitution (One Hundred and Third Amendment) Act, 2019 to enable the State to make reservations based on the economic criterion alone. The Act received the assent of the Hon'ble President on 12<sup>th</sup> January 2019 and was published in the Gazette on the same day. Through this Constitution (One Hundred and Third Amendment) Act, 2019; a new clause (6) was inserted in Article 15 and 16 of the Constitution. Clause (6) as inserted in the Article 15 reads as follows:

*“(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making, -*

*(a) any special provision for the advancement of any economically weaker sections of citizens, other than the classes mentioned in clauses (4) and (5); and*

*(b) any special provision for the advancement of any economically weaker sections of citizens, other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their 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, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.”*

*Explanation :- For the purpose of this Article and Article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.’*

Similarly, Clause (6) was inserted into the Article 16 and it reads as follows

*“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.”*

Mr. X challenged the constitutional validity of the 103<sup>rd</sup> Constitutional (Amendment) Act, 2019 before the Hon'ble Supreme Court of India under Article

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32 of the Indian Constitution claiming that, it violates the basic structure of the Constitution.

### ISSUES:

- Whether 103<sup>rd</sup> Constitutional (Amendment) Act, 2013 violates any of the basic structures of the Constitution of India.
- Whether the additional 10% reservations for Economically Weaker Sections in educational institutions and public employment is unconstitutional, as it breaches and exceeds the 50% limit for reservations as laid down in *Indra Sawhney vs Union of India (AIR 1993 SC 477)* in 1993?
- Whether reservations under the Constitutional scheme can be prescribed only on the basis of economic criteria and not on social and educational backwardness also?