

RESERVATIONS FOR MIGRANT SCHEDULED CASTES AND SCHEDULED TRIBES

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ABSTRACT

The issue dealt with in the present article is whether the migrant Scheduled Caste (SC) and Scheduled Tribe (ST) members are entitled to benefits of the reservation policy in the State of their migration. This question has come up in the recent case of State of Uttaranchal v. Sandeep Kumar Singh. It is submitted that the migrant SC and ST candidates should be able to avail the benefits of the reservation policy of the states to which they have migrated. Any reservation policy framed by the state which seeks to exclude the migrant candidates would be invalid because it would be based solely on the criteria of place of birth and hence would be violative of Article 16. Moreover, Articles 341-342 are only for the purpose of specifying the list of SCs and STs in each State and should not be interpreted to mean that the lists would be considered to be valid only for that State alone. Any reservation policy which seeks to exclude the migrant SC and ST from its purview would also be violative of the Basic Structure of the Constitution. This is a multi

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layered argument since three principles of the Basic Structure Doctrine would be violated: the overarching Principle of Equality, which would be violated due to the treatment of migrant SC and ST in the same category as the general category members of the State and hence resulting in the treatment of unequals as equals; the Golden Triangle of Articles 14, 19 and 21 would be violated since the right to freely reside and the right to development will be hampered due to lack of reservation benefits in the State of migration; the principle of Harmonious Construction of Fundamental Rights and Directive Principles which requires that Article 46 and Article 16 be read to mean that the reservation benefits be given regardless of the State.

I. INTRODUCTION

Whether the migrant Scheduled Caste (SC) and Scheduled Tribe (ST) members are entitled to benefits of the reservation policy in the State of their migration?- is the question that has come up once again in the recent case of *State of Uttaranchal v. Sandeep Kumar Singh*.¹ The fact scenario of the case is as follows:

G.B. Pant University of Agriculture & Technology, Pant Nagar, Uttaranchal issued an employment notice inviting applications from candidates all over the country for various posts mentioned therein. As per the notification, the vacancies were advertised under the reservation roster supplied by the Uttaranchal government. The

¹State of Uttaranchal v. Sandeep Kumar Singh, [2010] 12 SCC 794.

respondents therein applied for the posts as SC reserved category candidates. In support of their caste, certificates issued by the states of Uttar Pradesh, Bihar and Tripura were produced. They were successful in the selection conducted by the University. Thereafter, a letter was sent to the Vice-Chancellor of the University by the government of Uttaranchal, stating that the appointment had been made in violation of reservation policy of the state and the appointments made by the University were cancelled. The appointment letters of the respondents were withdrawn by the University under the instructions of the state government on the ground that the candidates did not belong to SC category of the state of Uttaranchal. The respondents filed writ petitions in the High Court challenging the termination letter. The High Court allowed the writ petitions and quashed the termination orders. The present case has been filed by way of an appeal by the state of Uttaranchal. Since a very important question of law as to interpretation of Articles 16(4), 341 and 342 arose for consideration in the case², it has been referred to a larger bench.³

The author seeks to submit that the migrant SC and ST candidates should be able to avail the benefits of the reservation policy of the states to which they have migrated. Any reservation policy framed by the state which seeks to exclude the migrant candidates would be invalid because:

1. The Reservation Policy would be violative of Article 16 (2) of the Constitution of India since it would be discriminating only on the ground of place of birth.
2. Articles 341-342 and Article 16 (4) needs to be harmoniously construed in furtherance of the objective of Article 16 (4). The purpose of Articles 341-342 is to prepare a list classifying persons into SCs and STs with respect to the State. Once the list is prepared,

²*Id.*

³*Id.*

they would be considered to be either SC or ST for the entire geography of the country and for all purposes of the Constitution. This argument will be dealt with in two limbs:

- a) Articles 341-342 should be interpreted in furtherance of the object of Article 16(4).
 - b) Article 16 (4) and Articles 341-342 need to be harmoniously construed.
3. The Reservation Policy would be violative of the Basic Structure of the Constitution
- a) It would be violative of the overarching Principle of Equality. This is because by refusing reservation benefits to the migrant SC and ST, in effect they would be treated in the same manner as the general category members and thus, unequals would be treated as equals.
 - b) It would be violative of the Golden Triangle of Article 14, 19 and 21:
 - i. Violation of Article 14:
 - Violation of the test of reasonable classification since there is no intelligible differentia for the classification of migrant SC and ST in a category separate from the resident SC and ST of the state.
 - Violation of the test of non arbitrariness since the separate categorization of resident SC, ST and the migrant SC, ST is arbitrary.
 - Violation of the strict scrutiny test due to the failure to provide reservation to the migrant SC and ST which results in the hampering of their personal autonomy.
 - ii. Violation of Article 19 because by excluding the migrant SC and ST members from reservation, in effect, would prevent

them from residing in any other part of the country other than the State where they are recognized as SCs or STs.

- iii. Violation of Article 21 because the right to development of the migrant SC and ST is being hampered by the lack of reservation benefits in the states to which they migrate.
- c) It would be violative of the principle of harmonious construction of Directive Principles and Fundamental Rights which, when applied to Article 16 (4) and Article 46, would require the State to further the interests of SCs and STs regardless of the fact that they belong to another State.

II. ARGUMENTS

A. *The Reservation Policy would be Violative of Article 16 (2) of the Constitution of India*

Article 16 (1) provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In respect of any employment or office under the State, discrimination against a citizen on grounds only of religion, race, caste, sex, place of birth, residence or any of them, is prohibited.⁴ However, *nothing in the Article* will prevent the Parliament from making any reservation in appointments or posts, in favor of any backward class of citizens.⁵

If the reservation policy does not provide reservation to the migrant candidates, it is based solely on the criteria of the place of birth of the individual. Article 16 (2) will invalidate a law, rule or an order if it authorizes discrimination, in matters of employment under the state, on any of the grounds specified therein even if it professes to make a

⁴Constitution of India, 1950, art. 16(2).

⁵Constitution of India, 1950, art. 16(4).

reservation in the interests of the backward classes.⁶ The principle of equality would be violated if a citizen, by reason of his residence in a state, which ordinarily would be the result of his birth in a place situated within that state, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in another state.⁷

The aim of the *non obstante* clause in Article 16 (4) was to take out the *absolutism* of Article 16 (1) and not to *stultify*⁸ or *destroy* the *negativism* of Article 16 (2).⁹ A *non obstante* clause is used to preclude any interpretation contrary to the stated purpose and objects.¹⁰ It is thus necessary to refer to the objects and the purpose of the laws under consideration.¹¹ Affirmative action, in terms of Article 16 (4), is meant to provide for representation of citizens who are socially or economically backward.¹² Their rights need to be judged on the basis of the interest and well-being of the SC and ST in the country as a whole.¹³

Article 16 (4) has been said to be a facet of Article 14 and Article 16 (1)¹⁴ and therefore, anything destructive of equality for Article 16 (1) would be destructive of Article 16 (4) also.¹⁵ Limiting the reservation policy to the residents of the State would amount to discrimination on the basis of only place of birth and hence would be violative of Article 16 (2).

⁶Venkataraman B. v. State of Madras, A.I.R. 1951 SC 229; Narsimha Rao A.V.S v. State of A.P., [1969] 1 SCC 839.

⁷Dr. Pradeep Jain and Others v. Union of India and Others, [1984] 3 SCC 654.

⁸State of Uttar Pradesh and Others v. Pradip Tandon and Others, [1975] 1 SCC 267.

⁹Indra Sawhney and Others v. Union of India, A.I.R. 1970 SC 422.

¹⁰BLACK'S LAW DICTIONARY 1079 (Bryan A. Garner ed., 7th ed., 1999).

¹¹VEPA P. SARATHI, INTERPRETATION OF STATUTES 581 (Eastern Book Company 4th ed., 2005).

¹²Bimlesh Tanwar v. State of Haryana, [2003] 5 SCC 604.

¹³Marri Chandra Shekhar Rao v. Dean, Medical College, [1990] 3 SCC 130.

¹⁴Chattar Singh and Others v. State of Rajasthan and Others, [1996] 11 SCC 742.

¹⁵Indra Sawhney and Others v. Union of India, A.I.R. 1970 SC 422.

*B. Articles 341-342 and Article 16 (4) should be
Harmoniously Construed in furtherance of the Objective
of Article 16 (4)*

- a) Articles 341-342 should be Interpreted in furtherance of the Objective of Article 16 (4)– The object of Articles 341 is to prevent any disputes regarding the fact of a caste being an SC or not,¹⁶ and the object should not be interpreted to mean that SC so specified are considered to be so for that state alone.¹⁷ Similar is the case with Article 342 which is to remove any confusion as to whether a particular tribe is an ST or not. If the reservation policy excludes the migrants, the SC and ST members who may be forced to migrate to other states for livelihood and to escape their tormentors would not be able to benefit from the reservation policy.¹⁸ This will defeat the objective of Articles 341-342 and Article 16 (4), which is to provide additional protection to the members of the SC and ST¹⁹ and to bring them into the mainstream national life.²⁰
- b) Articles 341-342 and Article 16 (4) should be Harmoniously Construed– The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.²¹ Articles 341 (1) and 342 (1) clearly show that the power of the President is *limited to specifying* the castes or tribes which shall, *for the purposes of the Constitution*, be deemed to be Scheduled Castes or Scheduled Tribes *in respect to a State or a Union Territory*, as the case may be.²² SC and ST are entitled to derive

¹⁶Bhaiya Lal v. Harikishan Singh, A.I.R. 1965 SC 1557.

¹⁷Manju Singh v. The Dean, B.N. Medical College and Others, A.I.R. 1986 Guj 175.

¹⁸Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr v. Union of India, [1994] 5 SCC 244.

¹⁹D. D. BASU, SHORTER CONSTITUTION OF INDIA 2128 (A.R. Lakshmanan et. al. rev., Lexis Nexis Butterworths Wadhwa 14th ed., 2009).

²⁰*Supra* note 14.

²¹I.R. Coelho v. State of Tamil Nadu and Others, [2007] 2 SCC 1.

²²*Supra* note 18.

benefits of the all-India Services or admissions in the educational institutions controlled or administered by the Central Government, irrespective of the state to which they belong.²³ If a person is to be treated as SC in terms of Article 341, all the benefits attached must be conferred on him because there will be an anomaly if a person is treated as a member of SC for one purpose and not for another purpose.²⁴ The same would apply to ST under Article 342.

The terms '*in respect to the State*' and '*for the purposes of the Constitution*' need to be interpreted in a manner to achieve the objective of equality promised to all citizens by the Preamble of the Constitution.²⁵ The phrase '*In respect to*' means 'in connection with' or 'in regard to' that state,²⁶ and cannot mean that the SC or ST so specified is deemed to be an SC or ST for that state alone.²⁷ '*For the purposes of the Constitution*' means that the SC and ST necessarily need to be identified on a state to state basis because of the varying social conditions of a caste and a tribe across the states,²⁸ and once so identified, they should be regarded as SC or ST '*for the purposes of the Constitution*' i.e. for the purposes of all and not only some of the provisions.²⁹ Such an interpretation would ensure that the SC and ST would be able to avail of the reservations throughout the country.

C. The Reservation Policy would be Violative of the Basic Structure Doctrine

The concept of basic structure has been resorted to even where there is no Constitutional Amendment in question.³⁰ The primary reason

²³S. Pushpa v. Sivachanmugavelu and Ors., [2005] 3 SCC 1; Marri Chandra Shekhar Rao v. Dean, Medical College, [1990] 3 SCC 130.

²⁴Subhash Chandra and Anr. v. Delhi Subordinate Services, [2009] 15 SCC 458.

²⁵*Supra* note 18.

²⁶*Supra* note 17.

²⁷*Id.*; See also, ADVANCED LAW LEXICON 2256 (Y. V. Chandrachud ed., 2005).

²⁸*Supra* note 18.

²⁹M.K. Kochu Devassy v. State of Kerala, [1979] 2 SCC 117.

³⁰State of West Bengal v. The Committee for Protection of Democratic Rights, [2010] 3 SCC 571; S.R. Bommai v. Union of India[1994] 3 SCC 1.

seems to be that if Parliament, while exercising its Constituent Power, cannot enact an amendment destroying some character of the Constitution, the same cannot be done by permitting the framing of laws which violate the same character and then protecting them.³¹ A two fold test would be used wherein the law would first be tested to see if it violative of Part III of the Constitution and if the answer is positive, the law would be tested on the touchstone of basic structure.³² The actual effect and impact of any Constitutional or statutory provision on the rights guaranteed under Part III of the Constitution has to be taken into account in determining whether or not it destroys the basic structure.³³

- a) *The Reservation Policy would be Violative of the Overarching Principle of Equality*– Right to equality before law, right to equality of opportunity in matters of public employment are fundamental rights guaranteed under the Constitution and have a ‘*common identity*’³⁴ committed to the *overarching principle*³⁵ of equality which is the basic structure of the Constitution.³⁶ The concept of egalitarian equality exists in Article 14 read with Article 16(4).³⁷ The violation of the principle of equality has been elaborated upon in point 2.1 of this paper.
- b) *The Reservation Policy would be Violative of the Golden Triangle of Article 14, Article 19 and Article 21* – When Article 21, read with Articles 14 and Article 19, is sought to be eliminated, not only the "essence of right" test but also the "rights test" has to be applied, because they form the core values of the Constitution,³⁸ and are a part

³¹*Supra* note 21.

³²*Id.*

³³*Supra* note 30.

³⁴*Glanrock Estate (P) Ltd. v. State of Tamil Nadu*, [2010] 10 SCC 96; *His Holiness Kesavanada Bharti v. State of Kerala*, [1973] 4 SCC 225.

³⁵*M. Nagaraj and Others v. Union of India and Others*, [2006] 8 SCC 212.

³⁶*Supra* note 34.

³⁷*Supra* note 35.

³⁸*Supra* note 34.

of the basic structure.³⁹ Articles 14, 19 and 21 pervade all enacted laws and they stand at the ‘*pinnacle of the hierarchy of constitutional values*’.⁴⁰ Their exclusion would result in nullification of the basic structure doctrine.⁴¹

i. The Reservation Policy would be Violative of Article 14: Equal protection requires affirmative action by the state towards unequals by providing facilities and opportunities.⁴² Article 14 prohibits class legislation but not reasonable classification⁴³ which means that the classification (i) should be based on intelligible differentia which distinguishes persons or things grouped together from others left out of the group and (ii) the differentia must have a rational relation to the object sought to be achieved.⁴⁴ The classification will be violative of Article 14 if the basis has no rational nexus with the object sought to be achieved.⁴⁵

1) The Reservation Policy would be Violative of the Test of Reasonable Classification

Firstly, Unequals would be treated as Equals in the Reservation Policy— Equality of opportunity is the hallmark of the Constitution and provisions for affirmative action have been provided to ensure that unequals are not treated as equals.⁴⁶ By not providing reservation for the migrant SC and ST members, they would, in effect, be treated

³⁹Minerva Mills Ltd. and Others v. Union of India and Others, [1980] 3 SCC 625.

⁴⁰*Supra* note 35.

⁴¹*Supra* note 34.

⁴²Panchayat Varga Aharmajivi Samudik Sahakari Khedut Cooperative Society v. Haribhai Mevabhai, [1996] 10 SCC 320.

⁴³Dharam Dutt v. Union of India, [2004] 1 SCC 712; Budhan Chowdhry v. State of Bihar, [1955] 1SCR 1045.

⁴⁴Municipal Committee, Patiala v. Model Town Residents Association, [2007] 8 SCC 669; Saraswat Cooperative Bank Limited v. State of Maharashtra, [2006] 8 SCC 520; K. Prabhakaran v. P. Jyaranjan, [2005] 1 SCC 754; Naresh Kumar v. Union of India, [2004] 4 SCC 540.

⁴⁵State of West Bengal v. Anwar Ali Sarkar, A.I.R. 1952 SC 75.

⁴⁶Secretary, State of Karnataka v. Uma Devi (2006) 4 SCC 1; State of Gujarat v. Karshanbhai K. Rabari, [2006] 6 SCC 21; Atyant Pichhara Barg Chhatra v. Jharkand State Vaishya Federation, [2006] 6 SCC 718.

in the same category as the general category candidates of the state and such a scheme would be violative of Article 14 because unequals are being treated equally.

Secondly, there would be no Rational Nexus in the classification made in the Reservation Policy – Protective discrimination in favour of the SC and ST is a mandate⁴⁷ of the Constitution and is a part of Constitutional scheme of social and economic justice.⁴⁸ The aim is to integrate them into the national mainstream and establish an integrated social order.⁴⁹ Article 16 is an incident of guarantee of equality contained in Art. 14⁵⁰ and hence Article 16 does not debar a reasonable classification which is made with reference to the object to be achieved.⁵¹ Preferential treatment of Backward Classes and SC and ST is a rational classification and is necessary to ensure equality of opportunity for all citizens.⁵²

The basis of classification may be geographical provided there is a nexus between the territorial basis of classification and the object sought to be achieved.⁵³ However, mere migration does not mean that that the person ceases to be a SC or ST and becomes a member of forward caste.⁵⁴ Therefore, in the present case, the classification being made between the migrant and the non migrant SC and ST members has no nexus with the object, which is to provide additional protection to the members of the SC and ST as a class of persons who have been suffering since a considerable length of time due to social and educational backwardness.⁵⁵

⁴⁷*Supra* note 28.

⁴⁸*Ashok Kumar Gupta v. State of U.P.*, [1997] 5 SCC 201; *Jagdish Lal v. State of Haryana* (1997) 6 SCC 538; *State of U.P. v. Dina Nath Shukla*, [1997] 9 SCC 662.

⁴⁹*P.G.I. of Medical Education and Research v. K.L. Narsimhan*, [1997] 6 SCC 283.

⁵⁰*State of Kerala and Another v. N.M. Thomas and Others*, [1976] 2 SCC 310.

⁵¹*Union of India v. Kohli*, [1973] 3 SCC 592.

⁵²*State of Kerala and Another v. N.M. Thomas*, [1976] 2 SCC 310.

⁵³*D.P. Joshi v. State of M.P.*, [1955] 1SCR 1215.

⁵⁴*S. Pushpa v. Sivachanmugavelu and Ors.*, [2005] 3 SCC 1.

⁵⁵*E.V. Chinnaiah v. State of A.P.* [2005] 1 SCC 394.

In fact, the Hon'ble Supreme Court has opined that it is necessary for the legislatures or the Parliament to consider appropriate legislations to ensure that the SC and ST are given the benefits of reservation even after migration to ensure that proper effect is given to the rights given to them.⁵⁶

2) The Reservation Policy would be Violative of the Test of Non Arbitrariness in Article 14

An unreasonable classification would make the impugned legislative or executive action arbitrary and violative of Article 14.⁵⁷ Any administrative or policy decision can be considered arbitrary⁵⁸ if it is irrational and not based on any sound reasoning.⁵⁹ The courts claim that Article 14 aims to prevent arbitrariness, and reasonable classification is merely a test to determine whether the legislative or the executive action is arbitrary.⁶⁰ The right to equality also means protection against any arbitrary or irrational act of the state.⁶¹ The reservation policy which excludes the migrant SC and ST makes an unreasonable classification and is arbitrary.

3) The Reservation Policy would be Violative of the Strict Scrutiny Test

If people who are entitled to get benefit of protective discrimination under Article 16 (4) are deprived of their Constitutional right, the test of strict scrutiny will be applicable.⁶² Any classification based on suspect criteria that is rooted in "*a characteristic that relates to personal autonomy*", except in cases of affirmative action, may be subject to strict scrutiny.⁶³ However only laws that enhance the

⁵⁶*Supra* note 28.

⁵⁷*Ramana Dayaram Shetty v. I.A.A.I.*, [1979] 3 SCC 489.

⁵⁸*Union of India v. Dinesh Engineering Corporation*, [2001] 8 SCC 491.

⁵⁹*Om Kumar v. Union of India*, [2001] 2 SCC 386.

⁶⁰*Ajay Hasia v. Khalid Mujib*, [1981] 1 SCC 722.

⁶¹*E.P. Royappa v. State of Tamil Nadu*, [1974] 4 SCC 3.

⁶²*Subhash Chandra and Anr. v. Delhi Subordinate Services*, [2009] 15 SCC 458.

⁶³*Naz Foundation v. Government of NCT*, [2009] 160DLT 277.

personal autonomy of the members of a vulnerable group can be said to be an affirmative action measure and those that hamper the personal autonomy should be regarded as discriminatory.⁶⁴ The test of strict scrutiny will be applicable when state action is directed against a minority group, thereby creating a classification based on criteria that is rooted in either 'immutable status' or 'fundamental choice'.⁶⁵

Assessment should not only be based on its proposed aims but rather on the implications and the effects.⁶⁶ Since the migrant SC and ST members cannot derive any benefit from the reservation policy of the state to which they have migrated, this in effect hampers the personal autonomy regarding the fundamental choice of their place of residence.⁶⁷

While applying the strict scrutiny test, it needs to be ensured that the ends sought to be achieved are compelling and the law is a narrowly tailored means of furthering the compelling means.⁶⁸ Article 16 (4) enables a State to provide reservation in cases where there exists backwardness of a class and inadequacy of representation in employment and this qualifies as compelling reasons.⁶⁹ However, the test of narrow tailoring will not be satisfied if there is failure to regulate activities that pose substantially the same threats to the government's compelling interest as the conduct that the government prohibits.⁷⁰ This is so because any under inclusiveness diminishes the

⁶⁴Tarunabh Khaitan, *Beyond Reasonableness – A Rigorous Standard of Review for Article 15 Infringement*, 50 (II) JILI 177, 205 (2008).

⁶⁵Religion and place of residence are fundamental choices protected by the Constitution. See, *id.*

⁶⁶Anuj Garg and Others v. Hotel Association and Others, [2008] 3 SCC 1.

⁶⁷*Supra* note 64.

⁶⁸Subhash Chandra v. Delhi Subordinate Service Selection Board, [2009] 15 SCC 458.

⁶⁹*Supra* note 9.

⁷⁰Richard H. Fallon, *Strict Judicial Scrutiny*, 54 UCLA LAW REV. 1267, 1327 (2007).

credibility of the government's rationale for infringing the Constitutional rights.⁷¹

If there is no reservation for the migrant SC and ST members, this would mean that even where the migration from one state to other is involuntary, by force of circumstances either of employment or of profession, the migrants will not benefit from the reservation⁷² and since such a consequence shows the under inclusiveness, the policy would not satisfy the strict scrutiny test.

ii. The Reservation Policy would be Violative of Article 19: All citizens have the right to reside and settle in any part of the territory of India⁷³ and the right to practice any profession, or to carry on any occupation, trade or business.⁷⁴ The SC and ST members face systematic and widespread denial of opportunities because of existing societal discrimination,⁷⁵ and the concept of egalitarian equality requires the state to take affirmative action in favour of disadvantaged sections of society.⁷⁶

A proclamation of a right is not a fulfillment of a right and a right will be considered to be guaranteed only when arrangements have been made for people to enjoy it.⁷⁷ Presence of abilities and not just absence of disabilities is required to ensure equality of opportunity.⁷⁸ By excluding the migrant SC and ST members from the reservation, in effect, this would prevent them from residing in any other part of the country other than the state where they are recognized as members of the SC and ST. In case they decide to migrate, their freedom to practice any profession will be hampered because they cannot avail of

⁷¹*Id.*

⁷²*Supra* note 28.

⁷³Constitution of India, 1950, art. 19(1)(e).

⁷⁴Constitution of India, 1950, art. 19(1)(g).

⁷⁵Tarunabh Khaitan, *supra* note 64.

⁷⁶*Supra* note 35.

⁷⁷HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE AND US FOREIGN POLICY* 16 (Princeton University Press, 1980).

⁷⁸*Supra* note 28.

the reservation benefits which are very necessary to get rid of their social handicaps which prevent them from coming into the mainstream of national life.⁷⁹

iii. The Reservation Policy would be Violative of Article 21: The right to life guaranteed under Article 21 includes not only the physical existence but also the quality of life,⁸⁰ and includes the opportunity⁸¹ to develop and be free from all restrictions which inhibit the growth.⁸² Right to development is considered to be a basic human right⁸³ and is a component of Article 21.⁸⁴ It includes the entire social, civil, cultural, economic and political process which will enable the person to make full use of their potential.⁸⁵ By excluding the migrant SC and ST from the benefits of the reservation policy, in effect, their right to development is being hampered and hence there is a violation of Article 21.

c) *The Reservation Policy would be Violative of the Principle of Harmonious Construction between Fundamental Rights and Directive Principles* – Maintaining a balance between the Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution⁸⁶ and the object is to create an egalitarian society.⁸⁷ The Directive Principles should serve as a code of interpretation for the Fundamental Rights and the former need to be read into the latter⁸⁸ and all the attempts should be made at

⁷⁹*Supra* note 14.

⁸⁰D. D. BASU, SHORTER CONSTITUTION OF INDIA, VOL. 1 366 (A.R. Lakshmanan et. al. (rev.), Lexis Nexis Butterworths Wadhwa Nagpur 14th ed., 2009).

⁸¹Reliance Energy Limited v. Maharashtra State Road Development Corporation Ltd, [2007] 8 SCC 1.

⁸²Chameli Singh and Others v. State of Uttar Pradesh and Others, [1996] 2 SCC 549.

⁸³Election Commission of India v. St. Mary's School, [2008] 2 SCC 390.

⁸⁴D. D. BASU, *supra* note 80, at 402.

⁸⁵N.D. Jayal v. Union of India, [2004] 9 SCC 362.

⁸⁶*Supra* note 39.

⁸⁷*Supra* note 21.

⁸⁸Akhil Bharatiya Soshit Karamchari Sangh v. Union of India, [1981] 1 SCC 246.

harmonizing and reconciling them⁸⁹ so that the true objects of the provisions can be promoted.⁹⁰ The Constitution should be interpreted in a manner to make the right to life meaningful and to provide the right to social justice and economic empowerment to the weaker sections of the society.⁹¹ The state is under an obligation to provide facilities and opportunities of economic empowerment to the SC and ST.⁹² Harmonious construction of Article 16 (4) and Article 46 would require the state to further the interests of the SC and ST regardless of the fact that they belong to another state.

Therefore, if the reservation policy excludes the migrant SC and ST, it would be violative of the basic structure of the Constitution because it would violate the principle of overarching equality, the principle of Golden Triangle of Article 14, Article 19 and Article 21 and the principle of harmonious construction of the Fundamental Rights and the Directive principles which is considered to be a feature of the Basic Structure.

III. CONCLUSION

The above discussion makes it clear that to make the reservation policy constitutionally valid, it is necessary to extend the benefits to even the migrant SC and ST candidates. Arguing in favour of not granting reservation to the migrant SC and ST, it has been pointed out by the National Commission of Scheduled Tribes that unless stratified reservation is mandated, it will be difficult to prevent marginalization of indigenous tribals and monopolization of reservation benefits by more advanced tribal communities. Thus, a common Reservation Order, e.g. for Delhi & Andaman and Nicobar Islands, may well lead

⁸⁹State of Tamil Nadu v. L. Abu Kavur Bai, [1984] 1 SCC 515.

⁹⁰Moti Ram Deka v. G.M., N.E. Frontier Railway, [1964] 5 SCR 683.

⁹¹*Supra* note 48.

⁹²Constitution of India, 1950, art. 46; Panchayat Varga Sharmajivi Samudik Sahakari Khedut Cooperative Society v. Haribhai Mevabhai, [1996] 10 SCC 320.

to a farce.⁹³ Such a problem would arise only if a single list under Article 341 and Article 342 was to be prepared for the entire country. This would cause the overlooking of the differing levels of development of the various castes in tribes in different states and in such a case would there have been the problem of the facilities being monopolized by the more advanced communities.

To avoid this problem and to ensure that the benefits are given to all who need them, once the statewise list of SC and ST has been prepared under Article 341 and Article 342 respectively, the list should be held valid throughout the country. Candidates who have been recognized as SC or ST in one state should be able to make use of the reservation policies of the state to which they migrate. Such a measure would also be in furtherance of the recommendation of the National Commission for Scheduled Tribes to have a constitutionally valid scheme of reservation may be evolved to extend benefits of reservation to migratory SCs & STs living outside their original place of nativity.⁹⁴

⁹³National Commission for Scheduled Tribes, *Agenda Note for Agenda Item No.3, For the Meeting of the Commission on 22/02/2010*, (Apr. 13, 2012) <http://ncst.nic.in/writereaddata/linkimages/Agenda22022010-III420942710.pdf>.

⁹⁴*Id.*