

समता आन्दोलन समिति (रजि.)

राष्ट्रीय कार्यालय : सी-28, निशान्त पार्क, ककरोला मोड़, मेट्रो पिल्लर नं. 800 के पास, द्वारिका, नई-दिल्ली

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माननीय श्री पानाचन्द जैन
संरक्षक (पूर्व न्यायाधिपति)

माननीय श्री अमिताभ गुप्ता
संरक्षक (पूर्व पुलिस महानिदेशक)

माननीय श्री जे.एस. राठौड़
संरक्षक (पूर्व ब्रिगेडियर)

माननीय श्री भागीरथ शर्मा
संरक्षक (पूर्व आई.ए.एस)



हमारे प्रेरणा पुंज: पं० जवाहरलाल नेहरू
'जातिगत आरक्षण के रास्ते चलना
मूर्खता ही नहीं, विध्वंसकारी है।'
(27 जून 1961 को प्रधानमंत्री के रूप
में मुख्यमंत्रियों को लिखे पत्र से साभार)

क्रमांक 1838-2627
To,

दिनांक : 25.02.2013

The Hon'ble President of India,
Rastrapathi Bhavan,
New Delhi

REPRESENTATION FOR DEMAND OF JUSTICE

Sub: Restraining the political parties from issuing
WHIP for 117th Constitutional Amendment

The humble Applicant most respectfully submits as under:

1. That Article 19 of the Constitution of India gives fundamental right of speech and expression to every citizen of India. Citizens of India unitedly elect their representative for representing their voice in the parliament. The issuance of 'Whip' by the political parties in the matters of Constitutional Amendment, violates/ breach the fundamental right of speech and expression of the citizens of India, which otherwise is being utilized by them in indirect form of democracy through their elected representatives.
2. That democracy is the soul of Constitution of India. Issuance of 'Whip, centralize the amending power of the Constitution of India in the hands of four or five persons, which is against the well being of the robust health of the democratic setup of Republic of India.
3. That Members of Parliament cannot bring amendment in the Constitution of India for undoing the judgment of the Hon'ble Supreme Court and put any law in the IXth Schedule of the Constitution of India, without the prior permission of the citizens of India (their respective voters), particularly when Hon'ble Supreme Court had protected their fundamental rights.

(cont...2)

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प्रान्तीय उपाध्यक्ष एवं
पदेन सम्भागीय अध्यक्ष :-

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जे.एस. राजावत
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मो. 9314962106

टार्गेट-2015

पदेन्नति में आरक्षण समाप्ति अभियान
द्वितीय चरण

4. That word "democracy" itself – literally meaning "people's rule". Meaning thereby 'People' is sovereign authority. Democracy is "by the people, of the people, for the people" but in present circumstances, it has increasingly become "of the party high command, for the party high command and by the party high command." Too much power gets concentrated in the hands of a few people after elections.
5. That in 1947, when the country became independent, there was neither a constitution, nor a Parliament but just the people of India. These people, through the Constituent Assembly, wrote a constitution. The constitution says: "We, the people of India, give ourselves this constitution." This Constitution then created the Parliament. Therefore, the Constitution of India is superior to Parliament and the people of India are superior to both the Parliament and the Constitution.
6. That in 1950, People of India adopted representative form of democracy. People elect their Member of Parliament for five years and they are supposed to be the "voice of his people" in Parliament. Unfortunately, an elected MP goes by the directions of his party High Command. Under law, he is supposed to follow the orders of his party High Command, else he could lose membership of Parliament. So, when it is said that the Parliament will decide, it is wrong. It is the party High Command of the ruling party that decides which laws would be passed in Parliament.
7. That party High Command never consults people. Decisions could be taken to favor various lobbies on extraneous considerations at the cost of public interest. Time has come to question representative democracy and move towards direct or participatory democracy in some measure. On critical issues like amendment in the Constitution of India, an MP should consult the people of his constituency through Gram Sabhas and Mohalla Sabhas (general body meetings of voters in that village or mohalla) or by way of declaration in the election manifesto. Member of Parliament should present the voice of his people in Parliament and not his High Command's wishes.
8. That people of India, elects the Member of Parliament, for legislating and giving coded law (strictly within the frame work of Constitution of India), but this power given to Member of Parliament by the People, does not encompass the amendment in Constitution of India, undoing the Supreme Court judgments, putting any subject in the IXth Schedule of the Constitution of India. The election of MPs' is done on the basis of Constitution of India, which is framed by the People of India and it is only after authorization by the People of India to the Members of Parliament only, they can resolve to make amendment in Constitution of India.

9. That the Hon'ble Supreme Court of India in *Keshvananda Bharti v. State of Kerala* (1972) had categorically through constitutional bench of 13 judges observed that the basic structure of the Constitution of India cannot be amended. Further, the Hon'ble Supreme Court in *Minerva Mills Ltd. Union of India and ors.* AIR 1980 SC 1789 and many other judgments observed that equality clause of the Constitution of India, is the basic structure of Constitution of India and the same cannot be amended.
10. That the Hon'ble Supreme Court in the case of *M.Nagraj v. Union of India and ors.*, 2006 8 SCC 212, had observed that Article 16(1) deals with the fundamental rights whereas 16 (4A) & (4B) are only enabling provisions. The Supreme Court further held that in matters relating to affirmative action by the State, the rights under Articles 14 and 16 are required to be protected, which can only be done after compulsory adherence to the following principles, which are already explicitly mentioned in the Constitution of India, also:
 - a. inadequate representation
 - b. continuing backwardness
 - c. over-all efficiency without which the structure of equality in Article 16 would collapse.
11. That under the protective umbrella of these constitutional principles only, the Constitutional validity of the 77th, 81st, 82nd & 85th constitutional amendments was conditionally upheld by the Hon'ble Supreme Court. Any interference with these requirements would be infringement of the fundamental right to equality and would be changing the basic structure of the Constitution of India and which is beyond the amending powers given to the Parliament under Article 368, Constitution of India.
12. That the conditions enumerated by the Hon'ble Supreme Court in *M.Nagraj's* case are explicit requirements of the substantive equality code of the Constitution of India, which is beyond the powers of amendment available under Article 368, Constitution of India and same cannot be interfered by any Constitutional Amendment.
13. That across the nation benefit of affirmative discrimination has been provided to the reserved class without adhering to the above mentioned principles. To substantiate, the Hon'ble Supreme Court recently in the case of *Suraj Bhan Meena v. State of Rajasthan*. 2011 (1) SCC 467 and in the recent case of *U.P. Power Corporation and others* had observed that since the State of Rajasthan and State of UP had not conducted study as required by the Constitution of India and enumerated by the Constitutional Bench of the Hon'ble Supreme Court in *M. Nagraj v. Union of India and ors.*, so their action of providing reservation is unconstitutional.

14. That constitutional principles explicitly enumerated by the Hon'ble Supreme Court in M.Nagraj, which are basic structure of the Constitution of India, and if the Parliament intends to over-reach such principles, with the help of 'Whip', than it will be against the separation of powers and federal structure of the Republic of India. If such approach is adopted than it will plant the seeds of anarchism in the Country, which is never intended by the people of India when they gave themselves, the Constitution of India.
15. That if the MPs' intend to throttle the fundamental rights of their 75% voters without their specific authorization, by interfering in conditions/principles (supra), which are part of basic structure of Constitution of India, than it would be breach of trust, with the people of India and a misconduct, violation, breach of duty, breach of faith, breaching their constitutional oath.
16. That ill effects of the provision of 'Reservation in Promotion', are:
 - a. Infringement of Fundamental Right of Equality.
 - b. It is conspiracy under pressure of uplifted reserved lobby, to make actual backward always backward.
 - c. It has resulted division of administration of all states and nation on caste lines, and under its influence the nation is heading for a caste conflicted.
 - d. Develops a sense of inequality.
 - e. Reservation in Promotion instead of ameliorating the caste differences rather it is perpetuating it and resultantly deepening the poisonous roots of casteism.
 - f. It never allow reserved class to come in main stream of the nation, rather it makes them to live in castes conservatism.
 - g. Persons who are brought to main stream of nation after public employment and thereafter 'Reservation in Promotion' is a question mark on prudent society.
 - h. Reservation in Promotion is injustice to law abiding, dedicated citizens and it is violation of their fundamental rights.
 - i. Reservation in promotion ensures actual backwards to remain backward across the generations, which motivate them for naxalism and other illegal activities.
 - j. Reservation in Promotion stops from acknowledging the uplifted backwards, as forwards'. It motivates a race of getting a backward tag forever, etc. So, it is evident from the fact that instead of all constitutional provisions and safeguards the population of so-called backwards instead of being decreased, is increasing immensely.

(5)

17. That the Law Commission of India in their 170th Report of 1999 had observed that political party should limit the issuance of the 'Whip' to instances only when the Government is in danger. It is submitted that political party 'Whip' interferes with Member of Parliament's freedom of speech and expression, which is throttling the real voice of electorate in the Parliament.

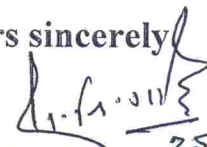
Under these circumstances, I hereby I request your Excellency to kindly ensure that:-

- (i.) It is requested that political parties should not issue 'whip' for passing the 117th Constitutional Amendment. The Hon'ble Prime Minister, Chairperson of the Lok Sabha and Leader of Opposition should ensure non-issuance of whip for 117th Constitutional Amendment.
- (ii.) To restrain all political parties and their Members of Parliament to make 117th constitutional amendment, w.r.t. 'Reservation in promotion', as no mandate has been taken from the People of India, in terms of election manifesto.
- (iii.) It is further requested that MPs' shall not be given any right to make any Constitutional Amendment unless they seek clear mandate on the proposed amendments in their election manifesto.

For cordial thanks for quick and positive action.

With regards,

Yours sincerely


(R. N. Gaur) 25/2/2013
General Secretary

Copy to :-

All MPs of Lok Sabha & Rajya Sabha for positive action.


General Secretary