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Constitutional validity of 93rd Amendment Act: An analysis of Ashoka Kumar Thakur CASE

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Abstract- Ashok Thakur v. U.I. case is an epoch making judgment the Supreme Court held in this case Article 15(5) as perfectly constitutional and not in violation of basic structure of the Constitution, but only with respect to state maintained or aided educational institutions. Ashok Thakur v. U.I. has also clarified several that in essence the same principle of law apply to Article 15 (4) and (5) as to Article 16 (4) as determined in Indra Sawhney v. Union of India; that SEBCs and OBCs in the two are essentially the same and the government could draw a common list for both; and that so long as OBCs are determined with reference to caste, the creamy layer form then must be removed to bring them in line with the requirement of being OBCs on caste lines. That the concept of does not apply to SCs and STs. and compelling state necessity evolved and applied by the U.S.A. Court in determining the validity of affirmative action or in inferring the concept of equality are not relevant for us in interpreting the equality provisions, especially articles 15 (4) and (5) and 16 (4) (4-A) and (4-B).

Key Words: Reservation, Other Backward Class, Schedule Caste, Schedule Tribe, Constitutional validity.

Introduction- In India law provides for a quota system where by a percentage are reserved in employment in Government and in the public sector units, and in all public and private educational institutions, except in the religious/linguistic majority educational institutions in order to mitigate backwardness of the socially and educationally backward communities and the SC and Tribes who do not have adequate representation in these services and institutions. The reservation policy in India has always been a controversial issue it has generated heated debates among policy makers, carrying with it an unending series of protest and processions. Reservation policy which was aimed by our founding fathers to bring social and economic equality among socially deprived and vulnerable groups of the social has been defeated by the filthy politics.

The verdicts of the Hon'ble S.C. in cases of T.M.A. Pai¹ and P.A. Inamdar² in which the court made it clear thus caste bases reservation amount be enforced on unaided private educational institution, 93rd Constitutions Amendment Act has introduction. It was aimed to promote the education advancement of the SCs, STs and OBC in matters of admission of students belonging to these categories

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¹(2002) 8 SCC 481.

²(2005) 6 SCC 537.