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Case Commentary on R.C. Poudyal v. Union of India

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ABSTRACT

The case of R.C. Poudyal vs Union of India largely deals with the issue of reservation in the then newly constituted Legislative Assembly of Sikkim. The case focuses on the constitutional validity of the reservations made by the Parliament in the state of Sikkim and determines the concerns related to such representations. In order to fathom the context for an argument the court largely relies on, it is imperative to know the historical circumstances due to which these reservations were put into question.

I. HISTORICAL BACKGROUND OF SIKKIM AND ITS ACCESSION TO INDIA

Sikkim was under a hierarchical monarchy below the king who was known as the Chogyal. In the 19th century, people from Nepal started immigrating to Sikkim due to which the demographic of Sikkim endured massive changes. This concluded in the rapid growth of Nepali Sikkimese population in the State. The Bhutia Lepchas, the original inhabitants of Sikkim were concerned that their voices would be inundated in the majority of the immigrants in the State. There were conflicts and negotiations within the State and therefore, the Chogyal created various councils in order to devolve power between the Bhutia Lepchas and the Nepali Sikkimese. Gradually, these councils kept expanding which resulted in greater devolution of power towards various communities in the State. One peculiar thing about this characteristic was that despite the expansion of such councils, Sikkim always entailed a system of Reservation of seats for communities within the State on the grounds of protecting cultural interests and identities of various individuals.²

Just before 1974, Sikkim had a state legislative assembly which consisted of 32 members out of which 16 seats were reserved for the Bhutia Lepchas and the other 16 seats were for the Nepali Sikkimese.

Consequently, several political parties in Sikkim argued against the monarchy and wanted the state to turn into a democracy owing to the various concerns of the citizens related to equal

¹ Author is a student at Jindal Global Law School, India.

² John Sebastian, *Constitutional Law II discussion*, Sept.9, 2020.

representation and equal rights.³ Subsequently, a tripartite agreement was executed between the ruler of Sikkim and the Foreign Secretary to the Government of India in tandem an agreement between the Chogyal and the political parties to accede to the Indian union.

The Indian Government admitted Sikkim to India through Article 2 resulting in the 36th Amendment to the Constitution alongside the insertion of Article 371F which listed special provisions for the State of Sikkim keeping in mind its peculiar history. Clause 'f' of the article offered powers to the Parliament of India to make any provisions for reserving seats in the Sikkim Legislative Assembly for the purpose of protecting the rights and interests of different sections of the population.

Subsequently, the Indian Parliament was fixated on trying to follow an arrangement which was already followed by the Sikkim State Assembly. In 1975, the Parliament passed a law, an amendment to the Representation of the People Act, 1951 and created a new composition of 32 members in the State viz.-

12 seats	Bhutia-Lepchas
1 seat	Buddhist Sanghas
2 seats	Schedule Castes
17 seats	General Category

The petitioner, a Nepali Sikkimese challenged this reservation of 12 seats for individuals belonging to the Bhutia-Lepcha origin and 1 seat for the Buddhist Sanghas on the grounds that reservations were made on the basis of religion and that was violative of Article 15 of the Constitution of India which prohibits any discrimination based on race, caste or religion. Creating an independent electoral poll for the Sangha tribe member was a sharp encroachment of the democratic requirements of the Union which Sikkim was now a part of.

II. ANALYSIS

The Supreme Court constituted a five-judge bench to adjudicate this matter. The opinion of the Court was delivered by Venkatachaliah J. along with separate partial dissents by LM Sharma Erstwhile Chief Justice and SC Agarwal J.

Issues that the Court dealt with:

1. Does the Judiciary have the power to review the conditions under which a new state is

³ Ashish Agarwal, *Case Study R.C. Poudyal v. Union of India*, LEGAL BITES (Sept. 10, 2020), <https://www.legalbites.in/r-c-poudyal-v-union-of-india-1993>.

admitted into the Union?

2. Is the Parliament allowed to make such reservations while creating a new state under Article 2? What is the scope of the term 'on such terms and conditions as it deems fit' mentioned in Article 2?
3. Can the legislature enact laws to reserve seats which are larger in number as compared to the population of the community?
4. Whether the reservations made by the Parliament were violative of the Basic principles of secularism and democratic nature of the Constitution?

The Union of India was of the opinion that the Parliament has been given a power under Article 2 which gives them the authority to admit new States into the Union on such terms that it deems fit and that these terms were not subject to Judicial Review. The Union argued that this was a political question and was outside the scope of the Judiciary. The Court contended that Article 2 bequeaths broad powers to the Parliament and does give a certain amount of flexibility to the Indian Union with respect to admission of new States, but this power was not to be considered as non-reviewable or unfettered. The Basic Structure doctrine was an existing doctrine at that time and hence, there was no unlimited power that was to be vested in the Parliament. Further, the Attorney General on behalf of the Union argued that the newly inserted Article 371F began with a non obstante clause and therefore the other provisions of the Constitution would not apply to the State of Sikkim. Hence, the Court must not be the judge of the validity of such matters. However, this argument was flawed in nature because in cases where the Parliament does not have the power to change the constitution due to the constraints that the Basic Structure doctrine carries, it also cannot use a non obstante clause and continue to go against the structure of the Constitution. That would tantamount to unlawful use of authority. Therefore, the judiciary must have sizable power to review the conditions on which a state is admitted, in cases where the Parliament has been inconsistent with already existing provisions.

The Court also elucidated further on the issue of Article 2, and concluded that the newly admitted state cannot be completely equal to the already existing states of the Union as the Parliament has the power to admit states on certain conditions as they deem fit, however, these conditions must not establish a system that is alien to the conventional institution that the Constitution envisages. The vagueness of the 'alien system' was something that should have been questioned. This sort of vague understanding of such law impermissibly puts off basic principles to be interpreted subjectively on an ad hoc basis with the consequent

possibilities of discriminatory application.

The Petitioners also put forth the issue of disproportionate representation and observed that 38% seats were reserved for 20% of the population of one specific community.⁴ The petitioners in their respectful submissions contented that a democracy focuses on fair and effective representation and such inconsistent arithmetic errors were anti-democratic in nature. The democratic requirements of the State of Sikkim were not in tandem of the requirements of other States. While it is known that Sikkim was a unique constituency in itself, the reasoning behind the consequential changes in the electoral laws was to identify and assist the progress of political establishments in the State and avoid the dominance of one section of the demographic over the other. However, it was the minority view of L.M Sharma, C.J.I. which was transcendental- Article **330** clause (2) and article **332 Cl. (3)** laid down the rule of maintaining the ratio between the seats and the population. This proves to be vital because the main goal for reservations is the principle of equal status. Therefore, it is safe to say that the issue of inadequate representation will not be resolved with this particular reservation, consequently applicable provisions are known to be flexible to authorize broader discretion to attain proportionate representation. This sort of excessive representation will give rise to unequal status.

Now, the Country is largely governed by democratic principles which the Court emphasizes on, this is used by the majority view of the Court to describe how in the Indian context, fair representation is not measured with arithmetical accuracy. The principle of one person one vote is looked at in spirit and is not a mandate in India. The country follows a first past the post system when it comes to elections that has the preponderance of majority over representativeness. The historical considerations of Sikkim are cited in order to prove the argument that the Indian Constitution entails equality which allows for reasonable classification based on tests of intelligible differentia.⁵ Therefore, it was concluded on account of the majoritarian opinion that Article **371F** was not violative of the Basic Structure of the Constitution of India.

III. CRITIQUE OF THE POLITICAL AND HISTORICAL ARGUMENT USED BY THE COURT

The issue concerning the question of whether the Buddhist Sangha community came within the ambit of religion was an issue subject to much scrutiny. The Supreme Court's arguments

⁴ John Sebastian, *supra* note i.

⁵ Amit Bindal, *Constitutional Law I discussion*, Mar.3,2020.

with respect to this issue were the least convincing and were filled with lacunae. The majority opinion of the Court relied on the fact that Sikkim portrayed a prior trend of the Sangha community being an active part of Sikkim's sociopolitical discourse and trusted the Historical material of the community holding integral importance to Sikkim's existence. The court recognized the community not as a mere religious identity but also ascribed a political role to the community. The court however, acknowledged the fact that the creation of a separate electorate would be abominable only if it is made just on the basis of religious considerations and went on to call the Sanghas not just a 'religious institution'. The minority opinion given by Sharma J is specifically important here because the creation of separate electorates attacks the democratic foundation of the country in its entirety.

It is my contention that an addition of another factor to an already prohibited ground does not suddenly change the merit of the argument. If such justifications are made, then using this ground as a precedent, reservations can be made by any newly admitted state. There is no doubt that religion plays an important role in the political discourse of a State. Therefore, it is impossible to look at politics and religion apart from each other. This sort of argument proves to be implausible because it is devoid of any separate distinction. The reliance on Historical circumstances, as the court in this case has, to give merit to an otherwise flawed argument is obscure because that provides opportunities for all newly admitted States to use this as a defense for reservations based on religion. The Judges should have kept the democratic spirit in mind while adjudicating this matter. While it is clear that this sort of arrangement applies only to Sikkim, considering the state's Historical circumstances, it is not far-fetched to say that this would be a forefront for all anti-secular idiosyncrasies in such newly admitted states. Therefore, in my respectful submissions, I contend that the Judges in this specific matter should have had a secularist approach and used the minority interpretation to decide this case.
