

## 124<sup>TH</sup> CONSTITUTIONAL AMENDMENT: REWORKING RESERVATION SYSTEM

Ritika Saxena\*

### ABSTRACT

The Parliament of India has passed the 124<sup>th</sup> Amendment Bill, 2019 in 2019 regarding the Reservation. This Constitutional Amendment brought major changes to Article 15 and Article 16 of the Constitution. This amendment also makes varieties of note of Article 46, which seeks for the promotion of the interest of a weaker section of the society, economically as well as in the field of Education too. This article aims to define the need for reworking the reservation system and whether it is good news for the 'Economically Weaker Section of the society or not.

### INTRODUCTION

On 26<sup>th</sup> January 1950 when the Constitution of India came into force, a provision relating to non-discrimination between the people of India was also established by way of implementing Article 14, 15, 16, 17, and 18. Before the independence of India, there was classism, racism, casteism, etc. People of lower classes had faced discrimination and dominated by the upper class of society. For the educational and economical advancement of backward classes, special provisions were made.

### WHAT IS THE BACKWARD CLASS?

Backward class is a group of those people who are being disadvantaged in many fields. It is a term used by the government to classify between those classes of people who are educationally, economically, and socially disadvantaged. The government also classified them in Schedule caste (SC), Schedule Tribes (ST), and Other Backward Classes (OBC).

There was a time when these classes were in crying need of social and economical development. The provisions which were added in the constitution had fulfilled their objectives for years.

\*LLB, THIRD YEAR, SHRI RAMSWAROOP MEMORIAL UNIVERSITY, LUCKNOW.

## NEED FOR REWORKING RESERVATION SYSTEM

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The history of reservations in India can be studied from colonial rule. Nonetheless, reservations in substantial form were drafted into India's Constitution by the Constituent Assembly to protect the rights of the weaker section of the society. It also approved the promise to reservations for Scheduled Castes and Scheduled Tribes of our society. Thus, the only unequivocal reservations that were made at that time in writing were for SC and ST quota only. Then in 1990, the other backward classes came forward and were agreed to 27% reservation after the acceptance of the *Mandal Commission's Report* by the government. However, in 1992, the Supreme Court had limited the caste-based reservation system to a maximum of 50 percent. I.e. reservations in total can be given up to 50% only. It was held in the case of *Indra Sawhney vs Union of India*<sup>1</sup>. In this case, a 9 Judges bench was constituted which was headed by C.J. B.P. Jeevan Reddy, where 6:3 majority held that the decision of Union Government to reserve 27 percent Government jobs for backward classes excluding the Scheduled Caste and Scheduled Tribes provided socially advanced people, i.e. People covered under Creamy Layer shall be excluded and held this constitutionally valid provision. The state of Tamil Nadu has always been an exception in this case. Currently, Tamil Nadu has a 69 percent quota in various sections. In 1994 this law was afterward included in the 9<sup>th</sup> schedule of the constitution to get protection from Judicial Review.

All the reservations that were made in past were for the Schedule Castes (SC), Schedule Tribes (ST), and Other Backward Class (OBC) of the society. By the passing years more opportunities were reserved for them and the other people of the society, i.e. the General Classes, it was getting hard for them to move forward with the time. As the number of opportunities provided to the general class was comparatively lesser than the population of them.

There has been a lament need for any such a provision to be included in the Constitution of India which could protect the rights of higher casts. Many such demands have been raised by the numerous sections of the society especially the higher castes which fall under the economically weaker section, for many past years to increase 50 percent cap limit in job reservations keeping their best interests in mind and also to provide them with equal opportunity for jobs and education. This includes demands from *Thakurs* in Uttar Pradesh, *Rajputs* in Rajasthan, *Jats* in Haryana, *Patel Patidars* in Gujarat, and *Kapus* in Telangana and

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<sup>1</sup> AIR 1993 SC 477

Andra Pradesh. Thus, the bill seeks to provide for the advancement of ‘**the Economically Weaker Section**’ (EWS) of the Indian citizens.

### **WHAT IS THE ECONOMICALLY WEAKER SECTION (EWS) IN THE SOCIETY?**

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The Economically Weaker Section (EWS) or Economically Backward Class (EBC) of the society are those people who are not from SCs ST and OBC or Most Backward Community (MBC) in case of Tamil Nadu. These people belong to the Upper Class of the society whose annual income is less than 8 lakhs. So, the person who does not fall under any abovementioned category and whose annual income is less than 8lakh rupees, then they will fall under the Economically Weaker Section.

But the income criterion is not the sole factor to be looked upon; few other factors have to be checked to obtain the Economically Weaker Section’s certificate and to obtain the benefits of the same. The factors which are considered are:

- The Income of the candidate shall be less than 8 lakh rupees per annum.
- The agricultural land hold by the candidate and his family shall be less than 5 acres.
- The residential flat area holding by the family shall be less than 1000 square feet.
- If the residential plot’s area is in the notified municipality then the holding of such plot shall be less than 100 square yards.
- If the residential plot’s area is not in the notified municipality then the holding of such plots shall be less than 200 square yards.

The Economically Weaker Section (EWS) after obtaining the EWS certificate can avail the benefit of 10 percent reservation in Higher Education and government jobs all over India.

### **124<sup>TH</sup> CONSTITUTIONAL AMENDMENT BILL**

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The government has recognized this issue many times and had also addressed it in their many speeches. In May 2018, the Prime Minister addressed the issue in his speech by saying, “*The government wants the most backward in OBCs to benefit more from reservation within the given limit. We have formed a commission to look into the sub-categorization of the OBCs*”. In past, the issue was being addressed to sub-categorize the classes which already

exist in the society and gaining the benefits of the reservation system but through the 124<sup>th</sup> Constitutional Amendment Act, the issues faced by the upper class were addressed and resolved bit.

*“124<sup>th</sup> Constitutional Amendment Act brought changes under articles 15 and 16 of the constitution. Article 15 talks about the Prohibition of discrimination on grounds of religion, race, caste, sex, or birthplace, whereas Article 16 deals with Equality of opportunity in matters of Public Employment.”<sup>2</sup>*

Clause 6 was added after clause 5 under Article 15, which says that State shall not be prevented from making any special provision for the advancement of Economically Weaker Section (EWS) of the society<sup>3</sup> and such provision made shall be related to admission in the educational institution including the private institution, whether aided by the government or not aided by the government. It should be made prominent that the classes mentioned in clauses 4 and 5 of Article 15 shall be excluded from the classification of EWS.

Further Clause 6 was also added to Article 16 of the constitution, which says that the state shall not be abiding by making any provision in respect of the Economically Weaker Section (EWS) of the society in the matter of reservation of appointments or posts in their favour. The classes mentioned under clause 4 of the Article shall be excluded from gaining the benefit of the same.<sup>4</sup>

### **STATEMENT OF OBJECTS AND THE REASON STATED BY THE GOVERNMENT**

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The government gave few reasons and also include Article 46 in their list of reasons. According to the statement of the object, few sections in the society were excluded from attending the higher educational institutions and Public Employment due to the financial incapability to compete with the people who are more economically privileged, as they were promoted by way of reservation system; these people who were excluded from attending the higher education were the Economically Weaker Section (EWS) of the society, who were gaining the backwardness by being excluded from the reservations.

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<sup>2</sup> The Constitution of India

<sup>3</sup> The Constitution of India

<sup>4</sup> 124 Constitutional Amendment bill

Under Clause (4) and (5) of Article 15, the benefits of reservation were given to the backward class of the society education-wise, and clause (4) of Article 16 also provides the benefits to the backward classes like Schedule Caste, and Scheduled Tribe. There was no specific provision for the people who are economically backward in the society unless they meet the unambiguous standards of social and educational backwardness i.e. the SC/ST quota.

The public authority fought that the DPSP contained Article 46, which urges that the State will advance the Educational and Economic Interests of the more fragile segment of the general public with uncommon consideration and specifically to the STs and SCs from social shamefulness.

To tie down the privilege to the instruction of the more fragile part of the general public the (93rd Amendment) Act, 2005 was passed which provision (5) was embedded under Article 15 of the constitution which empowers the State to make exceptional arrangement to give social and educational equity to the ST and SCs. Essentially, Clause (4) was embedded under Article 16 for their advantages concerning the arrangements and posts; this was not satisfactorily addressed in administrations under the State.

However, the economically weaker sections of the upper classes were not eligible to fall under any of the benefits provided by (Ninety-third Constitutional Amendment) Act, 2005. They were deprived of their rights due to economical backwardness. *“To ensure that the economically weaker section of the society gets a fair chance of receiving Higher Education and participation in Employment in services of the State and to fulfill the mandate of Article 46”*, the decision to amend the Constitution of India.

## DEBATABLE ISSUES

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There are few expected challenges in the implementation of this new reservation quota for the Economically Backward Class (EWS). The 50 percent cap limit on reservation accepted through the Mandal Commission is subject to judicial review. The Supreme Court shall need to lift this cap limit in reservations. The Supreme Court had many times ruled against the cap limit. If the limit is exceeded then the upper classes are most probably in a chance to not achieving any secured place in the state services and if the limit of 50 percent cap is not exceeded and the Supreme Court rejects the notion of rupturing the 50 percent limit, the Economically weaker section (EWS) quota can only be provided by cutting into the limits of SC, ST or OBCs, which is the current situation. The major hurdle that occurred here is in the

case of the identification of eligible candidates who applied for the EWS certificate. More affirmations are needed to be recorded in regards to landholding and the yearly pay of the competitor. The workload for the administration has been increased as they are required to verify the documents.

The Supreme Court in the writ petition of *Janhit Abhiyan vs Union of India and Ors*<sup>5</sup>, said, “on the plea of the ceiling of 50% for affirmative action, it is the case of the respondent-Union of India that even though ordinarily, 50% is the rule but equivalent will not put a stop to amend the Constitution itself because of the existing exceptional circumstances to strengthen the members of the social order belonging to economically weaker sections.” The States are not prohibited from increasing the cap limit; they can increase the limit for the benefit of the economically weaker section of the society. The state of Tamil Nadu has been an example of the same. It is the only state that has a quota of 69 percent. “According to the UGC guidelines, all the central universities are currently following the same reservation policy as earlier; i.e. 15 percent for Scheduled Caste (SC), 7.5 percent for Scheduled Tribes, 27 percent for Other Backward Class (OBC), and 10 percent for Economically Backward Class (EWS)<sup>6</sup>.”

## CONCLUSION

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The ST, SC, and OBCs, who were ‘socially and educationally backward in the early years of independence they had taken the advantage of the reservation policy. Most of them have been benefited from the reservation policies, even though many of them cannot be regarded as ‘backward’. Some of these people were backward from their castes but in reality, they are now more privileged than the people of the upper class. Thus, the reservations had been usurped by others than the weaker class of society. The decision of the court is affirmative but it should be implanted properly. Providing reservations to the needy class of the society is a great initiative but meanwhile, the government should also have to look at the aspect of slowly decreasing the reservation limit to those who have benefited from this policy for years and are now the privileged class of the society. Common criteria for providing reservations should be implemented rather than of which is being followed for decades.

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<sup>5</sup> W.P. (C) No. 55 of 2019 etc.

<sup>6</sup> [https://www.ugc.ac.in/pdfnews/2689000\\_Reservation-for-EWSs-082019.pdf](https://www.ugc.ac.in/pdfnews/2689000_Reservation-for-EWSs-082019.pdf)

**REFERENCES**

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**Legislature:**

The Constitution of India, 1950

93<sup>rd</sup> Constitutional Amendment Act, 2005

103<sup>rd</sup> Constitutional Amendment Act, 2018

124<sup>th</sup> Constitutional Amendment Bill, 2019

**Links:**

<http://www.ncbc.nic.in/>

[https://www.ugc.ac.in/ugc\\_notices.aspx](https://www.ugc.ac.in/ugc_notices.aspx)

<https://dopt.gov.in/sites/default/files/ewsf28ft.PDF>

<https://www.prsindia.org>

**Books:**

Dr. J.N. Pandey, 'Constitutional Law of India' (Central Law Agency) 55<sup>th</sup> edition

M. Laxmikanth, 'Indian Polity' 5<sup>th</sup> edition

**Cases:**

Indra Sawhney vs Union of India, AIR 1993 SC 477

Janhit Abhiyan vs Union of India and Ors, W.P. (C) No.55 of 2019, etc.

State of Kerala vs N.M. Thomas, AIR 1976 SC 490

Balaji vs State of Mysore, AIR 1963 SC 649