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Case Comment: Changing Nature of Reservation Policy: Janhit Abhiyan v Union of India

Mohd Hashim^a

^aVES College of Law, Chembur, India

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INTRODUCTION

On January 12th Government of India passed the 103rd constitutional amendment act which amended articles 15 and 16 of part 3 of the constitution, and inserted clause 15(6) that provides the lawmakers with a framework to make any special provision for the advancement of Economic Weaker Section (EWS) of the society and 16(6) which empowers the state to make provisions of reservation for the above-mentioned class to provide them for admission to central government-run educational institutions and private educational institutions (except for minority educational institutions), and employment in central government jobs. However, it does not include the classes that already enjoy reservation through existing provisions. It has been added that reservation, under both articles, is not subject to exceeding more than 10%, which adds to the existing reservation limit for non-creamy OBCs, SCs, and STs. The act also confers about the term 'Economically Weaker Section' and has described the criteria which are as follows:

- Individual's family gross income must not be more than Rs 8 lakhs per annum.
- His/her family must not own more than 5 acres of agricultural land.
- His/her family must not own a residential flat of 1000 sq. Feet.
- His/her family must not own a residential plot more than of 900 sq. Feet (if notified municipalities).
- His/her family must not own a residential plot more than of 900sq. Feet (other than in notified municipalities).

It must be understood that the said reservation is solely enabling in nature rather than mandatory. Hence it doesn't put compulsion on the institutions to make provisions for the Economically Weaker Sections, but it merely enables them to make arrangements for a 10% reservation quota for the Economically Weaker Sections. However, after receiving the assent of the president, it became a topic of debate, as a result, several PILs and special leave appeals were filed before the Supreme Court against the amendment, challenging its constitutionality.

BACKGROUND AND FACTUAL CIRCUMSTANCES

Discrimination based on caste was a big hindrance to equality. According to the framers of the Constitution, the rationale behind the policy of reservation was aimed to balance and rectify the social status and historic injustice against the backward and disadvantaged castes. Initially, the policy was introduced for 10 years but it kept extending in terms of time and expanded with the inclusion of other classes into its ambit. With the first amendment, the reservation was extended to include SEBCs (socially and educationally backward classes). After the recommendation of the Mandal Commission, SC upheld the government's order to include OBCs under the reservation policy in 1992. In the landmark judgment of *Indira Sawhney v Union of India* 1993, the judgment laid down the ceiling of 50% quota and the concept of a creamy layer was introduced, which refers to the well-off or better-educated members of OBCs who are not supposed to be eligible for the matter of reservation. On 14th January 2019, the parliament enforced the 103rd amendment which now includes economically weaker sections of upper castes.

ISSUES INVOLVED

In *Janhit Abhiyan v The Union of India*¹ the petitioners challenged the constitutional validity of the amendment and as a result, the following questions emerged in front of the constitutional bench -

- Can the reservation be granted solely based on the economic standard?
- Whether the exclusion of SCs, STs and OBCs from the said reservation slab of 10% damages the basic structure of the constitution.
- Can the ceiling of 50% be breached which was decided in the case of *Indira Sawhney v Union of India* (1993)?
- Can states be allowed to provide reservations in un-aided private educational institutes?

JUDGMENT

The court upheld the constitutionality of the 103rd Amendment of the Constitution with a split decision of 3:2 by a five-judge constitutional bench, where the former CJI UU Lalit and Justice Ravindra Bhat had dissenting opinions. What is interesting about the judgment is that Justice J.B. Pardiwala, while affirming policies of the act opined that reservation shall not last for an indefinite time and the policy needs to be re-examined.

ANALYSIS

The move of the Parliament to extend reservation on the sole basis of economic backwardness was regarded as against the precedents laid down by the courts and the basic structure of the constitution yet the Hon'ble Court has upheld its constitutionality.

AFFIRMING THE NEW CRITERIA

The said amendment has aimed to grant special relief of reservation to citizens who are "economically backward" rather than "socially and educationally backward" which is mentioned

¹ *Janhit Abhiyan v The Union of India* (2022) 2 SCC 1

in articles 15(4) and 16(4) of the constitution². The petitioner has argued that the inserted clauses under article 15 and 16 are against the vision of the constituent assembly and damages the basic structure of the constitution. The preamble to the constitution not only strives for social justice but also for economic justice. The respondent has regarded the amendment as a move for achieving economic justice. Certainly, it is a step towards it. However, the income criteria provided in the act mention that the salary of an individual's family shall not be more than Rs. 8 lakhs per annum which is relatively high compared with those who are genuinely weaker in terms of economic backwardness. The act may rather help those who are relatively "less poor" than those who suffer from chronic poverty.

The court held that economic backwardness is a valid criterion for deciding the backwardness for the matter of reservation by citing the landmark judgments of *R. Chitralakha v State of Mysore*³ *Mr. Balaji and Others v State of Mysore*⁴ and *Nagaraj v Union of India*⁵ where the court has observed that poverty is a measure of backwardness. Justice Dinesh Maheshwari pointed out that although the constitution provides a framework to uplift the socially and educationally backward classes also it does not deny making provisions for the economically backward ones. Justice Bela Trivedi affirming the criteria provided by the act stated, Treating EWS as a separate class would not amount to an unreasonable classification. Just as equals cannot be treated unequally, unequals cannot be treated equally. Treating unequals equally violates equality under the constitution, and thus, violates basic the structure of the constitution. The exclusion of SEBCs thus cannot be said to be discriminatory or violative of the constitution.

IS THE CEILING OF 50% BREACHABLE?

In the case of *Indira Sawhney and v Union of India*,⁶ the SC via the nine Judge bench laid down the ceiling of 50% percent reservation. However, after careful scrutiny of the case, it is important to note that the said ceiling is a thumb rule which is supposed to be followed by the legislators

² Constitution of India 1950, art 15-16

³ *R Chitralakha v State of Mysore* (1964) INSC 232

⁴ *MR Balaji & Ors v State of Mysore* AIR (1963) SC 649

⁵ *Nagaraj v Union of India* (2006) 1 SCC 1

⁶ *Indira Sawhney v Union of India* (1992) 3 SCC 217

and is not inflexible in extraordinary situations. Moreover, the ceiling was laid down exclusively for the socially backward classes specified under articles 16(4) and 16(5), and in the context of the 103rd amendment, it grants an extra 10% reservation to the economically backward sects of the society. Justice Maheshwari in his judgment stated the same and concluded that the 50% percent ceiling is not applicable in the current scenario.

With a dissenting opinion Justice Bhat said, "I find that there is no need for a specific finding on the 50 percent cap, or its breach of the basic structure; however, I deem it necessary to sound a note of caution, on the consequence of upholding the reservation, thereby, breaching the 50 percent limit". Even if the 50% ceiling can be breached and the breach does not violate the basic structure of the constitution or as Justice Maheshwari stated 50% ceiling is not applicable in the reservation of EWS. It is conspicuous that the breach can open the gates of demand for more reservations and the further increment in the percentage of reservations will inevitably violate the equality code and the basic structure of the constitution.

VALIDATING THE EXCLUSION OF BACKWARD CLASSES

As the amendment excludes SC/STs and SEBCs from the new 10% slot on the grounds that they already enjoy reservation in the bracket 50%. This provision of the act is a violation of Article 14 as it further discriminates the historically disadvantaged communities as contended by the petitioner. However, the honorable court's reasoning is established on the fact that SCs, STs and OBCs are already claiming the relief of affirmative action under articles 15(4)⁷, 15(5), and 16(4)⁸. Also, the EWS reservation does not barge or encroach on the quota provided to them. Justice Bhat dissented against the majority judgment with a legal point of view rather than a practical view by the judges with the majority opinion. He said, "While reservation on economic grounds is permissible, excluding SC/STs and OBCs from EWS cannot be permitted and amounts to discrimination against them". He supported his opinion by stating the Sinha Commission report which claims that 38% of the total SC population and 48% of the ST population falls below the

⁷ Constitution of India 1950, art 15(4)

⁸ Constitution of India 1950, art 16(7)

poverty line. The main objective behind EWS reservation of uplifting economically backward classes does not seem to be fulfilled at its maximum extent.

CONCLUSION

The rationale behind the reservation policy seems to be changing as the drafters of the constitution introduced the policy to maximize social justice and to ensure the representation of marginalized and historically excluded communities which will lead to an egalitarian and caste-less society. The operation span of the policy was supposed to last until the above-mentioned communities have attained equal opportunity and social justice as the privileged ones, but the 103rd amendment act extends to the inclusion of economically weaker sections to claim reservation under articles 15(6)⁹ and 16(6)¹⁰ on the sole basis of economic backwardness rather social and educational backwardness as criteria for granting reservation, the nature of poverty is never ending, which implies that reservation will be needed for an indefinite time period. Exclusion of the creamy layer citizen of OBCs in 1992 in the Indira Sawhney case¹¹ by fixation of proper income, property, or status criteria by the direction of the Supreme Court. It seemed like the progress of the original rationale of the policy but in the recent judgment of the EWS quota the Supreme Court has upheld in favor of the never-ending nature of the reservation policy.

⁹ Constitution of India 1950, art 15(6)

¹⁰ Constitution of India 1950, art 16(6)

¹¹ *Indira Sawhney v Union of India* (1992) 3 SCC 217