



ORIGINAL RESEARCH PAPER

Law

THE 10 PERCENT QUOTA WAY TO GENERAL

KEY WORDS:

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1. INTRODUCCION

The year 2019 began with a historic way when the President Ram Nath Kovind gave his assent to the Constitution amendment that provides a reservation policy, introduced by an amendment to the Constitution which intends to reserve 10 percent of the total seats in higher education institutions, both private and public, and also in the government jobs exclusively for the Economically Weaker Section (EWS) belonging to the general category which is now a law.

It is worth mentioning here that the Constitution of India does not provide any reservation based on economic basis or criteria, so this law could only be brought out through an amendment in the Constitution where the reservation is to be provided not on any caste basis but purely on the economic criteria.

The Constitution (103rd Amendment) Act, 2019, which came into effect on January 14, 2019, has amended Articles 15 and 16 of the Constitution of India by adding two new clauses which empower the state to provide a maximum of 10 per cent reservation for "economically weaker sections" (EWS) of citizens other than the Scheduled Castes (SC), the Scheduled Tribes (ST) and the non-creamy layer of the Other Backward Classes (OBC-NCL).

It is important to note, before we further dwell into the implications of this new law that, there is no interference with the other 50 percent share which is reserved for SC/ST/OBC-NCL as this 10 percent law is carved out of that 50 percent of the general category, who do not have any reservation in the public institutions and the public employment.

The statement of the objects of the bill (124th Constitution Amendment Bill) states that with a view to fulfil the mandate of the **Article 46**, and to ensure that the economically weaker sections of the citizens get a fair chance of receiving higher education and the participation in the employment in the services of the state, it has been decided to amend the constitution of India.

Let us now have a look at the amended articles of the Constitution of India through which it could be possible to bring out this pro poor amendment providing for 10 percent reservation in jobs and educational institutions to economically weaker sections in the general category.

1.1 The Amended Articles of the Constitution of India:

- **Article 15 (6)** states: Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5);

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority

educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category. [Explanation- For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

- **Article 16 (6)** states: " Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."

2. The Criteria of Income & Assets To Qualify For The Reservation:

Considering the economic condition as the sole basis for reservation, this policy uses two criteria to define the eligibility: annual household income and asset ownership. In its Office Memorandum no. 20013/01/2018-BC-II dated January 17, 2019, the Ministry of Social Justice and Empowerment, Government of India has stipulated that only those persons who are not covered under the scheme of reservation for SCs, STs and OBCs and whose family has gross annual income below Rs 8 lakh (Rupees eight lakh only) are to be identified as EWSs for benefit of reservation. Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application.

Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWS, irrespective of the family income:-

- 5 acres of agricultural land and above;
- Residential at of 1000 sq.ft. and above;
- Residential plot of 100 sq. yards and above in notified municipalities;
- Residential, plot of 200 sq. yards and above in areas other than the notified municipalities.

The property held by a "Family" in different locations or different places/cities would be clubbed while applying the land or property holding test to determine EWS status. Moreover, the term "Family" for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years.

On what basis were the above income and asset threshold set as the eligibility criteria? Specifically, will the above criteria, seemingly wide in range and reach, help insulate the proposed policy from the ills that blight the welfare schemes in India.

Estimates suggest that as high as 80 percent to 95 percent of the general category households will be eligible for this quota and moreover the above new criteria are susceptible to the error of wrong inclusion rather than addressing exclusion. Importantly, Rs. 8 lakh as cut off is higher than the eligibility

criteria adopted by many states and education institutes in India.

The fact of the matter is that, as many as 80 percent of the households from the general category are economically weaker sections despite their social advantage in the fastest growing economy in the world. The new reservation policy has made one point very clear that the reservation is no more the privilege of the meritless anymore.

So, the rationale underlying the proposed reservation policy is that the EWS from the general category remained excluded from attending the higher educational institutions in India due to their financial incapacity which itself is a discrimination and moreover, which goes against the principle of economic justice enshrined in the preamble of our Constitution. It needs to be seen how this 10 percent Quota can prove to be a game changer.

Let us now further analyse the different dimensions of this new law.

2.1 The Beneficiaries of the 10 percent Quota Law

Considered a non-caste and non-religion-based reservation, the 10 per cent reservation Bill for the General category is expected to benefit the poorer sections of the upper caste Hindus and other religions who at present are not beneficiaries of any quota as the caste is not going to be a mandatory criterion for eligibility.

Moreover, the 10 per cent general quota law also seeks to provide reservation to economically weaker sections in privately owned higher educational institutions, including unaided institutions, barring minority institutions as mentioned earlier.

Interestingly, the 10 per cent quota provision is over and above the existing 50 per cent quota for Scheduled Castes (SCs), Scheduled Tribes (STs) and the Other Backward Classes (OBCs), and having said that, it means that the new reservation will not encroach upon the reservation already provided to SC/ST and OBC (non creamy layer) categories.

The quota law will be applicable to the economically backward among Hindus, Muslims and Christians. Among the major Hindu castes to benefit from the quota law are, Brahmins, Rajputs (Thakurs), Jats, Marathas, Bhumihars, Vaishyas (trading castes) along with Patidars or Patels, Gujjars, Kappus and Kammas, depending on which caste group is listed in a state under which category who have long standing demands regarding their reservation and India has witnessed in the recent past many such "aandolans" or violent agitations who have also claimed many innocent lives.

Let us have a glimpse at the past efforts and the challenges on the way of this new reservation policy.

3. The Past efforts and New Legal Challenges with regard to giving reservation on economic criteria:

The story of the reservation on economic criterion is not a new attempt. There have been a few attempts in the Indian history regarding this kind of reservation. Let us have a look at few such important attempts and why they failed to bring out the reservation on economic basis.

• **Narasimha Rao led Congress Government, 1991**

In 1991, the Congress government headed by the Narasimha Rao granted reservation to those belonging to upper caste but are economically weaker. Rao government sought to use an executive order in September 1991 which failed because the government brought it without any constitutional amendment which was naturally not a proper legal route. However, in 1992, the Supreme Court in the Indra Sawhney

case struck down the proposal stating separate reservation for economically weaker among forward castes is invalid.

• **Atal Bihari Vajpayee led BJP Government, 2003**

In 2003, a year before the General Elections, the BJP Government led by Atal Bihari Vajpayee appointed a Group of Ministers to come up with some ideas that can be implemented for the poor among the upper castes. The GoM included prominent leaders including the then Deputy PM LK Advani, Law Minister Arun Jaitley, Finance Minister Jaswant Singh, and Railway Minister Nitish Kumar. In January 2004, a task force was set up to work on the criteria for the reservation for the economically backward section. But nothing came up and a such there are no records regarding submission of any reports submitted by the task force. The end result was that the Congress-led UPA-I took over the BJP government in the 2004 general elections.

• **Manmohan Singh led Congress Government (2006 - 2013)**

In 2006, the Congress led UPA-I government appointed commission to study separate reservation for economically backward people from the upper castes. The government led by Manmohan Singh set up a commission to suggest criteria for economically backward classes and come up with some crucial welfare measures. The commission submitted the report in 2010, when the UPA – II was in power and suggested to carve out a category that would provide the economically backward classes, the same benefits of the Other Backward Classes (OBCs). However, the proposal was discussed in 2013, a year before the 2014 General Elections but was put on hold as it would need a constitutional amendment to get around the apex court's 50 percent cap for quotas.

Now, this time as the constitution stands amended, with the amended articles 15 and 16 of the Constitution of India, the major legal hurdle which have been removed now and which is a big milestone in the interest of the country registering history.

Given below are some arguments and criticism regarding the new quota law. Let us analyse it.

4. The Arguments regarding the 10 percent quota law for EWS:

- One of the arguments is that the 103rd Constitution amendment violates the basis structure doctrine as Supreme Court has repeatedly held that economic backwardness cannot be the sole criterion for reservation, the fact of the matter is that, economic reservation finds its ground in terms of right to equality guaranteed under Article 14. It is difficult to see how economic reservation damages or destroys the concept of equality, and consequently the Basic Structure.
- Moreover, it is to be noted that earlier whenever the previous governments tried to take out any reservation on economic basis, the Supreme Court always denied it and the obvious reason was that the states tried to implement it through notifications or acts as it lacks the sanction from Article 15 and 16 which is the source of power to implement it. Now, we have a Constitution amendment, (103rd Amendment) Act, 2019, which is the latest step in this direction to overcome the Supreme Court's bar on economic criteria for backwardness thereby validating economic backwardness as the sole criterion for a new category of reservation. Consequently, any challenge pertaining to violation of basic structure does not seem to have a stand.
- Another argument is that this new quota law has effectively breached the '50 per cent ceiling' by the latest Constitution amendment as now the total reservations has risen to 59.50 percent. As a matter of fact this is also not a legal hurdle as because there is no breach of the 50 percent which is meant to be reserved for the SC/ST/OBC

(NCL) and this 10 percent reservation to EWS which is coming out of the other 50 percent meant for the General category sections without even touching the other 50 percent. So where is the problem? Moreover, it is worthwhile to mention it is clearly mentioned in the judgement of Indira Sawhney (para 806-810), that the ceiling of 50 percent is only applicable on caste basis whether in the educational institutions or in the public employment and moreover, Article 15 and 16 of the Indian Constitution does not talk about any economic criteria, meaning thereby, the caste is the only determinant of social and educational backwardness when determining the ceiling of 50 percent reservation and this ceiling is definitely not a blockage for reservation done on economic criteria in any way.

5. The Issues Needs To Be Addressed

- There is a continuous debate going on since the law has been passed regarding the family income criteria which is set at Rs 8 lacs or less and the agricultural land of 5 acre or less etc. for claiming reservation which is too high for a developing country like India where, according to a fair estimate 80-90 percent people are earning below 8 lacs per annum and having land less than the limit set and as a result a good percentage of population would fall into this bracket and which will undermine the purpose of this reservation and which needs to be reset in the future.
- It's time that our country needs secular reservation which is not based on any caste system anymore but should run on the wheels of equality of status and opportunity and on the anvil of economic justice which is the need of the hour and moreover it's high time that there should be a set standard for creamy layer in SC/ST reservations otherwise the end result to which we are heading towards is nothing but reverse reservation in which the general category sections would be discriminated and will need it more than anyone else
- Last not least, the fact of the matter is despite such reservations, the major challenge which is still looming is that the government jobs are not growing, overall employment is shrinking. The unemployment rate is on inclining mode and therefore its time that such issues are addressed on an alarming basis as what is the logic of reservation when there are no jobs on the palate for the youth.

6. Concluding Remarks:

Let us not forget the Preamble of the Constitution of India which is based on social, economic and political justice and clearly mentions about equality of status and opportunity from which the economic criteria has flown out. It is a good step forward on the road of equality and the time is ripe enough to get rid of such caste based reservations which is not a good medicine for the health of our country.

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