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UNDERSTANDING THE LEGAL FRAMEWORK OF RESERVATION FOR EWS (ECONOMIC WEAKER SECTION) IN INDIA

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ABSTRACT

The reservation system in India has evolved over decades to address socio-economic inequalities, expanding to include various marginalized groups. The 103rd Constitutional Amendment introduced a 10% reservation for economically weaker sections (EWS), sparking legal debates due to its exclusion of existing beneficiaries and breaching the 50% reservation cap. Judicial interventions, like in the Indra Sawhney case, highlighted the complexity of determining backwardness, emphasizing a holistic approach beyond economic criteria. The recent Supreme Court verdict upheld the amendment, reflecting a nuanced understanding of reservation dynamics while balancing constitutional principles. Overall, India's reservation policies reflect a continuous endeavor to reconcile social justice with legal frameworks in a diverse society. This article deals with understanding the attempt by the government to classify and provide reservation for Socially and Economically Backward Classes (SEBCs) and Economic Weaker Section (EWS) and the role of judiciary in its interpretation, classification and adoption.

INTRODUCTION

In India, the caste system has existed from more than 3,000 years. The expression 'reservations' referred as 'affirmative action' or 'positive discrimination' or 'compensatory discrimination' that refers to justice given to people belonging to disadvantaged group. It was an earliest attempt by the framers of the Constitution to bring in socio-economic equality in Indian society.

Post Independence the reservation system was framed by the Constituent Assembly which was chaired by Dr. B.R Ambedkar. The framers of the Constitution were aware and conscious of the lack of homogeneity in the Indian Society and apart from the differences in religion, culture, language, etc. there are people who were in comparison weaker than others viz. economically, socially and educationally. Henceforth to improve the conditions of such weaker and to make them at par with the other sections of society the reservation system was introduced in the Constitution. Reservation was initially introduced for a period of 10 years that included Scheduled Castes and Scheduled Tribes. Later with time the Parliament and the Judiciary has extended the ambit of reservation including OBCs, Women, Transgenders and Economic Weaker Sections of citizens to it.

The recent development took place on 14th January 2019, with the enforcement of 103rd Constitutional Amendment that provided 10% reservation for the Economic Weaker Sections in education and employment, only among those citizens that do not come under any other community based reservation. It was a huge step towards extending the ambit of reservation policy as it was based on the economic factor of an individual rather than on membership of any social group being the major factor.

However, many had welcomed the move by the Government of India while there were few backlashes as it excluded the SCs, STs and OBCs from its ambit and majorly as its being a vertical reservation it has breached the 50% cap of total reservation set by the Hon'ble Supreme Court of India.

In order to understand the how the classifications for the reservation criteria were made and steps taken by the judiciary, we firstly have to go through the Basic Structure of the Constitution of India. The *Kesavananda Bharati v. State of Kerala* the Doctrine of Basic Structure was laid down by the Supreme Court after which all the Constitutional amendments enacted later must pass the very 'basic structure filter' created by the Supreme Court. It was ruled that Parliament has the

power to amend the Constitution under the Article 368 of the Constitution of India but it is not absolute, it cannot use its power to alter or destroy the basic structure of the Constitution. It was observed that if the Parliament has unrestrained power to amend the Constitution, then the Supreme Court has a coextensive power to review and invalidate any amendment violating the basic structure.

Attempt to classify the Backward Classes

In 1951, the Parliament amended Article 15 of the Constitution by inserting clause 15(4) allowing the states to make special provisions for the advancement of the socially and economically backward classes, scheduled castes and scheduled tribes.

In 1952, the First Backward Classes Commission was formulated under the chairmanship of Kaka Kalelkar, known as the Kaka Kalelkar Commission who was a social reformer and Rajya Sabha member. The commission was constituted to make recommendation on how to enhance the position of backward classes in India. It identified the backward classes on the basis of following criteria i.e. education, trade and occupation, employment and position in the traditional Hindu caste system.

The Commission took two years to complete its work, and prepared a list of 2,399 castes and communities and suggested several measures for their social and economic reforms. About 70% of India's population was considered backward. The commission believed that only way to achieve the social equality in India was by eliminating caste distinction and social discrimination. Although commission had considered several relevant criteria in determination of backward classes, yet it chose 'caste' as an important factor. Kaka Kalelkar himself disapproved the commission's methodology and conclusions to classify the backward class that was solely on based on caste. The commission failed to specify any objective tests to define the 'backwardness'. The Government of India rejected the recommendation made by the commission that the caste be the basis for identifying social and economic backwardness. Therefore the states were advised to draw their own lists using economic criteria rather than going by caste.

In 1962, the Mysore government issued an order to reserve 68% seats in the engineering and medical colleges for SC, ST and OBC students while leaving 32% of the seats for merit. The order was challenged in the Supreme Court which interpreted Articles 15(4) and 16(4) of the Constitution and

ruled that the reservation shall not exceed 50% as it is in interest of meritorious students and on other hand uplifts the deprived classes. Whereas exceeding the limit of 50% would deprive the meritorious candidates of reasonable opportunity of admission. The court viewed that considering only the caste of a group would not always be mandatory to ascertain its backwardness. The cast could not be the sole criteria to ascertain social backwardness although it was important criterion as religion other than Hindu does not recognize caste based distinctions.

The Parliament and the Judiciary were identical view that caste cannot be the sole criteria to determine backwardness of a class, but their lied an uncertainty and confusion regarding the Constitutional limits of the reservation system in India. Whether exceeding the 50% limit of reservation is Constitutional, and which factors and criterion to determine the backwardness of a class?

On 20th December 1978 Prime Minister of India, Morarji Desai, announced the formation of a Second Backward Classes Commission under Chairmanship of B. P. Mandal, former Member of Parliament. The commission's assignments were: to determine criteria for defining India's "socially and educationally backward classes"; to recommend steps to be taken for the advancement of those classes; to examine the desirability of reserving state and central government jobs for those classes. In 1980, the Mandal commission submitted its report based on 11 indicators grouped in three broad heads i.e. social, educational and economic to ascertain which class could be treated as the socially and economically backward classes.

Social Indicators:

1. Castes/Classes considered socially backward by others.
2. Castes/Classes that relied on manual labour for their livelihood.
3. Castes/Classes where at least 10% males and 25% females above the state average got married below the age of 17 years in rural areas and at least 10% females and 5% males do so in urban area.
4. Castes/Classes where participation of women in work is at least 25% more than the state average.

Educational Indicators:

1. Castes/Classes where the number of children between the ages of 5 and 15 who never attended school is at least 25% above the state average.
2. Castes/Classes where the rate of student dropout between the ages of 5 and 15 is at least 25% above the state average.
3. Castes/Classes amongst where the proportion of matriculates is at least 25% below the state average.

Economic Indicators:

1. Castes/Classes where the average value of family assets is at least 25% below the state average.
2. Castes/Classes where the number of families living in kutcha houses is at least 25% above the state average.
3. Castes/Classes where source of drinking water is beyond half a kilometer for more than 50% of the households.
4. Castes/Classes where the number of households having taken consumption loans is at least 25% above the state average.

The commission found 3743 socially and economically backward castes in India. OBCs constituted about 52% of the population of India. Since SC's & ST's already had 22.5% reservation i.e. 15% and 7.5% respectively. Therefore the commission decided to provide 27% reservation for the OBCs so that overall reservation limit of 50% would not be breached and also it would not contravene the Supreme Courts judgement in *Balaji v. State of Mysore*. In 1990, the Parliament implemented the Mandal Commission's recommendations. It

sparked violence, protest and riots across the nation, particularly in North India. Students boycotted classes, blocked traffic and even tried self-immolation. The upper castes feared the commission's recommendations would reduce their access to higher education. Ultimately all this lead to the downfall the V.P. Singh's government in the next general election.

Later, two office memorandums were issued by the government to implement some of the recommendations made by the Mandal Commission relating to public employment. Firstly, 27% posts would be reserved for the OBCs including the castes enlisted in Mandal Commission's report as well as the list made by the respective state government of backward classes. The preference would be given to the poorer sections and only to be filled by others within the backward classes in case of vacancies. Secondly, 10% of the vacancy would be reserved for other economically backward classes which were not included in any existing reservation schemes. The first office memorandum was issued in 1990 by the V.P. Singh government, after its dissolution; Prime Minister P.V. Narasimha Rao's government issued the second office memorandum in 1991, amending the earlier one.

Thereafter Indra Sawhney, a journalist filed a PIL stating that these memorandums issued by the government were constitutionally invalid under Article 16 and other provisions of the Constitution. This PIL was clubbed with several other writ petitions challenging the validity of the memorandums.

Indra Sawhney v. Union of India, the Supreme Court ruled that the Article 16(4) of the Constitution talks about reservation only on appointment but not on promotion, although the state can extend concessions and relaxations to the reserved categories in matter of promotion, but the efficiency should not be compromised.

The court regarding the backwardness of a class opined that "If the real object is to discover and locate backwardness, and if such backwardness is found in a caste, it can be treated as backward; if it is found in any other group, section or class, they too can be treated as backward." And "Reservation is not being made under clause (4) in favour of a 'caste' but a backward class. Once a caste satisfies the criteria of backwardness, it becomes a backward class for the purposes of Article 16(4)." Hence factors such as income level, education can be assessed to determine the backwardness of a community.

Moreover, the Court upheld the 27% reservation for the OBCs for employment in public sector but excluded the 'creamy layer' of OBCs from the reservation as the Court wanted to ensure that the advanced and prosperous members of the backward classes did not exploit the system that was designed for the benefit of the disadvantaged ones.

The Court held that the 10% reservation for the 'other economically backward people' as unconstitutional, the court viewed that a reservation solely based upon economic grounds cannot be taken into consideration as it did not aligned with the purpose of reservation neither it uplifts the historically disadvantaged groups nor it eradicates poverty in general.

Therefore the Court ruled that 10% reservation for economically backward people was invalid and remaining 27% reservation for the OBCs as contemplated by the memorandums fell within the limit of 50% ceiling as laid down in the *Balaji* case.

The Court moreover recommended for constitution of a permanent body at both central and state level to deal with the inclusion, under-inclusion and over-inclusion of groups in

the list of other OBCs. Also the state governments were directed to identify the 'creamy layer' amongst the backward classes and exclude them from the purview of reservation.

Subsequently, the Government of India issued Guidelines for identification of 'creamy layer' through the memorandum issued on 8th September 1993. The directions were issued to the states to follow the criteria laid down by the government of India in the memorandum and the guidelines laid in the *Indra Sawhney* judgement.

In the case of *Pichra Warg Kalyan Mahasabha v. State of Haryana*, on 12th October 1993, the state of Haryana constituted Second Backward Classes Commission to identify the OBCs and the basis for the exclusion of the 'creamy layer' within the OBC list. The state government accepted the recommendations of the commission and decided for exclusion of 'creamy layer' from the backward classes. The Court held that determining the 'creamy layer' within the OBC list, whereas making the economic criteria solely determinant for the 'creamy layer' is itself violative.

Therefore the court ruled that economic criteria cannot be the sole determinant of the 'creamy layer' within the backward classes reservation list. The socio, economic and all appropriate and relevant factors must be taken into consideration for identification of socially advanced 'creamy layer' groups within the backward classes list. The Court moreover ruled that sub-classification amongst the backward classes to give more benefit of reservation to the people with lower income is arbitrary and violative of *Indra Sawhney* judgement.

In case of *Dr. Jaishree Laxmanrao Patil v. Chief Minister, Maharashtra*. Also known as the Maratha Reservation case. The Maharashtra government passed the Socially and Educationally Backward Classes Act, 2018, which granted 16% reservation for the Maratha community in state educational institutions and public services of Maharashtra. The Court determined that state's SEBC Act, 2018 failed to lay out the exceptional circumstances to fall within the exception limit and the 50% limit on the reservation should not be reconsidered and therefore the SEBC Act granting reservation to Maratha was struck down.

There has been shift in social-economic paradigm of reservation. The inclusion of OBCs in the ambit of reservation in addition to the SCs and STs paves way for new challenges and more flexible interpretation of the Constitution.

Economic Weaker Section

In 1990, an early attempt was made by V.P. Singh, then Prime Minister of India, he proposed some measures for the economically weaker upper class while implementing the Mandal commission report for the reservation of the OBCs. However this move gradually led to fall of his government.

In second attempt the P.V. Narasimha Rao's Government in 1991 issued an order for 27% reservation for the OBCs and 10% reservation for the economically weaker sections in the general category. The Supreme Court of India in *Indira Sawhney* case upheld the 27% reservation for OBCs and however struck down the 10% reservation for the economic weaker upper class citing that only one criterion cannot be taken into consideration while providing reservation. In other words the court said that there is need for more than one criterion to identify any caste or class eligible for reservation.

On 10th July 2006, Prime Minister Manmohan Singh, constituted the Sinho Commission under the chairmanship of Major General S.R. Sinho (retired), to determine the economic weaker sections of the society and steps to be taken for their advancement. The commission presented its report recommending that the limit of taxable income should be

used to determine the economic backwardness of citizens. This report was left unattended by the government due to political pressure.

Later in January 2019, Prime Minister Narendra Modi's Cabinet decided to amend the Constitution based on the report of S.R. Sinho commission to provide 10% reservation for economic weaker section of society.

On 14th January 2019 the 103rd Constitutional Amendment Act came into effect. The amendment inserted two Articles 15(6) and 16(6) in the Constitution. The amendment introduced 10% reservation for Economically Weaker Sections (EWS) of the society related to admissions in educational institutions including private or government (exception to minority institutions) and for employment in government jobs.

Article 15(6) is added to provide reservations to economically weaker sections for 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. The amendment aims to provide reservation to those who do not fall in Article 15(5) and 15(4) (effectively, SCs, STs and OBCs).

Article 16(6) is added to provide reservations to people from economically weaker sections in government posts.

The Act states the economic weakness of a citizen shall be decided on the basis of the family income and such criterion mentioned below.

Eligibility criterion for the beneficiaries of the EWS reservation:

1. Those who are not beneficiaries of any existing reservation i.e. people belonging to SC, ST and OBC are not eligible under this reservation.
2. Those with family annual gross income of up to 8 Lakhs.
3. Those with family owns lesser than 5 acres of land.
4. Those owing the house not over than 1000 square feet and a plot of 100 yards.
5. Those owing a residential plot less than 200 yards in a non-notified municipality area.

The idea behind the 103rd Constitutional amendment was to include the economic weaker sections of the society which could not attend the educational institutions and secure jobs in the public sectors due to lack in their financial capacity. Also Part IV, Directive Principles of State Policy, Article 46 of the Constitution makes it compulsory for government of India to care for the educational and economic interests of the weaker sections of the society. Since the socially disadvantaged sections have got the privilege, there was need for the economically disadvantaged sections as well.

By the way of 103rd Amendment Act, reserving 10% for the EWS the total reservation has increased from 49.5% to 59.5% wherein 15%, 7.5% and 27% are reserved for SCs, STs and the OBCs respectively.

Aftermath of this amendment more than 20 petitions were been filed challenging the constitutional validity of the 103rd Amendment. They all argued that the amendment violates the Basic Structure of the Constitution and principle of equality enshrined under Article 14 of the Constitution.

On 27th September, 2022 the 5-Judge Constitution Bench headed by CJI U.U. Lalit finished their arguments and reserved its judgement in the case. On 7th November, 2022 the Bench delivered the judgment and declared the 103rd Constitutional Amendment Act, 2019 and EWS reservation as constitutionally valid by 3:2 Majority. The case is referred as *Janhit Abhiyan v. Union of India*.

Issues regarding the case:

1. Whether reservations can be granted solely on the basis of economic criteria?
2. Whether States can provide reservations in private educational institutions which do not receive government aid, as provided in the Amendment?
3. Whether the 103rd Constitutional Amendment Act, 2019 stands invalid for excluding Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Socially and Economically Backward Classes from its scope?

The Supreme Court's opinion resides on the side that none of the issues aforementioned have violated the fundamental structure of the Constitution of India.

The Majority judgement in the case came from Justices Dinesh Maheshwari, Bela Trivedi, and JP Pardiwala, whereas Justice S Ravindra Bhat and CJI UU Lalit were in dissent.

Justice Dinesh Maheshwari opined that the reservation solely based upon economic criteria does not violate any essential feature of the Constitution nor does cause any damage to the Basic Structure of the Constitution. Further he observed that the 10% Reservation for the EWS in addition to the existing reservations breaching the ceiling limit of 50% does not violate any essential feature of the Constitution nor does it cause damage to the Basic Structure of the Constitution as the ceiling limit is not itself inflexible and only applies to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India.

Moreover exclusion of classes covered under Articles 15(4), 15(5) and 16(4) of the Constitution from getting benefit under the economic weaker section balances requirement of non-discrimination and compensatory discrimination, hence such exclusion does not violate any Equity Code neither does it causes any damage to the Basic Structure of the Constitution. Whereas it permits the State to make special provisions, including reservation, based on economic criteria and special provisions in relation to admission to private unaided institutions excluding the SCs/STs and SEBCs from the scope of EWS.

Justice JP Pardiwala opined that there can be reservation for the weaker sections of citizens apart from the SCs/STs and SEBCs. He viewed that the meaning of the expression “weaker sections” used in Article 46 of the Constitution cannot be confined only for the SCs/STs or SEBCs as it will expose the weaker sections of citizens other than them, to exploitation that too without any protection.

Moreover he emphasized on Article 21 that encompasses the right to live with dignity and Article 46 that provides special care and protection to the weaker sections of citizens at par with the SCs/STs by the State. The link between these Articles 21 and 46 is that, the State to give the weaker sections of citizens a life of dignity, and jointly they put a constitutional obligation on the State to achieve the goal of welfare of the weaker sections of the citizens by all means. Article 46 speaks of educational and economic interests of the weaker sections. The expression “weaker sections” and their “economic interests” are correlative and denote the status of the people who are to be taken care of. In his view Article 46 has wider aspect and scope unlike Article 15(4) which emphasis on the upliftment of only 3 embarked classes. The object of welfare under Article 46 is towards those educationally and economically weak. Therefore there can be reservation for the certain weaker sections, other than the SCs/STs and SEBCs, the economic weaker sections of citizens.

Justice Bela M Trivedi opined that the 103rd Constitutional Amendment Act's classification of the economic weaker sections of citizens as a separate class to the existing regime cannot be treated as unreasonable or unjustifiable

classification. Whereas Articles 15(4), 15(5) and 16(4) provides for the reservation for the SCs/STs and SEBCs and excludes the economically weaker sections of citizens from having benefits of the reservation. Thus the 103rd Constitutional Amendment Act adding Article 15(6) and 16(6) that enables the State to make reservations for the economic weaker sections of the citizens does not violate Articles 14 and 16 and the basic structure of the Constitution.

Moreover she was in view that the reservation system needed to be revisited for the larger interest of society as a whole. A step can be taken towards transformative constitutionalism to inculcate the ideas of framers of Constitution to have egalitarian, casteless and classless society.

Justice S Ravindra Bhat and CJI U U Lalit opined that total and absolute exclusion of SCs/STs and SEBCs from the ambit of 103rd Constitutional Amendment Act destroys the equality code and principle of non-discrimination. The special provision introduced in Articles 15 and 16 for economic criteria, for the purpose of Article 15 it is non-violative of the Basic Structure whereas Article 16 does violate the Basic Structure as its major goal is empowerment through representation of the community.

The Contrast in Mandal and Sinho Commission

The Mandal and the Shino commission had a common purpose yet a major difference i.e. both commissions were formulated for studying the backwardness while the two had employed different methodology into their study.

The Mandal Commission of 1979 in its 1980 report examined the social and educationally backwardness to be the basis for the introduction of 27% reservations for the Other Backward Classes in education and employment in 1991. While the Sinho commission of 2006 studied the economic backwardness only among the General Category citizens, and introduced 10% reservation for Economically Weaker Sections in education and employment.

The Mandal Commission was constituted under the direction of Morarji Desai's Government. It was chaired by B.P. Mandal and assisted by a team of eminent sociologists. The report of the commission was based on case studies, census data, traveling across the nation and interacting with people. They obtained extensive data from the public through publishing questionnaires in the newspapers, by visiting districts and villages and holding meetings. Therefore the Commission primarily recommended 27% reservation for the socially and economically backward classes. It was adopted and introduced by then Prime Minister V.P. Singh in 1991.

The Sinho Commission was constituted under the direction of Manmohan Singh's Government. It was chaired by Retired Major General S.R. Sinho, Narendra Kumar and IAS officer Mahendra Singh. The commission visited all the states and union territories and held discussions with government, media and social activists. The questionnaires were sent to state governments, workshops and seminars were conducted along with the heads of the social science institutions. Therefore the Commission recommended that the limit for taxable income should be determining factor for a citizen to be economically backward. It was adopted and introduced by the Prime Minister Narendra Modi in 2019 providing 10% reservation for the Economically Backward Sections (EWS) with a family income of upto Rs. 8 Lakh to be qualified for the reservation under the EWS category.

There is a wide gap between the methodologies used by the Mandal and Sinho Commissions. While Mandal Commission had interacted and surveyed extensively with majority of Indian population, whereas the Sinho Commission limited to only upper class Indian population and communications with the government functionaries.

It is observed that the Supreme Court of India has been relying on the data provided specially in the matters concerning reservation. In the *Maratha Reservation Case* the government relied on the Gaikwad Commission Report to justify the provisions of reservations for the Maratha Community under the SEBC Act. However the Supreme Court was keen for the constitutional scrutiny by questioning the data supporting the conclusion drawn. The Supreme Court in *Jarnail Singh* and *M. Nagaraj Cases* has emphasized on the need and availability of the contemporaneous data to justify the reservation policies.

CONCLUSION:

The very issue of reservation has remained a cause of agreement and disagreement between the reserved and non-reserved sections of the society. While the reserved keep pushing and unreserved keep opposing. The reports of Mandal Commission 1979 and the Sinho Commission 2006 played a key role in the distinctions of the OBCs and the EWS categories. Though both the commission played similar role in terms of scope and reference justifying reservation for their respective classes but the major difference between them is that the Mandal Commission examined the social, educational and economical backwardness of for OBCs reservation in higher education and public employment, whereas the Sinho Commission examined economic backwardness among the general category.

The Apex Court had laid down the doctrine of Basic Structure in *Kesavananda Bharati v. State of Kerala* which protects the Constitution by limiting the amending power of the Parliament under the Article 368. If the Parliament has unrestrained power to amend the Constitution, then the Supreme Court has a coextensive power to review and invalidate any amendment violating the basic structure. Back in the case of *Balaji*, the court established that the reservation shall have a cap limit of 50%, in any circumstances where in the reservation exceeds 50% it would imply dominance over Article 16(1) of the Constitution. In *Indra Sawhney*, where in the 10% reservation provided to the economically backward sections of the society was taken down, ruling that backwardness of a class cannot be solely identified on the basis of economic criteria. In *Pichra Warg Kalyan Mahasabha* case the Court ruled that economic criteria cannot be the sole determinant of the 'creamy layer' even within the backward classes reservation list i.e. there has to be other relevant factors to be taken into consideration.

It seems now the Supreme Court has taken a U-Turn by ruling the 10% EWS Quota as constitutional as in its earlier judgments wherein reservation solely based upon economic criteria and the total reservation limit exceeding the ceiling cap limit of 50% were held unconstitutional.

The landmark judgement of the Supreme Court in *Janhit Abhiyan v. Union of India* has broken all the shackles and widened the scope of the interpretation of the Constitution. The Court has seemingly taken a flexible approach in order to inculcate the provisions with changing times and to open a wide range of opportunities to all different spheres of the society. It has overturned the ceiling limit with its flexible interpretation by inculcating the 10% reservation in addition to the existing reservation. Hereby classifying economically weaker sections of the citizens as a separate class in addition to the SCs/STs and SEBCs. The breach of 50% ceiling does not result in violation of any essential feature of the Constitution and does not cause any damage to the Basic Structure of the Constitution. The affirmative action provided in provisions of Articles 15 and 16 of the Constitution have been regarded as non-essential feature of the Constitution as it is merely an enabling provision and exception to the general rule of equality. Therefore the 103rd Constitutional Amendment Act does not challenge the Basic Structure of the Constitution

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