

Reservation For Economically Weaker Section (Ews): Paradigm Shift In Policy To Achieve Equality

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ABSTRACT

The paper observes the assertion of reservation of seats to Economically Weaker Section (EWS) kids in unaided-private facilities at state level in result of an understanding between a land giving power along with unaided personal educational facilities. It involved considerable quantity of effort and negotiation of numerous stakeholders such as for instance Non-Governmental Organization (NGO), judiciary, and federal government with the personal educational facilities to secure reservation. The writer, as a specific invitee to the state level committee that was appointed to explore modalities of EWS reservation, has recorded the deliberations that spotlight the view areas of the reps of individual NGO as well as institutions Further, interviews with the couple of parents of EWS kids offer info on several of the soil realities. With all the addition of 25% reservation for EWS kids under Right to Education Act 2009 during national level, the problems raised by the stakeholders at state level have significance in setup. It's realized that besides highly effective methods for setup of reservation for EWS kids, it's essential to enhance the performance of federal facilities to verify extraordinary exodus of kids to unaided private facilities. Economically Weaker Section (EWS) in India is a subcategory of individuals belonging to the General Category owning an annual household income under eight lakhs and who don't belong to the reserved class like SC/ST/OBC (central list). In case of a EWS candidate's yearly household income is above the recommended cap, then simply he/she is going to be realized as a candidate out of General category instead of from EWS group. Post 46 of the Indian Constitution so long as the State shall market with unique attention the economic and educational interests of the weakened areas of the individuals, along with, in certain, of the Scheduled Castes as well as the Scheduled Tribes, and also shall guard them from all types and social injustice of exploitation. The Union Government tabled the Constitution (One 100 and 24 Amendment) Bill, 2019 that supplied 10 % extra quota for the economically weakened areas among the erstwhile unreserved class pupils. The meaning of economically weakened sections' will undoubtedly be identified by the State every so often. The constitutional amendment has lain down which they'll be restricted to individuals with household income under eight Lakh per year, and people who very own farming acreage below 5 acres.

INTRODUCTION

Indian republic was created in 1950 with a fourfold goal of securing to the citizen justice of its, fraternity, equality as well as liberty. Additionally, the citizens had been assured a lot of basic rights, through the Constitution, because a much better standard of life. But with no simple comforts to a good lifestyle, the basic rights can't be savored in themselves. Acreage continues to be concentrated in the couple of hands, just 5 % of India's growers regulate 32 % ground. Business also is concentrated at the hands of the best internet business homes. Economic and social strength continues to be monopolized by little proportion of the individuals. Consequently, to bring the economically weakened segment of the culture in the front side, it's essential to bring them under the garb of several financial policy. Based on UNDP Report 2018 between 2005/2006 to 2015/2016 India has decreased multidimensional poverty from 54.7 % to 27.5 % of complete folks.²

Throughout 1980, the Mandal Commission Report, followed the Supreme Court judgment in *Indra Sawhney v. Union of India*¹, allowed not over 50% of seats in the educational as well as assistance issue for the ST (Scheduled Tribes), SC (Scheduled Castes) and OBC (Other Backward Classes) who constituted about 70 a cent of the entire public of India. This resulted in a significant improvement in the status of theirs; based on the information produced by Planning Commission between 2004-2005 as well as 2011-2012, far more individuals among the deprived community classes SCs, OBCs- and STs had been brought above the poverty line, as compared to various other sections of modern society. Thus, it became an imperative for the legislature to frame policies for the upliftment of the economically weakened areas of the individuals that belonged to "other "general category" or category". Always keeping this in brain the legislature passed the Constitution (103rd Amendment) Act, 2019 (hereinafter known as "Act") to offer 10% reservation in educational facilities as well as the tasks to economically backwards area in the common class.

It amended the basic rights under Part III of the Constitution to place Articles 15(6) as well as 16(6) in the Constitution. The clauses hear as follows:

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

- (a) any specific provision for the development of any economically weakened areas of people apart from the classes stated in clauses (4) and also (5);and

¹ 1992 Supp (3) SCC 217.

(b) any specific provision for the development of any economically weakened areas of people apart from the clauses stated in clauses (4) and also (5) insofar as such specific provisions connect with the admissions of theirs to educational facilities such as 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 per cent of the total seats in each category.

For the purpose of this article and Article 16, “economically weaker sections” shall be like could be informed by the State every so often on the foundation of other signs and family earnings of financial disadvantages.

Article 16(6): Absolutely nothing in this post shall stop the State by doing some provision for the reservation of posts or meetings in favor of every economically weakened areas of people apart from the classes stated in clause (4), additionally to the current topic and reservation to a maximum of 10 % of the articles in every class.

INDIAN CONSTITUTION AND CONCEPT OF RESERVATION

Uniformly with the upkeep of effectiveness of the Administration, Article 344, originally supplied for reservation of seats because of the regular castes and regular Tribes, in the home of the folks and in the legislative assemblies of the states for phase of 10 seasons. Nevertheless, the successive amendments in order to the constitution, this particular reservation, this reservation was extended from moment to time up to 2010 AD Article 340 allows for the appointment of percentage to explore the circumstances of Socially as well as educationally Backward classes and also making suggestion as on the actions, which must be brought to enhance the conditions of theirs. Almost all the provisions are targeted at speedy uplift of weakened areas to be able to secure equality of condition and also of chance, which will advertise the, unity, and fraternity integrity of the Nation.⁴

Therefore, the extension of booking in favor of additional rear ward courses on the foundation of caste is of an illusory dynamics to promote community justice. The authorities of the morning appears to be unaware of the directive concepts of state policy that mandate promo of the economic and educational interests of the weakened areas quickly to get the item of any classless as well as casteless secular society. Booking are similar to very first aid, not a lasting solution to the substantial trouble of backwardness. Palliatives can't resolve issues. In order to keep on the booking forever, failing setup of the directive concepts of state policy may be the best method to prevent the backwards courses forever backwards. This's going on all around the nation together with the outcome that fraternity is still a pious expectation.

Booking can at greatest dietary supplement the initiatives of the condition to attain socio economic equality through time bound steps of uplifting the weakened sections. There's absolutely no justification for not offering compulsory and free training for most kids before finish the era of 14 years inside the stipulated time of ten years through the commencement of the Constitution mandated by post 45.th the centre as well as the state governments must thus develop good steps to guarantee that each kid is supplied compulsory and free education up to the secondary phase and anywhere needed, offer monetary guidance to the household interested to facilitate the child's training and also give extra proper's to assist kids from backwards classes to develop requisite power to contend with a single as well as most on identical phrases.

RESERVATION IS AT ALL STAGES

The concept of equality is appropriate to work in all the stages and in most values, specifically, original recruitment promo, retirement, transaction of gratuity and pension. With regard to promo the standard concepts are sometimes seniority-cum-merit or merit-cum-seniority. Seniority-cum-merit implies that because of the least essential worth requisite for effectiveness of administration, the senior. though the much less meritorious shall have precedence. This won't violate Articles 14, 16(2) as well as 16(1). A principle that provides that provided the essential requisite worth, a part of the backward category shall obtain precedence to confirm sufficient representation won't likewise violate Article 14 or maybe Article 16(1) and also (two). The appropriate touchstone of validity is finding out whether the principle of choice secures sufficient representation for the un represented backwards neighborhood or even moves beyond it.⁵

MINIMUM NECESSARY REQUIREMENT UNDER ART 335:

The Constitution of ours seeks at equality of chance and condition for all of people which includes individuals that are socially, economically as well as educationally backwards. The promises of participants of backwards classes demand enough representation in executive and legislative systems. When users of Scheduled Tribes and Castes that are announced by this particular Court in order to be backwards courses are able to sustain least needed necessity of management effectiveness not just representation but additionally choice might be provided to them to implement equality and also to eliminate inequality. Articles 15(4) and 16 (4) carry out the role of backwards classes to merit equality. Exclusive provisions are produced for the improvement of backwards booking and classes of articles and meetings for them to secure proper representation. These provisions are going to bring out the information

of equality assured by Articles 14, 15 (1) and 16 (1) the idea of equality because equality is meant by equality to everyone without just to the sophisticated and also knowledgeable areas of the culture. It makes sense, thus, which to be able to supply equality of chance to other people of the country of ours, each category of citizens need to have a feeling of identical involvement in creating an egalitarian culture, in which there's lots and serenity, where there's total financial independence and there's absolutely no poverty or pestilence, without oppression and discrimination, where there's equal chance to training, to succeed, to make the living of theirs therefore the aim of social justice is attained.⁶

ARTICLE 46 OF CONSTITUTION

"The State shall market with unique attention the economic and educational interests of the weakened portion of the individuals, and also particularly of the Scheduled Castes as well as the Scheduled Tribes, and also shall guard them from all forms and social injustice of Exploitation."⁷

ECONOMICALLY WEAKER SECTION OF SOCIETY COMES UNDER THE DEFINITION OF CLASS

The Constitution makes it very clear that the reservation could be for any caste or maybe course just. Consequently, prior to delving in to the talk about reservation on the financial schedule exclusively, as provided in the doing well paragraphs, it's being proven that the "economically weakened section" of the culture comprises a course in itself. When we go by the meaning provided by sociologist Max Weber, a category is a group of individuals who have a comparable socio economic condition in relation to various other courses in the culture. The households and people that are categorized together with identical social category have very similar living risks, status, design of daily life, perceptions, and more.

Additionally, the Black's Law Dictionary, describes course as a number of issues or people, considered jointly, possessing particular characteristics in typical, along with constituting a device for particular uses.

Consequently, moving by the definitions economically weakened sections do comprise a course of individuals as the Act lays down 2 main financial requirements for ascertaining the eligibility of the folks; for starters, the individuals earnings must be much less compared to eight lakhs secondly and annually, in case ground is owned by them it ought to be under 5 acres. This particular group all of the individuals of exact same socio economic condition in the exact same group.

The Supreme Court of India in Ashoka Kumar Thakur v. Union of India, upholding the constitutional validity of Central Educational Institutions (Reservation in Admission) Act,

2006 mentioned that the identification of backwards category can't be accomplished entirely on caste. Various other variables are implemented in determining the backwards category.

Nearly all relevant issue here's that can a category be driven as backward course on the foundation of occupation-cum-income without having the guide to caste; this was affirmed in *R. Chitralakha v. State of Mysore*. In many classes or organizations the caste isn't pertinent in the least, for instance, farming laborer's, street-hawkers, rickshaw pullers/drivers, etc. since they'll regularly qualify as for being specified as backwards category.

ECONOMIC CRITERIA CAN BE THE SOLE BASIS FOR RESERVATION

Numerous provisions of the Constitution as Articles 15, 29, 46 as well as 341 acknowledge the factual existence of backwards courses in the nation of ours and which will make a genuine effort to advertise the welfare of the weakened sections. This particular Act is a genuine try in this particular course to mitigate the hardships of the individuals who remain behind due to the financial factors of theirs.

One of the 7 contentions elevated against the Act was it formed reservation on the foundation of financial requirements. But in case we consider the Constitutional Assembly Debates associated with the very first Amendment Act, 1951, pertaining to inclusion of Article 15(4) it's apparent the explanation of backwardness in the clause 4 of Article 15 was regarded as being much like which of clause (1) of Article 340. This was the main reason, the term "economically" didn't discover an area in clause (4) of Article 15 although numerous users pointed out that in the identification of socially as well as educationally backwards classes, financial backwardness couldn't be dismissed.

THE CONSTITUTION BILL, 2019: A PARADIGM SHIFT IN POLICY TO ACHIEVE EQUALITY

The Constitution (100 and 24 Amendment) Bill, 2019, was created in the Lok Sabha on January eight, 2019, with a goal to supply reservation in advanced schooling as well as public work to 'economically weakened sections' of the culture. The Bill was passed in the Lower House of the Parliament with just 3 users voting against it out of the 326 people contained as well as voting, and consequently getting passed by Rajya Sabha also with no suggestions. On simply being authorized by both Houses of the Parliament, once the President of India granted the assent of his to the Bill, the Constitution (100 and 3rd Amendment) Act, 2019, came into power with outcome from January 14, 2019 as informed in the recognized gazette by the Central Government.

This hurried passage of the amendment has elevated particular uncertainties on the motives of the Government, wondering the democratic accountability. Nevertheless, this Article doesn't delve into the political issue of the amendment and will be limited to the discussions on the legal perspective, critically analyzing the provision as to whether it is constitutionally valid.

THE AMENDMENT

The provisions that have been amended by the Constitution (103rd Amendment) Act, 2019, are Articles 15 and 16 wherein Clause 6 has been inserted to the Articles as follows:

"In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:

(6) 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 specific provision for the development of any economically weakened areas of people apart from the classes stated in clauses (4) and also (5);and

(b) any specific provision for the development of any economically weakened areas of people apart from the clauses stated in clauses (4) and also (5) insofar as such specific provisions connect with the admissions of theirs to educational facilities such as 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 per cent of the total seats in each category.

For the purpose of this article and Article 16, "economically weaker sections" shall be like could be informed by the State every so often on the foundation of other signs and family earnings of financial disadvantages."¹

"In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor 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 amendment to Article 15 of the Constitution relates to advancement of economically weaker sections of the citizens and their reservation for admission to

² Section 3 of The Constitution (One Hundred and Third Amendment) Act, 2019

educational institutions (including private institutions, aided or unaided by the State), whereas Clause 6 of Article 16 relates to reservation of economically weaker sections in case of public employments. The explanation appended to the amended Article provides for the meaning of "economically weaker sections" which shall be decided by the State from time to time on the basis of "family income" and "other indicators of economic disadvantage". It is pertinent to note that the reservations made for the economically weaker sections would be to a maximum limit of 10%, in addition to the existing reservations provided under the Articles and would exclude the classes that have already benefited by way of the previous clauses of the Articles (i.e. Scheduled Castes, Scheduled Tribes and Other Backward Classes).

The Constitutional 103rd Amendment has been challenged by way of a petition filed in the Supreme Court by a non-governmental organization named Youth for Equality and several others, on the ground that the amendment violates the basic structure of the Constitution and it exceeds the capping of 50% as fixed for reservations by the Apex Court. It is argued that the 103rd amendment is in violation of the *basic structure* because there is a contradiction in the logic of the existing provisions of Article 15 and 16 and the amended provisions. Moreover, the amendment provides for a 10%.

economic reservation over and above the existing reservations, which implies that the reservation would *exceed the 50% capping* as set up by judicial precedents, because the present status of reservation quota has already reached 50%. Another argument of challenging the constitutionality of the amendment is that of *arbitrariness*. The definition of "economically weaker sections" is arbitrary in the sense that it does not specifically provide as to what constitutes 'other indicators of economic disadvantage' and the definition is left to be determined by the State from time to time.

Until the case of *I.C. Golaknath v. State of Punjab*³, the Supreme Court had been holding that any provision of the Constitution of India, including the Fundamental Rights, could be amended by passing a Constitution Amendment Act, as per the requirements of Article 368. However, in the case of *Golaknath*, the previous decisions were overruled and it was held that the Fundamental Rights contained in Part III of the Constitution would be excluded from the ambit of the power of amendment conferred by Article 368, thereby making the Fundamental Rights not amendable.

³ AIR 1967 SC 1643

A full bench was constituted in the case of *Kesavananda Bharati v. State of Kerala*⁴, wherein the landmark "basic structure doctrine" was laid down by the Hon'ble Supreme Court of India, overruling the 1967 judgment of *Golaknath*. According to this doctrine, the objectives specified in the Preamble, contain the basic structure of the Constitution and the same cannot be amended in exercise of the powers conferred under Article 368 of the Constitution. The Parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the basic structure or framework of the Constitution. Any amendment of the Constitution which affects the basic features in the abovementioned manner is liable to be interfered with by the Court on such a ground. So far as the question lies as to what constitutes a 'basic feature', it would be determined by the Court in each case that comes before it.⁵ Nonetheless post the Kesavananda Judgment, a large number of features have been acknowledged as basic feature of the Constitution by various judgments.

An obvious understanding of the basic structure doctrine makes it clear that all it requires is that a basic feature, equality in this case, is not damaged or destroyed and it is difficult to see how the economic reservations would damage or destroy the concept of equality. The government has sought protection under the Directive Principles of State Policy which enjoins the State to *promote the educational and economic interests of the weaker sections of the people* as provided under Article 46 of the Constitution. Thus, Article 15(6) and 16(6) has been formulated with an aim to eliminate discrimination on the basis of economic status, giving an opportunity to the section of people who are deprived of adequate representations in the educational institutions or jobs, hence striving towards equality and not challenging the basic structure.

JUDICIAL PRONOUNCEMENTS ON RESERVATIONS

There have been several decisions of the Supreme Court since 1951, which tried to analyze the criteria to be adopted for making reservations for the backward classes. In the case of *State of Madras v. Champakam Dorairajan and Another*,⁶ the Supreme Court for the first time had dealt with the issue of reservation. Pursuant to Supreme Court's judgment in this case the Parliament amended Article 15 and inserted Clause (4). The Supreme Court, in *M.R.*

⁴ AIR 1973 SC 1461

⁵ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299

⁶ AIR 1951 SC 226

Balaji v. State of Mysore,⁷ has fixed a limit to reservations and held that the 50% ceiling limit ought not to be crossed for the purpose of reservations. Not considering 'caste' as the sole criterion or dominant test in determining social backwardness of groups or classes of citizens, but in fact considering economic backwardness as a contributing factor, the Supreme Court has further observed as follows: "*Social backwardness is on the ultimate analysis the result of poverty, to a very large extent.*"

In the landmark judgment of *Indra Sawhney v. Union of India*,⁸ the Supreme Court has discarded economic backwardness as a criterion for reservations as follows: "*Reservation of seats or posts solely on the basis of economic backwardness i.e., without regard to evidence of historical discrimination, as aforesaid, finds no justification in the Constitution.*" It has also excluded 'creamy layer' amongst the backward classes from the ambit of reservation. Regarding the capping of reservations, it has been held that: "*Reservation in all cases must be confined to a minority of available posts or seats so as not to unduly sacrifice merits. The number of seats or posts reserved under Article 15 or Article 16 must at all times remain well below 50% of the total number of seats or posts.*" The judgment has however clarified that the expression "weaker sections" of the people under Article 46 is wider than the expression "backward class" and includes those who are socially, economically backward or rendered as weaker sections due to any natural calamity or physical handicap.

REVIEW OF LITERATURE

Ghosh (2006) mentioned that the origins of discrimination in India go very deeply that economic and social disparities are profoundly intertwined, though in progressively complicated means. The reaction of the press, together with the result of others in privileged provisions, throws a great deal of lighting on the undercurrents of interpersonal discrimination which are yet as pervasive among us. He more conveyed that nevertheless we require booking for organizations that are various in advanced schooling, not since they're the ideal tools to rectify lengthy - positioned discrimination, but since they're the best practical technique to go in this specific course. The dynamics of Indian society guarantees that with no these kinds of steps, cultural exclusion and discrimination is only going to persist as well as be strengthened.

⁷ AIR 1963 SC 649

⁸ AIR 1993 SC 477

Thorat and Senapati (2007)⁹ opined that which over time, there's been a lot of enhancement in the share of SC/ST reservation along with representation in educational facilities and federal work. The reservation in legislative systems has additionally guaranteed the SC/ST a little area in decision making procedure as well as the executive. The impact of proper reservation policy in federal sector and casual affirmative action policy in private market has resulted in many enhancement in the human advancement of SC/ST. Nevertheless, as in comparison to non SC/ST public of the nation, the speed of development continues to be quite gradual. And also as result, despite good enhancements, the disparities in human advancement between SC/ST along with non SC/ST remain also these days.

Jogdand P.G (2000), “Impact of New Economic Policy on Dalits in India”, observes that the new economic policy increases in income inequalities and unemployment problem across weaker sections of the societies according him reservation policy led to emergence of a middle class among Dalits.

Uttam Kumar Sikder (2012) in his study entitled “Socio- economic Deprivation of Dalits Households in Rural West Bengal, India: A Village Based Study” The weaker section of India has been the oppressed for more than three thousand years. During the period of British rule in the Indian sub-continent then are known as Depressed Classes. Since independence, Dalit have benefited by the “Reservation” policy in the economic (Government job), education and politics. In spite of the provisions made for the Dalit under Article 340 of the Indian Constitution, the fact is that only 1.2% of the rural populations of the SC are the age of category of 20 and above is Graduate. The similar figures for STs are just 1.1%.

OBJECTIVES

1. To study the Indian Constitution and Concept of Reservation
2. To review the minimum necessary requirement under Art 335
3. To study the Article 46 of Constitution in relation to Reservation for Weaker Section.
4. To discuss the Economically Weaker Section of Society that comes under the definition of class.
5. To study the Economic Criteria that can be the sole basis for reservation
6. To analyze the Constitution Bill, 2019 as a Paradigm Shift in Policy to achieve equality.

⁹ *Sukhadeo Thorat and Chittaranjan Senapati (2007), “Reservation in Employment, Education and Legislature- Status and Emerging Issues”, Working Paper Series, Vol.2, No. 5, Indian Institute of Dalit Studies, New Delhi*

RESEARCH METHODOLOGY

The Methodology is a doctrinal investigation approach which outlines just how in what a research work is usually to be performed &, along with some other conditions, identifies the techniques being worn in it. The existing analysis is completed with the aid of secondary resources i.e. publications, newspapers, magazines, sites etc.

CONCLUSION

The framers of the Indian Constitution, at the time of drafting the Constitution had kept in mind the prevalent state of affairs that adversely affected the equality of the country. There were a large number of under-privileged sections of people who experienced social discrimination through centuries under the garb of caste system and the members of such so-called lower classes required an adequate representation in the society. Efforts had, thus, been made to bring these weaker sections at par with the other sections of the society through the policy of reservations, which is considered as a positive or protective discrimination implemented in the Constitution. With the changing times, caste no longer can be the sole criterion for detecting socially backward classes because some of them have achieved economic status, thereby finding a social standing as well. However, even today poverty still remains a barrier to attaining equality and there is a significant discrimination between the people of a different economic status. The Government has thus by means of economic reservations taken a step forward to eradicate this form of discrimination as a means to achieving equality in the nation.

REFERENCES

- Sumit Chaturvedi, Land Reforms Fail, Only 5% of India's Farmers Control 32% Land, Reddify.com (18-5-2016, 10:32 IST)
- UNDP India Report 2018 Multidimensional Poverty Index, available at <<http://www.in.undp.org/content/india/en/home/sustainable>>
- P.P. Roa "Right to Equality and the Reservation policy" 1L1 2000 Vol 42 p. 193.
- Dr. Mamta din Madholia "supreme court on reservation" 1995 Kamlesh publications
- Jayati Ghosh (2006), "Case for Caste-based Quotas in Higher Education", Economic and Political Weekly, Vol.41, No.24, pp.2428-2431
- Sukhadeo Thorat and Chittaranjan Senapati (2007), "Reservation in Employment, Education and Legislature-Status and Emerging Issues", Working Paper Series, Vol.2, No. 5, Indian Institute of Dalit Studies, New Delhi