



# RESERVATION FOR ECONOMICALLY WEAKER SECTION-AFFIRMATIVE OR DISCRIMINATORY ACTION

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## ABSTRACT-

“Unity in Diversity” is the identity of sovereign nation India. But the division of Varnas in India ruins this unity. Before this provision of reservation of EWS introduced, untouchability was prevalent in India, in which lower caste people were not given opportunities to participate in higher departments. This provision was introduced by the constituent assembly with an aim to protect the social, political, economical and educational Right of the minorities. The people of India have given the right to equality and thus, this step of the constituent assembly was necessary to be taken for the EWS. The state has taken several appropriate steps in this direction to secure the dignity of the EWS. This provision of reservation has shown it's positive as well as the negative impact in several years.

This paper aims at analyzing the constitutional aspect of the Reservation and its impact on the EWS and a positive aspect of it. In this research paper, the researcher had accumulated secondary information from Journals, Books etc., and the reference of these has been specified further.

**Key words** – Reservation, Economically Weaker Section, Empowerment

## 1. INTRODUCTION

The term ‘reservation’ is denoted as an affirmative action and also as a discriminatory action. It is a policy or program for giving certain facilities and preference to certain groups of the people over the others. People or households with the income of below a specific threshold income are being classified as Economically Weaker Section or of EWS category.

The caste system is enrooted in country to certain religious, economical groups and sociological ideologies which are quite orthodox in nature and which has ultimately alienated the countrymen from one another while classifying the ethnic and minority groups of the country.<sup>1</sup> The process of facilitating particular section of the society in various fields as such in education, scholarships, employment etc. leads to injustice.

India’s percepts of law is aspired from the thought of B.R. Ambedkar where people can live with dignity without any kind of discrimination and exploitation which often leads to marginalization and social exclusion of the afflicted

<sup>1</sup>Rupak Das1 & Mr. Khaleeq Ahamed Constitutional Law and Reservation: A Critical Study International Journal of Research and Analytical Reviews, Volume 6 I Issue 1 I Jan – March 2019.

sections of the society.<sup>2</sup> Dr. B.R. Ambedkar himself belongs from the family of lower caste and has gone through the oppression of untouchability & discrimination from the society so was fortunate enough to get the opportunity to become well aware and self-sufficient of the vicious circle and exploitative system of caste in India.

## 1. RESERVATION IN INDIA

In the Pre-Independence Era, the history of the Indian reservation officially starts with *The Government of India Act, 1935*<sup>3</sup> and *The Poona Pact 1932*<sup>4</sup>. The issues of minorities were tried to initiate times before in *The Government of India Act 1919*<sup>5</sup>. When Dr. B.R. Ambedkar asked for the separate electoral for the depressed classes. But Mahatma Gandhi strongly opposed the appeal for separate electorate for depressed classes and because of this strong opposition from Mahatma Gandhi the issue of minority remained unresolved in the Conference.

But after Poona Pact, the Prime Minister Macdonald announced the separate representational communal reward for the Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans and Dalits Depressed classes where the number of seats for them is to be reserved special constituencies in which voters belonging to the depressed classes could only vote. This scenario was before the independence of India.

After the Independence of the India in 1947, [On 29 August, 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India. The Constitution of India was adopted on 26 November, 1949 and the hon'ble members appended their signatures to it on 24 January, 1950.]<sup>6</sup>

The constitution was in force and in Article 15 there are provisions related to the Prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. There was an Amendment to add the clause 4, an exception to the clause 1 and clause 2 of the Article 15. The Constitution first Amendment Act 1951<sup>7</sup>, after the decision of the Supreme court in the case of the *State of Madras v. Champakam Dorairajan*.<sup>8</sup>

This was bringing on the ground that it is enacted with a view to promote the social justice for all the sections of the people as required by Article 46 of the Directive Principles of State Policy. In our country the reservation provisions were built to clear the difference of the upper caste and lower caste by providing some reservation in educational institutes, employments for certain classes which are termed as the Scheduled Caste, Schedule Tribes and other backward classes.

Also, included the economically backward people also. [Reservation for Economically Weaker Sections (EWSs) in direct recruitment in civil posts and services in the Government of India.]<sup>9</sup>

Initially reservation was only for the Schedule Caste and for Schedule tribes, the Other Backward class was added to the reservation category after the case on the Mandal commission case<sup>10</sup>. By Article 340 of the Constitution, President

<sup>2</sup>Minakshi Rana Research Scholar, Department of Sociology, Punjab University, Chandigarh, Punjab, India, Social inclusion through EWS Quota under RTE Act 2009 with reference to Dr. B.R. Ambedkar's vision, International Journal of Advanced Research and Development, Volume 3; Issue 1; January 2018; Page No. 343.

<sup>3</sup>Constitution of India- Read, Search, Learn and Explore, Government of India Act, 1935  
[https://www.constitutionofindia.net/historical\\_constitutions/government\\_of\\_india\\_act\\_1935\\_2nd%20August%201935](https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935) accessed on 23 August 24, 2020.

<sup>4</sup>Constitution of India- Read, Search, Learn and Explore, Poona Pact 1932 (B.R. Ambedkar and M.K. Gandhi)  
[https://www.constitutionofindia.net/historical\\_constitutions/poona\\_pact\\_1932\\_b\\_r\\_ambedkar\\_and\\_m\\_k\\_gandhi\\_24th%20September%201932](https://www.constitutionofindia.net/historical_constitutions/poona_pact_1932_b_r_ambedkar_and_m_k_gandhi_24th%20September%201932) accessed on 23 August 24, 2020.

<sup>5</sup>Constitution of India- Read, Search, Learn and Explore, Government of India Act, 1919  
[https://www.constitutionofindia.net/historical\\_constitutions/government\\_of\\_india\\_act\\_1919\\_1st%20January%201919](https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1919_1st%20January%201919) accessed on 23 August 24, 2020.

<sup>6</sup><http://164.100.47.194/loksabha/constituent/facts.html> Draft- Lok Sabha, accessed on 23 August 24, 2020.

<sup>7</sup>The Constitution (First Amendment) Act, 1951.

<sup>8</sup>AIR 1951 SC 226

<sup>9</sup>No.36039/1/2019-Estt (Res) Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training--Office Memorandum, Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training.

appointed a backward class commission in December 1978 under the chairmanship of B.P. Mandal. In Indra Sawhney case<sup>11</sup>, The Supreme Court upheld 27 percent quota for backward class and struck down the government notification of reserving 10% government jobs for the economically backward classes among the higher castes and upheld the principle that the combined reservation beneficiaries should not exceed 50 percent of India's population.

The 77th Amendment of the Constitution<sup>12</sup> was enacted by the Parliament under Article 16(4A) which was further explained in the case of the M. Nagaraj<sup>13</sup> with three main constitutional requirements;

1. The SC and ST communities should be socially and educationally backward
2. The SC and ST communities are not adequately represented in the Public Employment.
3. Such reservation should not affect the overall efficiency in the administration.

### 1.1. CONSTITUTIONAL ASPECT FOR RESERVATION FOR EWS CATEGORY

The Economic Weaker Section Category is excluding who is eligible prior to them for reservations under Article 15 and Article 16. It brings up the total number of reserved seats in government posts, educational institutions including in other sectors to a total of 60 per cent by exceeding the ceiling of 50 % which is set by the Supreme Court of India. Dr B.R. Ambedkar stated that the possibility that political pressure might lead to unrestricted reservations for every class of society which might render the concept of reservations.

It is been stated Article 15(4) and Article 16(4) operate as exceptions to the equality clauses of Article 15(1) and Article 16(1), hence reservations should not exceed 50 per cent of the total seats as that would amount to reverse discrimination which was said by the Apex Court of the country<sup>14</sup> but in case of N. Thomas it was held that the Article 16(1) is another facet of equality which also includes reasonable classification of all persons who are similarly situated. Even without any violation of Article 16(4) and Article 15(4), Article 16(1) which includes preferential treatment and positive discrimination. In this view, Article 16(4) and Article 15(4) are not exceptions to Article 16(1) and Article 15(1) but are an "emphatic restatement" of it. Thus Article 16(1) includes both formal and substantive equality to this context.

### 1.2. 124<sup>TH</sup> CONSTITUTION AMENDMENT BILL (2019)

The Constitution (One Hundred and Twenty-Fourth Amendment) Bill, 2019 was introduced in Lok Sabha by Mr. Thaawar Chand Gehlot (Minister of Social Justice and Empowerment) on January 8, 2019. After four and half hours of the long and rancorous debate, 323 Lok Sabha members voted in support of the bill while only three voted against it.<sup>15</sup> This purely aims to provide the development of "economically weaker sections" of citizens. Prime Minister Narendra Modi stated this bill as "landmark moment in our nation's history".<sup>16</sup>

The Amendment does not make this EWS criterion reservation mandatory in State Government-run educational institutions or employment. Anyhow, some states have chosen to implement this policy of 10% reservation for economically weaker sections. Gujarat was the first state to implement this program followed by the state of Telangana. Bill further states that Person belonging from the communities that already have reservations such

<sup>10</sup>[AIR 1993 SC 477] Indra Sawhney Etc. Etc vs Union Of India And Others, Etc. on 16 November, 1992,

<sup>11</sup> Supra Note

<sup>12</sup>The Constitution (Seventy-Seventh Amendment) Act, 1955 <http://legislative.gov.in/constitution-seventy-seventh-amendment-act-1995-> accessed on 23 August 24, 2020

<sup>13</sup>[(2006) 8 SCC 212] M.Nagaraj & Others vs. Union Of India & Others on 19 October, 2006

<sup>14</sup> M.R Balaji v State of Mysore, 1963 AIR 649.

<sup>15</sup>Lok Sabha clears 124th Constitution Amendment Bill to give quota for general category, January 9, 2019,

<https://economictimes.indiatimes.com/news/politics-and-nation/lok-sabha-clears-124-constitution-amendment-bill-to-give-quota-for-general-category/articleshow/67441684.cms>, accessed on 24 August 2020.

<sup>16</sup>Narendra Modi hails passage of quota bill in Lok Sabha, Livemint,

<https://www.livemint.com/Politics/9UgDb6mStPSyItaRQiko3K/Narendra-Modi-hails-passage-of-quota-bill-in-Lok-Sabha.html>, accessed on 24 August 2020.

as Schedule Castes, Schedule Tribe and the Creamy Layer of Other Backward Classes are not eligible for reservation under this criterion.

## 2. SIGNIFICANCE OF RESERVATION FOR EWS CATEGORY

The concept of 10% in EWS reservation for general category candidates by the government is a positive cause for the general category students who are economically weaker. This covers those candidates which are left out from the category under (such as OBC, SC, ST and except PH and Ex-servicemen criteria) but are economically weaker. The amendment in the Constitution of India by the parliament to provide for a 10% reservation in education and government jobs in India for a section of the General category candidates have its own significance. This basically depends upon the given two concepts:

- **The need of Social Justice-** In the book published in Tamil by Coimbatore-based Periyarite magazine 'Kaattaaru', and according to the book, In the Indian subcontinent, after the Brahmanical invasion, people were divided and denied their rights on the basis of caste. Reservation is remedy to the injustice on a certain basis if the injustice was meted out in the first place on the same basis. Only thus can equality be restored.<sup>17</sup>
- **Implementation of the Principle of Preamble-** Our [Preamble](#) provides *Equality, Justice, Liberty, etc.*<sup>18</sup> For the protection of these principles, the law and the government of our country is doing its best. During these days Anti-Dalit ideology and anti-reservation ideology are taking so much attention. In some recent judgements of, *Suresh Chand Gautam vs State of Utter Pradesh*<sup>19</sup>, *Chebrolu Leela Prasad vs state of A.P.*<sup>20</sup> and *Mukesh Kumar vs The State of Uttarakhand*<sup>21</sup> which are much responsible for promoting upper caste ideology and spreading hate towards lower case. [Reservations are meant to prevent caste supremacists from outright denying the less privileged their right to learn altogether. That it works is seen from the fury of the supremacists over the "injustice" to them that they cannot occupy all the opportunities and must share.]<sup>22</sup>

## 3. DOWNSIDE OF RESERVATION FOR EWS CATEGORY

Reservation promotes backwards class people but strongly affects forward class people; Because of the quota system, nowadays not every backward class is finically weak. Others took advantages because of this only. So only caste-based reservation is not good at all, there is a strong need to change our reservation system with the EWS category reservation<sup>23</sup>. But this also have some downside to implement ([Criteria for income and assets](#))<sup>24</sup>-

- The criteria of having annual income not more than 8 lac per annum, But the studies show that the 95% of the population have less than 8 lac per annum income<sup>25</sup>. It is very difficult. [The first inkling that this yardstick has little to do with helping the poor is seen from the Central Statistics Office's first advance estimate of Gross Domestic Product, which projects per capita annual gross national income at Rs 1,03,633 for 2018-19. Assuming a family of five, average household income in India would then be Rs 5,18,165. Since the average or

<sup>17</sup>T, Thamarai Kannan, Why caste-based reservation is a logical social-justice measure, Forward Press-By and For India's Aspiring Millions, <https://www.forwardpress.in/2019/09/why-caste-based-reservation-is-a-logical-social-justice-measure-2/> accessed on 2 August 2020.

<sup>18</sup>Constitution of India, Preamble, [https://www.constitutionofindia.net/constitution\\_of\\_india/preamble](https://www.constitutionofindia.net/constitution_of_india/preamble), accessed on 2 August, 2020.

<sup>19</sup> Suresh Chand Gautam vs State of Utter Pradesh (2016 INSC 0256)

<sup>20</sup>Chebrolu Leela Prasad vs state of A.P. (2020 SCC Online SC 383)

<sup>21</sup>Mukesh Kumar vs The State of Uttarakhand (2020 SCC Online SC 148)

<sup>22</sup>Radhika, why reservation is still necessary to uplift the depressed classes? <https://groundreport.in/why-reservation-is-necessary/#:~:text=Reservations%20are%20meant%20to%20prevent,the%20opportunities%20and%20must%20share>, accessed on 2 August, 2020.

<sup>23</sup> See: Government of India, Ministry of Heavy Industries & Public Enterprises Department of Public Enterprises, <https://dpe.gov.in/sites/default/files/EWS-1517-25-01-2019.pdf> accessed on 3, August 2020.

<sup>24</sup> See: Point 4. *Criteria and Assets*, <https://dopt.gov.in/sites/default/files/ewsf28ft.PDF>, accessed on 3, August 2020.

<sup>25</sup>Handbook of Urban Statics, Ministry of Housing and Urban Affairs, Government of India, accessed on <http://mohua.gov.in/pdf/5c80e2225a124Handbook%20of%20Urban%20Statistics%202019.pdf> accessed on 3 August 2020.

mean is much higher than the median income, the threshold of Rs8 lakhs is very high.]<sup>26</sup> So, at least 95% of the population is now covered under EWS.

- Any legislation or executive measure undertaken to remove disparity in wealth cannot be suspect but a classification based on economic conditions for purposes of Article 16(1) would be violative of equality doctrine. As this new reservation policy violates the basic criteria given in the case of [Indra Sawhney vs Union of India](#), [that the total number of reserved seats/places/positions cannot exceed 50% of what is available, and that under the constitutional scheme of reservation, economic backwardness alone could not be a criterion.]<sup>27</sup>

## 6. CRITICAL ANALYSIS

The reservation systems indulged certain groups of the communities even before independence as well. At the time when there was a rule of Britishers, the demand of various forms of positive discrimination had been implemented at large. In 1882 and 1891 the Kings and princess of the princely state of Kolhapur, introduced reservation in favored of Non-Brahmin and backward classes, much of which came into force in 1902. Free education was provided to everyone and opened several hostels to make it easier for them to receive it.

Eradicating the social, educational and economic inequality and imbalance caused by driven societal discrimination in the past, reservation policy is purely justified for deprived ones to attain justice. It is completely vague to state that the Act violates the basic structure. However, it has to be subjected to the two tests in which width has to categorize in four issues<sup>28</sup>:-

- Qualitative issues as such 50% ceiling for all reservations considered together
- Excluding creamy layer or qualitative exclusion;
- Compelling reasons which led to the backwardness of the economically weaker sections
- The overall administrative efficiency is not wiping out by the new reservation.

### 6.1. DOES NOT VIOLATE THE 50% CAP ON RESERVATION

It was questioned in the court of law, it violates the Supreme Court's ruling held in [IndraSawhney case](#)<sup>29</sup> that economic backwardness cannot be the sole criterion for identifying backward class but the main objective is to uplift the socially deprived society in order to provide them an opportunity. Henceforth, this legislation will definitely work because around 30% of the total populations of India, which constitute of the general category, are bereft of any socio-economic reservation either in the matter of education or in the matter of employment because of education and economic progress.

### 6.2. THIS IS IN CONSONANCE WITH THE CREAMY LAYER EXCLUSION PRINCIPLE

Government stated that the eligibility criteria for “economically weaker sections” (upper castes) quota would be the same as for OBCs, but it is more tough for the new quota category.<sup>30</sup> The reason behind excluding these people was that the benefits of reservation are often snatched away by the top layers of that class. That the few seats reserved for the backward class are taken away from them by the few fortunate among them. This wholly ruins the concept of reservation as it seizes away seats from the unfortunate ones on “the same principle of merit on which the non-reserved seats are taken away by the top layers of society”.

<sup>26</sup>Manas Chakravarty, Does the govt believe that more than 95% Indian households need job reservations?, <https://www.moneycontrol.com/news/business/economy/quick-take-does-the-govt-believe-that-more-than-95-indian-households-need-job-reservations-3365871.html>, accessed on 3 August 2020.

<sup>27</sup>*Supra 11.*

<sup>28</sup>Faizan Mustafa, An Expert Explains: New Quota and Basic Structure, *The Indian Express* 15 February 2019, available at <https://indianexpress.com/article/explained/10-percent-quota-reservation-economically-weaker-section-supreme-court-5538470/> accessed on 25 August 2020.

<sup>29</sup> 1992 Supp (3) SCC 217.

<sup>30</sup> Subodh Gildhiyal, Eligibility criteria for EWS quota tougher than OBC ‘creamy layer’, *The Times of India*, <https://timesofindia.indiatimes.com/india/eligibility-criteria-for-ews-quota-tougher-than-obc-creamy-layer/articleshow/67649267.cms> accessed on 31 August 2020.

### 6.3. REASONS BEHIND THE BACKWARDNESS OF THE ECONOMICALLY WEAKER SECTIONS

The provisions of the constitution have already recognized the existence of backward classes in our country as in Articles 15, 29, 46 and 341 of the Constitution which is promoting the welfare of the weaker section of the society. Also, in 1951 in First Amendment Act Article 15(4) was added witnessing the description of backwardness in the clause 4 of Article 15 was considered to be similar to that of clause (1) of Article 340. This was the reason, the word “economically” was not placed in clause (4) of Article 15 though many members pointed out that in the identification of socially and educationally backward classes, economic backwardness could not be ignored.<sup>31</sup>

### 6.4. THE ADMINISTRATIVE EFFICIENCY IS NOT WIPING OUT BY THE NEW RESERVATION

The state is implementing their own policies so as ensure equality among the people. Various people challenged before the court of law against the act on the basis of violation of constitutional provisions but judicial restraint is something which confines the power. In *Shri Ram Krishna Dalmia v. S.R. Tendolkar*<sup>32</sup> it was held that:

- That it must be presumed that the legislature interprets and understands the need of the people, that its laws are made by keeping the problems to be sorted made manifest by experience and that of discriminations are based on adequate grounds; and
- That in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

## 7. CONCLUSION

The EWS reservation is sanctioning an economic criterion by way of amendment providing reservation to the “economically weaker sections”. The Constitution of India is providing reservation to Schedule Caste and Schedule Tribe irrespective of their economic condition wherein the people who are in real need are not getting the empowerment to grow and develop. Therefore, the intention in which the step was taken is commendable because it is a high time to establish a sound academically and empirically sound methodology to identify those who are qualifying the seats of this criterion.

<sup>31</sup> 1st Backward Classes Commission Report, Second Part (1955)

<sup>32</sup> AIR 1958 SC 538