

# Reservation to Economic Weaker Section-A Progressive Step

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**Abstract:** After the independence Narendra Modi's Government has shown the courage to provide the reservation on economic basis. It is progressive step towards the Article 46 mentioned under DPSP & Economic Justice mentioned in Preamble has achieved. Many Cases for challenge the 103<sup>rd</sup> Constitutional amendment, 2019 are pending before Supreme Court. The hearing of the issue has been started from 13<sup>th</sup> September 2022 before the Constitutional bench (5 judges) headed by Hon'ble CJI Uday Umesh Lalit. In Indra Sawney's Case reservation on economic basis nor raised or not discussed. It is new matter of reservation has come to the Supreme Court.

**50% limit in the reservation came after the judgement, it is not the Constitutional Amendment, but EWS is the Constitutional Amendment and it the state's duty under Preamble and article 46 to secure the Economic Justice.**

**Keywords:** EWS, 10 percentage Reservation to Un-reserved category, Article 46, DPSP, 103<sup>rd</sup> Amendment act 2019, Indra Sawney, Mandal Commission.

## INTRODUCTION- RESERVATION

The System of reservation existed in India even before Independence. In Poona Pact 24 September 1932 reservation of electoral seats for depressed classes in the legislature of British India in 1932 was given. It was signed by Dr. Ambedkar on behalf of the depressed classes and by Madan Mohan Malviya on behalf of upper caste Hindus.

Post-Independence, after making the constitute assembly; reservation system was framed by Dr. B.R. Ambedkar. Initially, it was introduced for a time span of 10 years. Post 10-year period, the legislators of India found the necessity to continue the system of the reservation to overcome many years of societal and cultural discrimination of certain sections of society. By this Scheduled Caste and Scheduled Tribe are given 15 % and 7.5 % respectively reservation in Government jobs or Higher Educational Institutions.

By 103<sup>rd</sup> Amendment in Constitution of India, from 12 January 2019 provides the 10% reservation to Un-reserved Category in Education and Government Jobs.

## INSERTED PROVISIONS ARE AS FOLLOWS

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); and (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 per cent. 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.'

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 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."

## LITERATURE REVIEW

### Mandal Commission:

In 1 January, 1979 by Janata Party Government under Prime Minister Sri Morarji Desai SEBC (The Socially and Educationally Backward Classes Commission) was set to study the condition and representation of socially or educationally backward castes and recommend steps for their advancement. It was headed by *Bindheshwari Prasad Mandal, formally known as Mandal Commission.*

Report submitted on 31 December, 1980, based on its rationale that OBCs ("Other backward classes") identified on the basis of caste, social, economic indicators made up 52% of India's population, the commission's report recommended that members of Other Backward Classes (OBC) be granted reservations to 27% of jobs under the Central government and public sector undertakings.

Though the report had been completed in 1980, the V.P. Singh government declared its intent to implement the report in August 1990.

*Indira Sawney case (Indra Sawney & Others v. Union of India was an Indian public interest litigation case, 16 November 1992)*

Indira Sawney challenged the Mandal Commission and Govt decision to implement it in the Supreme Court in front of a nine Judge bench. After hearing both sides the bench passed the Act *with a provision that maximum reservation can be 50% of the educational seats or job vacancies and creamy layer of income will be applicable.*

On 16 November 1992, the Supreme Court, in its verdict, upheld the government order, being of the opinion that caste was an acceptable indicator of backwardness. Thus, the recommendation of reservations for OBCs in central government services was finally implemented in 1992. Now total reservation percentage has reached 49.5% (SC-15 %, ST-7.5 %, OBC-27%).

### PREAMBLE OF CONSTITUTION OF INDIA

According to the Constitution of India there are three type of justice (i.e. Social, Economic and Political.) will be provided to the Indian Citizen This is state duty to *secure Economic Justice.* It is much needed to provide reservation to the economic weaker section as they are in Un-reserved category.

### ARTICLE 46 OF CONSTITUTION OF INDIA

*In Directive Principle of State Policy (Part IV) Article 46 "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."*

This provision also says that State will protect the economic interests of the weaker sections of the people.

### THE MAJOR SINHO COMMISSION 2005

The Major Sinho Commission, constituted by the UPA Government to study economic backwardness among the general category, consisted of Retired Major General S.R. Sinho, Narendra Kumar, and Mahendra Singh, an IAS officer. To study economic backwardness, the Commission visited all Indian States and Union Territories, held discussions with government functionaries, the media and social activists. The Commission sent questionnaires to state governments, conducted a workshop and seminar, and engaged with heads of social science institutions.

Report submitted in 2010, the Major Sinho Commission recommended that the limit for taxable income should be used to determine whether a candidate is economically backward. It said that affirmative action other than reservations should be thought of, such as education and skill-building, and improvement in health and sanitation.

In 2019, the NDA Government introduced 10% reservations for *Economically Backward Sections (EWS)* in higher education and public employment through the Constitution of India (One Hundred and Third Amendment) Act, 2019.

The Government claimed that reservations for EWS were introduced on the basis of the Major Sinho Commission Report.

### HEARING IN SUPREME COURT

After the Enforcement of the 103<sup>rd</sup> Constitutional Amendment, there are more than 30 cases registered including NGOs to check the validity of the Amendment, Also check the Validity of Article 15 (6) and 16 (6) and also check the reservation limit (i.e. 50% not more than) in their own judgement in *Indira Sawney's case.*

*Case is hearing from 13 September 2022 under the constitution bench headed by hon'ble CJI Uday Umesh Lalit.*

#### CONCLUSION

From the Beginning of the Indian Constitution reservation is given to SC and ST to uplift the Community by given Level Playing field.

By the 93<sup>rd</sup> Amendment, 2005, 27 % reservation was provided to OBC on the recommendation by the Mandal Commission in 1992. SC held the Constitutionality of Amendment in 1992 in the Indra Sawhney Vs Union of India Case. 93<sup>rd</sup> Amendment was based on social criteria not on economic one.

Economic Justice will be provided by the State mentioned in the Preamble of the Indian Constitution besides Article 46 of DPSP also gives direction to the State to promote with *special care the educational and economic interests of the weaker sections of the people.*

In Indra Swaney's case reservation based on Economic had not arisen therefore not discussed. Government seeks to get the view of Supreme Court otherwise EWS reservation would have been put in schedule IX in the Constitution.

50% limit in the reservation came after the judgement, it is not the Constitutional Amendment, but EWS is the Constitutional Amendment and it the state's duty under Preamble and article 46 to secure the Economic Justice.

First time the reservation was given on basis of the economic backwardness not on the basis of Caste. It is progressive step of the Government to give the reservation according to the economic backwardness.

If it is applicable to all then casteism will reduce and needy/right person will get the benefits of the reservation.

Thus, Supreme Court will uphold THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019 as inserted provisions as follows:-

*Article 15 (6)* 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 per centage. of the total seats in each category.

*Article 16 (6)*

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."

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