

EWS Reservation is an intellectually corrupt Decision

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Abstract- Supreme Court has upheld the validity of the 103rd Constitutional Amendment which provides 10% reservation for the Economically Weaker Sections (EWS) among forward castes in government jobs and colleges across India. 10% EWS quota was introduced under the 103rd Constitution (Amendment) Act, 2019 by amending Articles 15 and 16. It inserted Article 15 (6) and Article 16 (6). It is for economic reservation in jobs and admissions in educational institutes for Economically Weaker Sections (EWS). It was enacted to promote the welfare of the poor not covered by the 50% reservation policy for Scheduled Castes (SCs), Scheduled Tribes (STs), Socially and Educationally Backward Classes (SEBC). 10% of EWS quotas are failure of state. We have political equality but not social and economical equality. The efforts should be focusing on reducing social and economical inequality, but the implementation of recent judgment is doing something else. Dr. Babasaheb asked to use education as a tool to destroy the caste system. But he said educating the people who perpetuate the caste system will put the Indian democracy in grave danger. Same is happening in the case of EWS this judgment will create more problems and so, we can say it is intellectually corrupt decision.

Key Words - EWS Quota, Caste System, Constitution, Reservation, Social Justice

I. INTRODUCTION

Recently, the Supreme Court has upheld the validity of the 103rd Constitutional Amendment which provides 10% reservation for the Economically Weaker Sections (EWS) among forward castes in government jobs and colleges across India.

What is the Verdict?

- The 103rd constitutional amendment cannot be said to breach the basic structure of the Constitution.
- The EWS quota does not violate equality and the basic structure of the constitution. Reservation in addition to existing reservation does not violate provisions of the Constitution.

- The reservation is an instrument of affirmative action by the state for the inclusion of backward classes.
- Basic structure can't be breached by enabling the state to make provisions for education.
- Reservation is instrumental not just for inclusion of socially and economically backward classes into the society but also to class so disadvantaged.
- Reservations for EWS does not violate basic structure on account of 50% ceiling limit fixed by Mandal Commission because ceiling limit is not inflexible.
- 50% rule formed by the Supreme Court in the *Indira Sawhney judgment in 1992* was "not inflexible". Further, it had applied only to SC/ST/SEBC/OBC communities and not the general category.
- The Scheduled Castes, Scheduled Tribes and the backward class for whom the special provisions have already been provided in Article 15(4), 15(5) and 16(4) form a separate category as distinguished from the general or unreserved category.
- Reservations were designed as a powerful tool to enable equal access. Introduction of economic criteria and excluding SC (Scheduled Castes), ST (Scheduled Tribe), OBC (Other Backward Classes), saying they had these pre-existing benefits is injustice.
- The EWS quota may have a reparative mechanism to have a level playing field and the exclusion of SC, ST, OBC discriminates against equality code and violates basic structure.
- Permitting the breach of 50% ceiling limit would become "a gateway for further infractions and result in compartmentalization (division into sections).

What is the Economically Weaker Section (EWS) Quota?

- About:
 - The 10% EWS quota was introduced under the 103rd Constitution (Amendment) Act, 2019 by amending Articles 15 and 16.
 - It inserted Article 15 (6) and Article 16 (6).
 - It is for economic reservation in jobs and admissions in educational institutes for Economically Weaker Sections (EWS).
 - It was enacted to promote the welfare of the poor not covered by the 50% reservation policy for Scheduled Castes (SCs), Scheduled Tribes (STs) and Socially and Educationally Backward Classes (SEBC).
 - It enables both the Centre and the States to provide reservations to the EWS of society.
- Significance:
 - Addresses Inequality:
 - The 10% quota is progressive and could address the issues of educational and income inequality in India since the economically weaker sections of citizens have remained excluded from attending higher educational institutions and public employment due to their financial incapacity.
 - Recognition of the Economic Backwards:
 - There are many people or classes other than backward classes who are living under hunger and poverty-stricken conditions.
 - The proposed reservation through a constitutional amendment would give constitutional recognition to the poor from the upper castes.
 - Reduction of Caste-Based Discrimination:
 - Moreover, it will gradually remove the stigma associated with reservation because reservation has historically been related to caste and most often the upper caste looks down upon those who come through the reservation.
- Concerns:
 - Unavailability of Data:
 - The Union or state governments have no such data to prove that 'upper' caste individuals, who have less than Rs 8 lakh annual income, are not adequately represented in government jobs and higher educational institutions. There

is a strong possibility that they are actually over-represented in these places.

- Arbitrary Criteria:
 - The criteria used by the government to decide the eligibility for this reservation is vague and is not based on any data or study.
 - Even the SC questioned the government whether they have checked the GDP per capita for every State while deciding the monetary limit for giving the EWS reservation.
 - Statistics show that the per capita income in states differs widely - Goa is the state having the highest per capita income of almost Rs. 4 lakhs whereas Bihar is at the bottom with Rs.40,000.

Way Forward

- It is high time now that the Indian political class overcame its tendency of continually expanding the scope of reservation in pursuit of electoral gains and realised that it is not the panacea for problems.
- Instead of giving reservation based on different criteria, the government should focus on quality of education and other effective social upliftment measures. It should create a spirit of entrepreneurship and make them job-givers instead of a job seeker.

EWS Quota: Newspaper Editorials Question Exclusions, Believe Concerns Will Remain

Newspaper editorials in all English-language dailies discussed the Supreme Court's decision on EWS quotas on Tuesday, focusing on the exclusion involved and what this means for the future of India's reservation policy.

In a 3:2 decision, the Supreme Court on Monday (November 7) upheld the constitutionality of the Union government's 2019 decision to reserve 10% seats in government jobs and educational institutions for 'economically weaker sections' (EWS) from among the upper castes. Newspaper editorials in all English-language dailies discussed this prominent decision on Tuesday, questioning the exclusion involved in the new reservation.

Two judges on the five-judge bench – Justice S. Ravindra Bhat and Chief Justice U.U. Lalit – dissented from the majority view. In their opinion, the amendment's exclusions violated the Constitution's equality code. The other three judges – Justice Dinesh

Maheshwari, Justice J.B. Pardiwala and Justice Bela M. Trivedi – upheld the decision’s constitutional validity.

‘Consider opening EWS quota for all’

In its editorial, *The Hindu* explained that given the strong political backing for the amendment, it would have been difficult for the Supreme Court to strike it down lightly. However, the income criteria that has now been deemed constitutional validity excludes a large segment (since it is only for upper castes), and the editorial says this is a problem:

“The majority acknowledges Parliament’s power to create a new set of criteria and a new target for affirmative action. Their opinions whole-heartedly endorse the exclusion of communities that benefit from existing reservation norms, contending that such exclusion is necessary to achieve the intended object of emancipating economically weaker sections and, if they are included, it may undermine the entire idea of providing such reservation. This approach is clearly flawed because this creates a vertical reservation scheme based on economic weakness, a factor that could be applicable to all communities, but consciously excludes a large segment. There was some merit in the argument that reservation cannot be used as a poverty alleviation measure, and that a collective remedy meant to be compensatory discrimination in favour of historically deprived classes cannot be converted into a scheme to identify individuals based on their low-income levels and confer the same benefit. The existing income criterion of ₹8 lakh a year has already been questioned by the Court in a separate case, as it is liable to result in excessive coverage of socially advanced classes. When those exempted from filing I-T returns are only those with taxable income below ₹2.5 lakh, it makes no sense to extend the reservation benefits to sections earning upto ₹8 lakh. Also, the majority view that the 50% ceiling is applicable only to caste-based quotas and not for EWS reservation is constitutionally unsustainable, as it is a vertical compartment that is carved out of the open competition segment.”

The editorial speaks at length about why the decision to exclude marginalised caste groups from the EWS quota is a problem:

“By introducing an income criterion and barring OBCs, besides SC/ST communities, from the EWS silo, there is a clear violation of equality in their

eligibility to avail of a part of the open competition opportunities. The Government should consider both opening up the EWS quota to all communities and keeping the income criterion much lower than the ceiling, perhaps at the same level as the income tax slab, to identify the ‘creamy layer’ so that some poorer sections of communities, if they are crowded out on the OBC or SC/ST merit list, could still avail of some residual benefits under the EWS scheme.”

‘Political nature of the law’

Business Standard too agrees with the two judges’ dissenting opinion that by excluding all but upper castes from the EWS quota, “the amendment practises “constitutionally prohibited principles of discrimination””.

In addition, the editorial continues, “critics have pointed to the political nature of the law, accusing the ruling party of leveraging it to shore up its traditional upper-caste base“. While it is true that Muslims may also gain in reality, the editorial believes that “it is difficult to escape the notion that political considerations have dictated this amendment, which is usually the case in such issues“.

The editorial also argues that this reservation policy may not be the best way to try and better the condition of economically weaker sections: “... it is unclear how far the state can fulfil its obligations to the families falling within the EWS when more jobs are created in the private sector. Therefore, policies that focus on expanding employment would work better for the EWS rather than the promise of jobs that are fairly limited. The government also needs to work on improving the quality of educational institutions in general, which will limit the demand for reservations to get into the chosen few.”

The newspaper also points to the danger of this leading to clamour from different caste groups demanding reservations. “In an economy like India’s, this trend is likely to aggravate social tensions, which is the last thing India needs at this point.”

‘Leaves some discomfort’

While it is heartening to accept this decision as pro-poor, *The Telegraph* has noted in its editorial, it is impossible to ignore that the exclusions “leave some discomfort”.

“The quota is declaredly not for those who come under other reservations umbrellas; the poor among SC/ST and OBC groups are excluded. The Constitution is against discrimination and in favour of equality. But the Supreme Court dismissed the petitioners’ objections on this score since the Constitution’s basic structure is not hurt by the EWS quota. Obviously, then, representation — rather, the lack of it — is not the basis of reservations, neither, necessarily, is educational and social backwardness caused by historical injustice.”

‘Attempt to fashion a new welfare architecture’

The *Indian Express* editorial did not focus as much on the exclusions, and instead talked about the Narendra Modi government’s attempt to reconfigure India’s affirmative action policy by reading caste alongside class. At the same time, the editorial said that it was important for the government to take seriously the concerns raised by the dissenting opinion in the Supreme Court and marginalised caste groups.

The EWS quota “has imbibed the spirit of creamy layer, formulated by the apex court in Indra Sawhney (1992) to exclude the economically better-off OBC candidates from the ambit of reservation, to explore differentiated quotas for the OBCs as well as religious minorities. The Justice G Rohini commission on OBC subcategorisation, the move to look at the conditions of Pasmada Muslims, the panel to look into quotas for Dalit Christians, all recently constituted, are premised on the principle that economic well-being has to be considered in policy deliberations on discrimination. This shift in approach towards social inclusion and welfare, even without diluting the existing reservation for SCs, STs and OBCs, may lead to a reconfiguration of political allegiances,” the editorial notes.

If discrimination and inequality of opportunity are to be seriously addressed, the newspaper continues, “expanding the economic pie remains the principal imperative. That will need heavy lifting, social, economic and political, and could, three decades after Mandal, reshape the politics of affirmative action towards being much more inclusive.”

‘Economic criteria for reservations welcome’

The Times of India editorial has welcomed the Supreme Court’s decision to allow economic criteria to determine reservations in India. However, the newspaper believes that the strong disagreements between the majority and minority judges’ views on whether or not the 50% cap on quotas can be breached when it comes to EWS will lead to further questions in the future.

“Justice Maheshwari, in his majority verdict, highlighted that the 50% cap is applicable for backward classes, SCs and STs. But it is not certain that the interpretation of the majority in the constitution bench will necessarily guide all subsequent attempts at getting new quotas. Plus, many socially dominant groups aren’t satisfied with a 10% “general category” quota. So, it’s likely that as various interest groups parse the words of the judges, the EWS ruling won’t be the final word.”

Times of India too noted that the decision to restrict the EWS quota to upper castes was a political one: “The exclusion of OBCs, SCs and STs from the EWS quota was politically deemed necessary because GoI had sensed considerable heartburn among unreserved groups.”

The editorial also makes another important point: that for a reservation like this to be truly effective, data-gathering on a large and serious scale will be required. “To truly benefit the poor, deprivation needs quantification via extensive government surveys. But such empirical exercises no longer find official favour,” it concludes.

‘May open demands for fresh quotas’

The Hindustan Times, while remembering other watershed moments in India’s reservation policy, notes in its editorial that Monday’s decision will go down in history for three major reasons:

“One, by saying that the 50% cap for quotas in public jobs and education was desirable but not inflexible or inviolable (and holding that the context of whether it was obtained under Articles 15(4), 15(5) or 16(4) of the Constitution is important), the verdict may open the door for further movement around fresh quota demands. Given economic distress and shrinking government employment, it is almost certain that

more communities will clamour for quotas in the future. Two, for the first time, an economic yardstick will be the sole criteria to determine eligibility for an affirmative action programme. This breaks from precedents and past definitions of backwardness that always pivoted on socioeconomic conditions and histories of oppression. Given that surveys show large sections of India's population back income-based quotas, it remains to be seen how economic parameters shape the reservation mechanism in the years to come. And three, with the EWS quota in place, an overwhelming majority of the country is now eligible for one form or other of reservation. It will be interesting to see whether this expansion changes the politics around reservation, especially the vocal opposition of upper caste groups and the now debunked link between quotas and merit."

Adv. Prakash Ambedkar has given his position on this matter as follows. According to them, Supreme Court verdict on EWS reservation. Looking at this result, it can be said that this is ideological corruption. Manusmriti has come through the back door again. There is no provision anywhere in the constitution to introduce a new principle. Has the right to amend the constitution. While doing this, Article 368 says that you can make addition, variation and deletion. That too in the clauses that are already there. Social reservation can be provided in Article 16. This social reservation is listed under Articles 341 and 342. This list is not meant to be permanent.

Parliament has the power to include or exclude in these lists. State under which article this new economic principle was incorporated while the constitution considered the social principle. There is no such provision. No explanation has been given in this decision. The Supreme Court itself says that social reservation and economic reservation are two different things. If these two are separate matters then state which provision is there to incorporate this new principle. This decision contradicts itself. is contradictory.

While making two separate compartments namely social reservation and economic reservation, it is said that those who are getting social reservation will not get economic reservation. Even if they fit the criteria. Manu enclosed the society by erecting caste walls. Similarly, this decision has started Manusmriti anew by confining it to social and economic compartment. I

believe it is dangerous to this country. Limiting the reservation to 50%, only 27% reservation was given to OBCs. Marathas, Patidars, Gujjars, Jats etc. were rejected for this reason.

Now that the Supreme Court itself has crossed this limit, all these groups will now demand that we be given reservation. This will create a new confusion in the country. This decision will lead the country towards turmoil. Therefore, we request you to review this decision

CONCLUSION

Also for inclusion of any class or section so disadvantaged as to be answering the description of a weaker section. In this background, reservation structured singularly on economic criteria does not violate any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India.

b. Exclusion of the classes covered by Articles 15(4), 15(5) and 16(4) from getting the benefit of reservation as economically weaker sections, being in the nature of balancing the requirements of non-discrimination and compensatory discrimination, does not violate Equality Code and does not in any manner cause damage to the basic structure of the Constitution of India. Reservation for economically weaker section s of citizens up to ten per cent. in addition to the existing reservations does not result in violation of any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of fifty per cent. because, that ceiling limit itself is not inflexible and in any case, applies only to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India. Not much of the contentions have been urged in relation to the impact of the amendment in question on admissions to private unaided institutions. However, it could at once be clarified that what has been observed hereinabove in relation to the principal part of challenge to the amendment in question, read with the decision of this Court in Pramati Trust, the answer to the issue framed in that regard would also be against the challenge. Accordingly, and in view of the above, the answers to the issues formulated in these matters are as follows:

1. The 103rd Constitution Amendment cannot be said to breach the basic structure of the Constitution by

permitting the State to make special provisions, including reservation, based on economic criteria.

2. The 103rd Constitution Amendment cannot be said to breach the basic structure of the Constitution by permitting the State to make special provisions in relation to admission to private unaided institutions.

3. The 103rd Constitution Amendment cannot be said to breach the basic structure of the Constitution in excluding the SEBCs/OBCs/SCs/STs from the scope of EWS reservation.

Consequently, the transferred cases, transfer petitions, writ petitions and the petition for special leave to appeal forming the part of this batch of matters are dismissed.

Karthik Raja, Co-editor of the 'Shudras: Vision for new path' along with Prof. Kancha Ilaiah and doctoral candidate at the Centre of Political Studies,

His opinion on EWS Reservation is that, The EWS quota is unfair because it twists the ideas of justice by bequeathing further privilege to communities which are historically situated to benefit from caste system.

He is speaking with bahujan perspective. He explained the reason for bringing the reservation at first place. He also explain how the EWS Reservation is not good and will create more problems.

The Supreme Court's judgment regarding poverty as a ground for discrimination is a step in the right direction. However, to fully realize the objective of EWS quota, i.e. financial emancipation, the government may consider opening the quota to all communities and lowering the income limit.

While making two separate compartments namely social reservation and economic reservation, it is said that those who are getting social reservation will not get economic reservation. Even if they fit the criteria. Manu enclosed the society by erecting caste walls. Similarly, this decision has started Manusmriti anew by confining it to social and economic compartment. Reverend Prakash Ambedkar believes that it is dangerous for this country that only 27% reservation was given to OBCs by limiting the reservation to 50%. Marathas, Patidars, Gujjars, Jats etc. were rejected for this reason.

While participating in all the above discussions, one thing we all should aim at is Dr. Babasaheb Ambedkar's "What is the future of Indian democracy?" What Babasaheb Ambedkar says in these speeches,

"So far the governments have been unable to achieve the social ills of reservation and equality.

Without waiting for any discussion, it is held that where there is a republic there must be a democracy. It is generally accepted that a democracy exists where a parliament is constituted and the law is made by representatives elected by the people for a fixed period of time, based on the principle of adult voting. In other words, democracy is considered as a political instrument and wherever this political instrument exists, democracy is assumed to exist.

Is there democracy in India or is there no democracy in India? what is the truth A definitive answer to this question will not emerge unless the confusion caused by treating republicanism and democracy as the same as democracy and parliamentarianism is removed."

"The major flaw in the present policy is that education is being imparted to a large number of people but not to the right sections of the society. The caste system will be strengthened if you educate the people in Indian society who have a vested interest in the caste system and who benefit from it. Without this, the caste system of the lower strata of Indian society will surely collapse. The no-strings-attached policy of the Indian government and the American Foundation to aid education is reinforcing casteism. Making the rich richer and the poor poorer is not the way to eradicate poverty.

This applies to the policy of using education as a tool to destroy the caste system.

Educating Christians to perpetuate the caste system will not only brighten the future of Indian democracy, but on the contrary, this policy will put Indian democracy in grave danger. "

As above said by Dr. Ambedkar state failed to work construction of society based on social and economical equality. Here in both cases in educating uppercaste (savarna) and providing them 10% of EWS quotas are failure of state. We have political equality but not the social and economical equality. The efforts should be focusing on reducing the social and economical inequality, but the implementation of recent judgment is speaking and doing something else. Dr. Babasaheb asked to use the education as a tool to destroy the caste system. But as he said educating the people who perpetuate the caste system will put the Indian democracy in grave danger. Same is happening in the case of EWS this judgment will create more problems and so, we can say it is intellectually corrupt decision.

REFERENCE

- [1] Ambedkar, B. R. (2002). Dr. Babasaheb Ambedkar: Writings and Speeches, Vol. 18 pg. no. 580. *Government of Maharashtra, Bombay*.
- [2] <https://thewire.in/law/ews-quota-newspaper-editorials-question-exclusions-believe-concerns-will-remain>
- [3] <https://www.drishtias.com/daily-updates/daily-news-analysis/supreme-court-upholds-ews-quota>