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## **EWS reservation with special reference to medical admissions in India: An analysis**

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**Abstract**---Constitution need to be changed according to the growing demands of the society. The partly rigid and partly flexible Amendment procedure adopted in India enabled it to stand the test of time making it a living document. After seventy-three years of independence, The Constitution (103rd Amendment) Act,2019 introduced the concept of reservation on economic grounds which was debated since the making of the constitution. Initially, the reservation was provided only in public employment and representation in legislatures for persons belonging to SCs,STs and SEBCs. Though initiated with a pious objective of ensuring equal protection for all, this policy had also resulted in many agitations and even violence in many parts of the country. Articles 15(6) and 16(6) were added to provide ten percent reservation for economically weaker sections in the general category. This article analyses the amendment in the light of constituent assembly debates and dialectics in the judicial verdicts. The article also highlights the recent challenges faced during its implementation in Medical admissions and the expert committee appointment to revisit the income criteria.

**Keywords**---reservation, economically weaker sections (EWS), education, employment, medical admissions.

## **Introduction**

“The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over” - Pandit Jawaharlal Nehru. India achieved its independence seventy-five years ago amidst several economic and social issues. Indian Constitution being the supreme document sustains the unity, integrity, and development of the nation. The key goals of the constitution are Justice, Liberty, Equality and Fraternity, and the success of our nation largely depends on upholding these democratic values. Articles 15 and 16 rest in the equity principle thereby ensuring proportional equality. Over the years, several principles such as the "carry forward rule reservation in promotion for SCs and STs concerning public employment and education in private educational institutions other than minority institutions were introduced to ensure social justice.

## **Constituent Assembly debates on Reservation**

Dr.B.R.Ambedkar stated that there is dearth of Equality and Fraternity in Indian Society .On the social plane, the elevation of few and degradation of others were practiced and on the economic plane, some had immense wealth and others lived in abject poverty which exposed a society of contradictions. Caste discrimination was considered anti-national since they bring division. To overcome the difficulties of graded inequality and to give due recognition to the principle of brotherhood reservation was suggested to be the best solution. Committee on Minority Rights under the chairmanship of Sardar Vallabhai Patel brought out the issues of the depressed communities where he suggested that certain communities particularly scheduled castes deserve special consideration. One of the most prominent debates in the making of the constitution was the topic of reservation. Discussions have taken place regarding the parameters of reservation, intended beneficiaries, and the duration of the policy. Dr.Rajendra Prasad stressed the need to create conditions where every individual can develop and rise to his fullest status. Drawbacks of the Poona pact were pointed out by Muniswami Pillai who suggested that the poor economic condition of the depressed communities should be taken into consideration and they should also be allowed to contest in unreserved seats. The view of Pandit Thakur Das Bhargava is relevant in the present situation who cautioned the assembly that perpetuation of reservation for giving preference to posts for certain communities may lead to a sense of separation harming the objective of 'Fraternity'. Mahavir Tyagi opposed reservation that the possibility of the reservation may only benefit a few people of status who is described today as a "creamy layer".

Though there was opposition on several issues, the majority of the members accepted that only the upper class in the society had better education and ownership of land at the commencement of the constitution due to which some communities were socially, educationally, and economically backward. Hence the reservation policy for Scheduled Castes (Hereinafter referred to as SCs), Scheduled Tribes (Hereinafter referred to as STs), and other Socially and Educationally Backward classes (Hereinafter referred to as SEBCs) were provided in public employment and to get elected as members in legislature and

parliament. Within fifteen months of working on the constitution reservation in educational institutions was introduced through the first constitutional amendment for SCs, STs, and SEBCs.

### **The Constitution (103rd Amendment) Act,2019-The need of the hour**

The Constitution of India is a living document since it transforms itself according to the changing needs of society. Poverty and Income inequality are the major social issues faced by governments all around the world in the 21<sup>st</sup> century. Reservation for underprivileged sections and land reform movements measures successfully reduced the class difference which existed at the commencement of the constitution. However, it is high time to examine the effect of those policies on the future generations of the then privileged classes. Indian Caste system when examined closely discloses the system of economic power. The social status of a person largely depends on the economic situation. Inter-caste marriages and Interreligious marriages remain a rare phenomenon in our country which means that various caste groups continue to remain and that had to be accepted as a reality. In the absence of better education and employment, most of the third generation among the once privileged category members had been pushed to lower-middle-class levels. Our constitution fails in its purpose when a section of society is punished for no fault of theirs. In 1979, the MGR government in Tamilnadu announced to provide 10% reservation for the poor among the general category. However, that was withdrawn seven months after the Loksabha elections.

Planning Commission Report dated 22/12/2014 indicates the progress made by lower caste groups. According to the report poverty level concerning SC had reduced from 46.5% to 28.5%, ST from 63.9% to 44.7%, Muslims 51.2%to 33, and other minorities from 30.2 % to 17.9%. Reports and studies indicate that perpetuation of benefits by a few sections hinders the development of the nation as a whole. 103<sup>rd</sup> amendment is a revolutionary step taken to protect the rights of a citizen who belongs to an economically weaker background. Dr.Radhakrishnan in his last speech in the constituent assembly hoped that the later governments would carry out all the obligations to achieve social justice since the aim of our constitution is social democracy which transcends the differences between caste and economic conditions. Injustice prevails in society if the people do not have sufficient means to enjoy the rights guaranteed. Law must positively respond by taking into consideration to the demands of the present. The objective of the amendment is to uplift the EWS who remained excluded from attending higher educational institutions and public employment and seeks to protect them by relying on Article 46. French Economist Thomas Piketty suggested that income-based reservations should be considered in India without replacing caste-based reservations.

### **Unanimous Decision of the Parliament**

There was strong political consensus and all the political parties unanimously passed the bill without any opposition in both the houses of parliament. This spirit matches the words of first Prime minister while moving objective resolution in the constituent assembly. "Time comes when we have to rise above party and

think of the Nation, think sometimes of even the world at large of which our Nation is a great part.” The legislative history of this amendment is as follows: Lok Sabha passed the bill on 9<sup>th</sup> January 2019 with an overwhelming majority of 326 members present where three members voted against the bill. In Rajya Sabha, the bill was passed rejecting 5 amendments proposed by members of the opposition. It came into effect on 14 January 2019.

### **Criteria for Reservation**

Through this amendment Articles, 15(6) and 16(6) have been inserted into Part III to provide up to 10 percent reservation for Economically Weaker Sections among the general category. The criteria for determining the EWS class shall be revised from time to time. The Department of personal, public grievances and pensions issued an executive order (O.M no.36039/1/2019) which fixed the criteria stating gross family income below 8lakhs along with other parameters such as less than 5 acres agricultural land, house less than 1000 square feet, Plot below 100 yards in a notified municipal area or less than 200 yards plot in a non -notified municipal area. In *Minerva Mills Ltd V.Union of India*, Chandrachud CJ observed that State must undertake several progressive measures to reduce the class difference. Indian Constitution provides a unique procedure to amend the fundamental law by adopting rules of both flexibility and rigidity. The validity of the laws should be tested using the touch stone of the time, circum stances prevailed and the compelling demands then existed in the society.

The goodness of any government can be better accessed through the effective implementation of the directive principles since it laid down the goals to be achieved by the state. All the rights enumerated in the constitution are swallowed by the enormous dragon of poverty and destitution. The main objective of fundamental rights is to preserve established rights whereas directive principles represent a dynamic move taking into account the needs of the society. Our constitutional makers incorporated many provisions in the constitution to further social revolution.

### **Judicial Decisions concerning Economic Backwardness**

Judiciary had taken efforts to find solutions to social and economic problems by traveling beyond the words of the statute taking into consideration of preamble, also the statement of objects and reasons, and even debates in the parliament when a bill is under consideration. The legislature can't make law for all possible problems which arise in the future. The courts as conscience keepers of the constitution interpret the law in the manner appropriate to meet the situation. In *M.R.Balaji V.State of Mysore*, the court held that Social backwardness is in the ultimate analysis the result of poverty to a large extent, though social backwardness is likely to be aggravated by considerations of caste. Justice V.R.Krishna Iyer opined that the dangers of reservation are threefold in the *State of Kerala V. N.M.Thomas* which are a. The top 'creamy layer' of the backward class takes away the reservation benefits thus keeping the weakest among the weak always weak b. the claim of backwardness has been overplayed by many groups and wish to wear the 'backward class' label c. There is a need to improve the social environment by providing better educational facilities and state should

sponsor inter-class and inter-caste marriages to generate cross-fertilization of castes.

Apex court laid down the "Means Test" as the basis for reservations in *K.C.VasanthaKumar v. the State of Karnataka*. The court stated that the Downtroddenness of the SC/ST and other OBC communities had been primarily viewed through an economic lens. *Indra Sawhney V.Union of India* held that the socially advanced class of the backward class must be excluded from the benefit of reservation. The application of the creamy layer test legitimizes economic weakness to be the primary cause of inequality. The court refused to identify the backwardness exclusively regarding the economic criteria. They also held that backward classes did not have to be situationally similar to the SCs and STs and pointed out that article 16(4) was designed as an instrument for sharing of power by the backward classes. There is a need for the continuous evolution of bases, practices methods, and yardsticks for the determination of the backwardness and groups truly deserving of affirmative action.

### **Issues and challenges in Implementation**

The constitutional validity of the 103<sup>rd</sup> amendment is challenged in *Janhit Abhiyan V.Union of India* on two main grounds of violation of basic structure and 50 % ceiling limit. The apex court agreed that the case involves a substantial question of law and referred the matter before a five-judge constitution bench. However, no stay order was issued on the operation of the constitutional amendment. The term basic structure was first mentioned in *Sajjan Singh v. the State of Rajasthan* followed by the landmark judgment in *the Keshavananda Bharathi* case though not exhaustive have laid down certain features to be basic such as secularism, equality, judicial review, socialism. It held that Amendments that alter the core principles are held unconstitutional since that changes the very identity of the basic document. In *M.Nagaraj V.Union of India* ,court formulated twin test to examine the effect of an amendment. The width test examines the legitimate scope (width) of the amending powers to see whether the "basic structure" of the Constitution is under threat. The "identity test" on the other hand tests whether the identity of the Constitution remains the same after the amendment. It can be noted that the very purpose of reservation is to give special protection to the disadvantaged sections to ensure equality. Through the 103<sup>rd</sup> amendment, economically disadvantaged sections among the general category were extended the benefit of reservation without taking away the benefits allotted to other categories. Absolute equality is impossible in an unequal society and classification on the ground of differences is the essence of equality. This amendment does not change the identity of the constitution thus there is no threat to the basic structure. Justice Hegde in *Chandra Bhavan Case* said:

“The provisions of the constitution are not erected as barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the constitution. They do not permit any kind of slavery, social, political or economic”. Hence the basic structure doctrine cannot be applied to limit the amending power of the parliament since democracy itself forms part of basic structure and the primary duty of parliament is to make laws beneficial for its citizens. *Indra Sawhney* case has set a limit of 50 % on the total reservation.

However, it was made clear that in extraordinary situations it can be extended taking into account the great diversity of this country. Tamilnadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institutions and appointment of posts in the services under the state) Act 1993 was enacted to provide 69 % reservation. The case also decided on the constitutional validity of an office memorandum issued by the union government for providing 10 % economic reservation when there was no express provision in the constitution. Hence the Judgment in the Indra Sawhney case is not applicable in the changed scenario. In *Utkarsha Umesh Deshmukh V.State of Maharashtra and Ors.*, the court held that the state had a duty to proportionately increase seats and implement the EWS quota to ensure equality of opportunity.

### **EWS Reservation in Medical Admissions**

All India Quota (hereafter referred AIQ) is the creation of judiciary in 1986 with an objective to enable domicile-free seats in undergraduate and post graduate admissions. In *Pradeep Jain V.Union of India* Supreme court held that no reservation shall be made on basis of residence for post graduate courses with an exemption based on institutional preference .It was held that 50 % seats will be based on All India Examination. *Saurabh Chaudri case* too reiterated the cap put on reservation. In *Dinesh Kumar case* apex court held that 30 % seats shall be filled in open competition . In *Abhay Nath V.University of Delhi*,the decision was to provide 22.5% reservation in AIQ.

Four petitions were filed challenging the constitutional validity of 27% reservation announced by National Testing Agency on 29<sup>th</sup> July 2021.In *Neil Aurelio Nunes and Others V.Union of India and Ors.*, Petitioners challenged the reservation to OBC and EWS in the PG medical admissions. They argued that it amounted to reverse discrimination and is against the 50% limit set by Mandal Commission Case. Federation of Doctors in an intervention plea urged the court to allow counselling since they were overworked and understaffed. Pandemic situation also forced for the delay in admissions. The Supreme court upheld the constitutional validity of OBC reservations and raised the following issues to identify criteria for EWS:

- Whether the government undertook any exercise to arrive at the Rs.8 Lakh ceiling to identify EWS.
- How the government would defend the same income ceiling that ignores differences like rural-urban, intrastate disparities, etc?
- Whether the Centre relied on the 2010 report of the commission for the economically backward classes headed by Maj.Gen(Retd)S.R.Sinho
- Would it be arbitrary to provide the same income limit for the creamy layer of OBC and EWS?

### **Pandey Committee Report, 2021**

Following the direction of the court, the Union government constituted Pandey Committee which submitted the report on 31<sup>st</sup> December 2021. Pandey Committee considered the Sinho Commission report and Census data 2011 and justified 8 lakh income limit is not overinclusive. The committee recommended

doing away with the residential criteria which need to be applied prospectively. The panel submitted that even though the income limit remains same for OBC and EWS quota, the two cannot be equated since income from agriculture, traditional professions etc are excluded from consideration under OBC quota. The apex court noted that Chapters III and IV of the Sinho Commission report recommended welfare measures for EWS and relevant parameters for identification. Court held that the counselling session is allowed to begin in the national interest with the existing criteria taking into account the delay in the counselling process due to the pendency of the petition. The challenge to the validity of the Pandey Committee recommendation is pending before the court.

### **Conclusion**

Reservation for EWS has strengthened the two great values of equality and fraternity since reservation on economic grounds is a less divisive factor compared to caste. Economic status determines a person's educational and social status. The argument submitted in PG medical admission case is relevant that an economically weaker meritorious student can never afford special coaching, tuition like other students which places them in a different setting which justifies additional support. This amendment reduced the frustration among groups fighting to get their entry into the schedules as it addresses the poor. Special protection has been ensured for deserving individuals by providing reservation to poor among general category ensured reservation for all deserving individuals. This is a historic amendment which strengthened national integrity. It was a long pending demand which was given due recognition.

The EWS reservation attempts to improve the lives of a wider spectrum of the population rather than providing support for mere subsistence at the bottom of the pyramid. In a democratic polity, it seems very difficult to roll back any beneficial policies. However, in the long run, measures to exclude beneficiaries who have attained better social, educational, and economic conditions should be adopted to achieve social justice. The Pandey Committee's recommendation on revising the criteria can be adhered to since it reduces the complexities of the current criteria.

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