
CRITICAL APPRAISAL OF RESERVATIONS FOR ECONOMICALLY WEAKER SECTIONS IN THE LIGHT OF LANDMARK JUDGMENTS

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ABSTRACT

This paper critically examines the reservations for ‘economically weaker sections’ in the context of some landmark judgments (like *Indra Sawhney v. Union of India*¹) and the recent case of *Janhit Abhiyan v. Union of India* that upheld the validity of 103rd constitutional amendment. In the recently released judgment, the court held that reservations on the basis of economic grounds were not violative of the basic structure doctrine of the Indian Constitution. The 103rd Amendment of the Indian constitution which inserts article 15(6) and 16(6) to the Indian constitution introduced 10% reservation for the Economically backward sections of the society and excluded those belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes from the purview of the reservations provided for “Economically Weaker Sections”.

¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477, 1992 Supp 2 SCR 454

Introduction

One Hundred and Third amendment act to the Indian constitution enacted by the parliament introduced the policy of reservations for “Economically weaker sections” of the society to give reservations to those who the government thought were not economically well off but couldn’t avail reservations due to not being a member of a Scheduled caste or scheduled tribe. It is to be remembered that the reservations to those who belonged to “Economically weaker sections” are only applicable to those who are not covered under the reservation benefits given to Scheduled Tribes and Scheduled castes. However, the validity of the reservations for ‘Economically Weaker Sections’ soon came into the question in the case of ‘Janhit Abhiyan v. Union of India’. 10% of the reservations provided under the Constitution of India was over and above the 50% limit imposed by the Supreme Court in its various landmark judgments. The aim behind reservations for various communities was to provide social justice to those belonging to communities who were historically ostracized and reservations were seen as means to undo some of those atrocities and discrimination for those communities and castes which was in turn aimed at making it more beneficial for those communities in the longer run.

Eligibility to be classified as ‘Economically Weaker section’

Reservations for “Economically Weaker sections” was applicable for direct recruitment in civil services posts and other services across various sectors that were offered by the state.

Those who are not applicable for reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) shall be applicable for reservations under the criteria of ‘Economically Weaker Sections’ provided that their family’s gross annual income is below 8 lakh Indian Rupees only. This included income from all sources like salary, agricultural profits/agricultural income, business, income etc for the financial year prior to the year in which the candidate applied for reservation.

Irrespective of the family income, reservations aimed to benefit “economically weaker sections” shall not be applicable to anybody whose family owns or possesses the following:

1. To those whose family owns or possesses 5 or more acres of agricultural land
2. To those whose family owns or possesses a residential plot of or more than 1000 square feet

3. To those whose family owns or possesses a residential plot of or more than 100 square yards in notified municipalities
4. To those whose family owns or possesses a residential plot of or more than 2000 square yards in areas other than notified municipalities

In order to determine the status for ‘Economically Weaker Sections’, holding or ownership or possession of land across multiple places, cities or localities shall be clubbed and taken into consideration while applying the land or property holding test.

“Family” for the criteria to determine ‘Economically Weaker Sections’ shall be taken to include that person who is willing or wishes to seek the benefit of reservation. His/her parents below the age of 18 years old as well as his/her spouse and children below the age of 18 years old.

One Hundred and Third Constitutional amendment act

The One Hundred and Third Constitutional Amendment act came into effect on 14th of January in 2019, received consent by the former President of India Ram Nath Kovind on 12th of January in 2019 and was published in the official gazette on the same day. This enabled the state to make reservations solely on the basis of economic criteria in matters of public employment and for the purposes of higher education. The One Hundred and Third constitution act amended article 15 and article 16 of the Indian constitution and inserted article 15(6) and article 16(6) in the constitution of India.

Article 15(6)² of the Constitution of India reads:

“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

² INDIA CONST. art. 15, cl: 6.

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.”

Article 16(6)³ of the Constitution of India reads:

“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.”

The judgment for *Indra Sawhney v. Union of India & Ors* on 16th of December, 1992 was given by a 9 judge constitutional bench of the Supreme Court with a majority of 6:3. As per this judgment, backward classes mentioned in article 16(4) of the Indian Constitution are to be identified on the basis of the caste system and not according to economic criteria and that the aforementioned article is not an exception to the article 16(1) of the Indian constitution. The 9-judge constitution bench also laid down that “backward classes” as mentioned in article 16(4) is not the same as socially and educationally backward classes as mentioned in article 15(4) of the Indian constitution. The court also ruled that Creamy Layer (which was to refer to Children from other backward classes but whose parents were “constitutional functionaries” or whose parents were the member of armed forces or paramilitary personnel above the rank of a colonel) should not be benefitted from reservation. The majority bench also ruled that reservation in civil services or higher educational institutions shall not exceed the benchmark of 50 % and that disputes regarding any new criteria for the purpose of reservation shall only be raised in the apex court that is the, Supreme Court of India. The court in this judgment also ruled that reservation shall not be made for promotions.

Reservations for ‘Economically Weaker Sections’ in the light of some landmark judgments by the Supreme Court

The reservations for ‘Economically weaker Sections’ introduced by the current BJP led political regime are to be capped at 10 % which is way beyond the cap of 50 % issued by the Supreme Court in its 9- judge constitutional bench in its judgement of *Indra Sawhney v. Union*

³ INDIA CONST. art. 16, cl: 6.

of India. It is also important to remember that the 10 % reservation for economically weaker sections did not include those who belonged to the Scheduled Castes, Scheduled Tribes or even those belonging to Backward classes and Other Backward classes meaning that this system of reservation was solely on the basis of economic criteria and nothing else. Even those who belonged to “Upper Castes” of the society were eligible for reservation provided that they fall into the category of Economically weaker Sections. However the majority judgment in *Indra Sawhney v. Union of India & Ors* ruled that reservations shall not be made solely on the basis of economic criteria.⁴ The court in the above case also believed that the makers and the founding fathers of the constitution of India who were aware of the caste system and the resultant systemic oppression and discrimination against various communities introduced the reservation system in order to undo the historical injustices, oppression and discrimination, the members of those belong to lower castes and tribes have endured for ages and with a hope that the future generations of those who belonged to the oppressed communities and minorities will not meet the same fate as their forefathers. Even in the landmark judgment of *Champakam Dorairajan v. State of Madras*⁵ the court ruled that economic criterion should never be the sole criterion to grant reservations and that “poverty” alone cannot be the only criterion to determine backwardness.

The reservation system in India for seats in higher educational institutions (except those that were established by minority communities under article 30 of the Constitution of India) and jobs offered by the government across sectors is structured in a way that Scheduled Caste get a reservation for 15 % , those belonging to the Scheduled Tribes are eligible for 7.5 % reservations, those belonging to other backward classes get a reservation for 27 % , Economically Weaker Sections get a reservation of 10 % and persons with disabilities get a 4 % . This brings to a total of 60 % reservations which is more than the cap of 50 % imposed by the majority bench of 6 : 3 constitutional bench in *Indra Sawhney v. Union of India & Ors* Reservations were to be used as a tool to undo years of oppression to backward classes which as defined in *Indra Sawhney v. Union of India & Ors* were to include scheduled castes, scheduled tribes and socially and educationally backward classes. The court also ruled that Creamy layer (which was a term to refer to Children from other backward classes but whose parents were “constitutional functionaries” like the president, judges of the Supreme Court and

⁴ P.S. Krishnan, Issues before the Supreme Court in the EWS quota case: background and analysis, IE, September 25th, 2022

⁵ *Champakam Dorairajan v. State of Madras*, 1951 AIR 226, 1951 SCR 225

judges of the High Courts of various states in India etc. or whose parents were the member of armed forces or paramilitary personnel above the rank of a colonel).

In the Maratha Quota case, the apex court of India that is the supreme court also ruled that changing the limit of 50 % quota on reservations leads to a society which is not formed and ruled on the basis of right to equality but one that is ruled by a caste system. The court also mentioned that unless in extraordinary circumstances, the 50% principle should not be exceeded. The 50 % reservation is not a law but an integral part of a landmark judgment by the Supreme Court and is to be considered as an authoritative unless it is overruled by a majority constitutional bench of the Supreme Court of India with more than 9 members (which was the number of judges in the constitutional bench that gave the decision in *Indra Sawhney v. Union of India*). Even in the case of *Balaji v. Union of India*⁶, it was held that reservation should not exceed the quantitative requirement of 50%.

In the landmark judgment of *Jarnail Singh v. Lachhmi Narain Gupta*⁷, it was held that the concept of creamy layer was an essential for the principle of equality as envisioned in article 14, 15 and 16 of the Indian constitution. The exclusion of creamy layer in the concept of reservation was necessary to make sure that those who truly belong to the backward community will have access to reservations and that those who belong to the crème de la crème of the society will not make illegitimate or unfair use of the same. The threshold to being classified as a member of the “creamy layer” despite being born into a backward class is on the basis of whether their parent was working as Grade A or Grade B government employees before they were the age of 40 years old. It is to be pointed out that the limit of reservations for “economically weaker sections” made for upper castes is also the limit which will fall for the “creamy layer” of the Other Backward castes making those communities ineligible for reservation. The income limit being the same for being classified as “creamy layer” despite being born into a backward caste as to the limit for being classified as ‘Economically weaker section’ despite being born into an upper caste violates the spirit of the judgement by the constitutional bench in *Indra Sawhney v. Union of India* which explicitly mentioned that those belonging to the “creamy layer” of backward classes and other backward classes. In the case of *Jarnail Singh*, the court also disagreed with the view that creamy layer is only a principle of

⁶ *Balaji v. Union of India*, 1963 AIR 649

⁷ *Jarnail Singh v. Lachhmi Narayan Gupta*, 10 SCC 396

identification and not that of equality.

In the case of *BK Pavitra (II) v. Union of India*⁸, the apex court held that adequacy cannot be compared in terms of proportionality of the population in the state. The court based adequacy on the subjective satisfaction of vague notions by the state and that it was the duty of the court to decide whether legislations enacted in the favour of reservation of backward classes were justified or unconstitutional and also that exercise of the power of the state must not be arbitrary. In the ratio decidendi of *BK Pavitra (II)*, it was also held that the exercise of power of the state to enact legislations to provide reservation for a community must be in accordance with article 355 of the Indian constitution. In the case of *BK Pavitra(I) v. Union of India*⁹ which was dealing with determination of seniority and promotion based on reservations in government jobs for the state of Karnataka, the court laid down that the ceiling of 50% reservations and not giving reservations to those who belong to the creamy layer of the Indian society are some of the key requirements without which the structure of equality under article 16 of the Indian constitution is bound to collapse.

The Current Discourse and the Supreme Court on Reservations for Economically Weaker Sections

In the recent landmark judgment of *Janhit Abhiyan v. Union of India*, with a 3:3 majority, the apex court upheld the 103rd constitutional amendment whereby two new clauses have been added to article 15 and article 16 of the Indian constitution, which provided for 10% reservations for those belonging to the ‘Economically Weaker Sections’ of the society other than that of already existing reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and the non-creamy layer of Other Backward Classes (OBCs). This amendment of the constitution doesn’t mandate rather enables reservations for those people who belong to the category of “Economically Weaker Sections”. This amendment was upheld by a majority of 3:2 of the 5-judge constitutional bench of the Supreme Court of India through four different judgments with Justice Dinesh Maheshwari, Justice Bela Trivedi and Justice Pardiwala taking the majority position and Justice Ravindra Bhat along with the then Chief Justice of India, UU Lalit disagreeing with the majority position. Justice Ravindra Bhat wrote the judgment for

⁸ *BK Pavitra (II) v. Union of India* 2019 SCC Online SC 694

⁹ *BK Pavitra (I) v. Union of India* (2017) 4 SCC 620

himself and the Chief Justice of India while the other 3 judges gave judgments on the issue on their own behalf.

The three primary issues of the case are as follows:

1. Whether the 103rd amendment to the Indian constitution can be said to breach the basic structure of the constitution by permitting state to make special reservations including reservations on the basis of economic criteria?
2. Whether the 103rd amendment can be said to breach the basic structure of the constitution in excluding Scheduled Castes, Scheduled Tribes, Other Backward classes and Socially and Educationally Backward classes from the scope of its reservation?
3. Whether the 103rd constitutional amendment can be said to breach the basic structure of the Indian Constitution by permitting the state to make special provisions with regard to reservations in private unaided institutions?

The Supreme Court in its judgment held that the One Hundred and Third Amendment which introduced article 15(6) and article 16(6) to the Constitution of India doesn't breach the basic structure of the constitution of India by permitting the state to make decisions with regards to the reservations for admissions into private unaided educational institutions. The majority of the judges held the view that poverty was considered as an adequate marker of deprivation and that the state can help the upliftment of those communities by providing reservations for them. Article 16(4) was considered to be exhaustive in terms of reservations for backward communities, however not exhaustive for the purposes of reservation. Reservations for admissions in private unaided institutions was not per se violative of the basic structure of the Constitution of India.

In his judgment Justice Maheshwari held that, reservation structured on economic criteria is not violative of the basic structure of the Constitution of India. Reservation is an instrument of affirmative action that is aimed to ensure an all inclusive march to an egalitarian society in the country. He also held that the ceiling limit of 50% is not inflexible and is only applicable to the reservations envisaged by articles 15(4), 15(5) and 16(4) of the Indian Constitution. All the five judges on the benches agreed that reservation on the basis of economic criteria had a sound legal basis to be considered as an affirmative action by the state. However, the two dissenting

judges (Justice Ravindra Bhat and the former Chief Justice of India UU Lalit) did not concur with the view of excluding those belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and Socially and Educationally Backward classes from the benefit of reservations made for Economically Weaker Sections as that exclusion is inevitable for the operation of the 10% reservations scheme for those belonging to the Economically Weaker Sections of the Indian society.

Justice Bela M. Trivedi in her majority judgment held that treating economically weaker sections of the citizens as a separate class cannot be considered as unreasonable classification as rational nexus can be established and is hence, not violative of the principles enunciated in Article 14 of the Indian constitution. Prescription of time limit with respect to reservations provided under article 15 and article 16 of the Indian constitution could be the way forward leading to a society that is egalitarian, classless and casteless.

Justice JB Pardiwala in his judgment held that the definition of the term weaker sections as mentioned under article 46 of the constitution cannot be limited to Scheduled Castes and Scheduled Tribes, the same cannot be interpreted through the principle of Ejusdem Generis (which literally translates to “of the same kind”) and that the provisions of the Indian Constitution should always be considered in the broadest possible manner. Reservation is by no means an end rather a means to secure social and economic justice. Continuing of reservations as a vested interest can be detrimental in the longer run as it could become a vested interest.

In the dissenting opinion to the judgment, Justice Ravindra Bhat and Justice UU Lalit were of the view that the total and absolute exclusion of constitutionally recognized backward communities like Scheduled Castes and Scheduled Tribes destroys the constitutional principle of equality code and is discriminatory in nature and called it a move that would heap fresh injustice based on past disability. The inclusion of articles 15(6) and 16(6) to the Indian constitution have been struck down as they are violative of the equality code which forms an inextricable part of the basic structure of the Constitution of India. Provisions based on economic criteria (for the purpose of Article 15 of the Indian Constitution) were not per se violative of the basic structure of the Indian constitution, however it is not the same for article 16 of the Indian constitution which aims to empower citizens through representation of various backward communities.

Conclusions and Suggestions

The idea of reservation first received legal and constitutional sanction through the first amendment to the Indian constitution made in 1951 which empowered the state to make special provisions for the advancement of Other Backward Classes, Scheduled Castes and Scheduled Tribes through reservation in educational and government jobs. There were various judgments in later years that built on the idea of reservation, expanded it and sometimes limited it. The first amendment was a response to the judgment of *Champakam Dorairajan v. State of Madras*. In the landmark judgment of *Janhit Abhiyan v. Union of India*, the court placed economic criteria as the centre for the scheme of reservations, however it can be argued that economic criteria is artificial and should not be considered the basis for reservations. Economic criteria cannot be considered as a ground for discrimination in the Indian society as a result of which, it cannot be considered as valid grounds for reservation. The reservation system in India was introduced to undo historical injustices to various oppressed communities whose voices were suppressed for time immemorial, it was seen as a means to empowerment and advancement of their social backgrounds.

Reservations are a means to achieve substantive equality for historically marginalized communities and is seen as means for reparation which is why the nine-judge bench in the landmark case of *Indra Sawhney v. Union of India* held that economic criteria should not be the sole criterion to grant reservations. Once the ceiling of 50% reservation is breached, there is a possibility that it will be breached time and time again thus creating a sense of uncertainty and will lead to a society that is not primarily guided by public interest and social justice.

The biggest infirmity of the *Janhit Abhiyan* judgment is the exclusion of Scheduled Castes, Scheduled Tribes and Other Backward classes from the scope of reservations for Economically Weaker Sections just on the virtue of the fact that they are entitled to caste-based reservations. In a society that is deeply rooted in casteism and where people belonging to backward communities have been subjected to suppression, not only is this an arbitrary classification but also discriminatory. The principles of equality as enunciated in articles 14-17 of the Indian constitution were aimed to foster social justice and equality which are being violated in the aforementioned provisions of excluding SCs/STs and OBCs from reservations provided for “Economically Weaker Sections” as per 103rd amendment to the constitution of India. Publicly

available data clearly shows that the constitutionally provided backward communities are on the fringes of poverty.

The inclusion of forward castes in the reservations for “Economically Weaker Sections” is against the basic principles which led to the introduction of the reservations system in the Indian society. It is to be noted that poor economic status is often a result of uneven resource distribution and it is the state’s economic policies that aggravate the gap between the rich and the poor. While it is imperative for the state to take affirmative action for their advancement through formulation of policies, reservations is not the answer to the economic gap in the Indian society.