

The Rationality and Constitutionality of Reservation for Economically Weaker Sections of Society in India

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Abstract

Reservations are an essential element of any democratic society where some population does not get fair and proportionate representation in governance and administration. Such representation is further necessary in the societies where social prejudices and caste biases are practiced avoiding certain populations mingling and associating with mainstream society like India where caste prejudices practiced since ancient times towards SCs, STs and OBCs and gender bias towards women. The representation of these populations have been fully forbidden in conducting social and public life, access to education, access to public employment and entering into political arena in the name of caste and gender. The representation of populations can be ensured by law to maintain the peace and fairness in society and to provide good governance. Good governance requires representation of all kinds of interests in a welfare nation. This is because to protect such interests and to maintain balance and fairness in governance and to achieve "*Sarve Janah Sukhino Bhavantu*". The Constitution of India and other legislations have been enacted to give fair chance of representation of Dalits and women to some extent in governance by providing reservation in education and public employment. Though 70 years of India's independence have been passed, still the representation of Dalits and women in educational opportunities, public employment and political field is not reached the desired goals of reservation for these communities. The Bill providing 33% percent reservation for women in higher politics is still pending, the 18% reservation for SCs, 7.5% reservation for STs and 27% reservation for OBCs in educational opportunities and public employment is not implemented effectively still now and reservation in promotions belonging to SCs and STs is still hanging. The reservation for SCs, STs and OBCs still not been achieved to the level of desired goals of it. However, the Union Government stepped into another kind of reservation which may be irrational to provide 10% reservation to economically weaker sections of the society. This is irrational because still India have not been achieved the goals of equality especially the removal of caste and untouchability in society by not implementing the reservation policy as desired by the framers of Constitution of India. The 10% reservation for economically weaker section of the higher caste is going to deepen the caste system and untouchability. The reservation for economically weaker section is not a bad concept itself, but without removal of caste system and untouchability it is not sustainable and rational.

Keywords: Reservation; Rationality; Scheduled Castes; Scheduled Tribes; Other Backward Classes; Economically Weaker Sections.

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Introduction

The history of Indian society is full of prejudices based on caste and gender. The social structure of the Indian society from ancient to present is in hierarchical order initially was known as Varna system later became caste system. Initially there were four Varna such as Brahmin, Kshatriya, Vaishya and Shudra assigned them specific jobs which were exclusive of 100% reservation for each Varnas. Brahmin was the top and priestly class endowed with pursuit of education and knowledge. The Kshatriya was next top and warrior class endowed with rulership of the country. The third top was the Vaishya class endowed with conducting the business and commerce. The fourth class was the Shudras who endowed with the ancillary work to support and serve all the above Varnas known as backward classes in present context. The separate group of the people called panchama Varna or avarna i.e., depressed class of the people who need to perform menial work such as lifting the dead animal carcasses, digging the grave pond, manual scavenging etc., who were treated as untouchables for centuries presently known as Dalits. The main feature of the caste system is that, there is no upward movement of the population means the Brahmins remains Brahmin and Dalit remains Dalit forever as there is no chance for conversion of the Dalit to the upper caste Brahmin or Vaishya a fixed and rigid stratified society. There was also the concept of purity and impurity, the upper caste were regarded as pure by birth and lower as impure. Because of purity and impurity, the impure known as untouchables were prohibited from entering into temples for worship, public water bodies, entering to main places meant for public and seeking education and knowledge. The caste system is based on birth not on deeds which makes society a stagnant not a dynamic one, where the people belonging to the upper crust were meant for all enjoyments of life whereas the lower crust the Dalits were deprived of all the enjoyments of life led to a life of miseries and sufferings lower than the animals.

India was invaded initially in ancient period by the Aryans, during medieval period the Arabs and lastly the Britishers. The Aryans were responsible for introduction many things like Gods including the caste system. Neither the Arabians i.e., Muslim rulers nor the Britishers had much done to raise the status of the untouchables i.e., the Dalits.

Many countries saw the movement for liberty and equality during the reformation and

renaissance period in USA, French and other part of the world. India attained the Independence in 1947 from the Britishers and commenced the drafting of the Constitution for independent India and succeeded in getting the great Constitution due to the hard work of legal luminaries and social reformers including Jawaharlal Nehru and Dr. B.R. Ambedkar.

The prime goals of the Constitution have been enshrined the Preamble assured securing Justice Social, Economic and Political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. The full-fledged concept of liberty and equality has been enshrined in III Part of the Fundamental Rights where the concept of equality inscribed in Articles 14, 15, 16 and 17. The concept of social justice is ensured in Articles 14, 15(4) and 16(4) which may regarded as protective or positive discrimination also known as reservation policy for uplifting the oppressed classes of the country who suffered lot from centuries.

Every society is in a constant attempt to ensure that the rights of equality and freedoms available to all its citizens. Multiple mechanisms have been devised to achieve these ends and one such is the means of protective discrimination as enshrined in the Constitution of India under Articles 14, 15(4) and 16(4). The Constitution as enacted perceived that in order to bring out an egalitarian society certain category of persons, who had been marginalised for centuries, needs to be offered certain privileges for some period of time. These categories were understood to be persons belonging to Schedule Caste, Schedule Tribes and other backward classes based on their social, political, economic and educational status in the society.

Still the concept of social justice has not been achieved its goals as felt and visualised by the framers of the Constitution the present ruling Union Government hurriedly and all of sudden introduced the Constitution (124th Amendment) Bill, 2019, [1] got approved by the Parliament and Assented by the President of India resulting in the Constitution (103rd Amendment) Act, 2019 [2] for providing 10 per cent reservation in jobs and educational institutions to economically weaker sections of the society. The Act introduced two amendments to the Articles 15 and 16 of the Constitution by inserting two additional sub-clauses. It was introduced for "advancement of any economically weaker sections of citizens other than the classes

mentioned in clauses (4) and (5).” It provides for reservation of jobs in central government jobs as well as government educational institutions. It is also applicable on admissions to private higher educational institutions. It applies to citizens belonging to the economically weaker sections from the upper castes. This reservation is "in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category". The Statement of Objects and Reasons of the Act states that people from economically weaker sections of the society have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged.

The Bill passed into the 103rd Constitutional Amendment Act on 13 January, 2019 when it got assent of the President. The State governments of Gujarat, Uttar Pradesh and Assam declared to extend the 10% reservation very immediately after passage of the Bill in Parliament. However, the Constitutional validity of the same was challenged before the Supreme Court by an organisation called Youth for Equality [3] and before the High Court of Madras by the Tamil Nadu Government [4].

Rationality and Constitutional Validity of The Act Providing 10% Reservation

The Union Government have passed the enactment providing 10% reservation for weaker sections of the society leads to doubt as to the Constitutional validity of the Act providing 10% reservation. There are certain issues can be raised as to whole idea of reservation and legislation amending the Constitution of India for providing 10% reservation for economically weaker sections of the society. The issues can be raised are:

1. What is the idea of Reservation?
2. What is Purpose of Reservation?
3. Is the purpose of reservation being achieved?
4. Can reservation accorded under the Constitution of India be exceeded beyond 50%?
5. Is the Constitution (103rd Amendment) Act, 2019 providing 10% reservation for economically weaker sections against the Basic Structure of the Constitution?
6. What was the yardstick for identifying the 10% reservation which is afforded under the Constitution (103rd Amendment) Act, 2019?
7. Is reservation needed at all?

These issue are the main factors reflecting the whole idea and purpose of reservation of reservation policy which needs critical analysis:

1. The Idea of Reservation and Removal of Untouchability

Since Independence the fundamental aims of the Constitution is to convert the India into a Sovereign, Socialist, Secular and Democratic Republic by which the framers of the Constitution felt to build the egalitarian India by allowing the representation and participation of all the communities in the governance and administration.

The prime goals of the Constitution to secure Social, Economic and Political Justice; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. The full-fledged concept of liberty and equality has been enshrined in III Part of the Fundamental Rights where the concept of equality inscribed in Articles 14, 15, 16 and 17. The concept of social justice is ensured in Articles 14, 15(4) and 16(4) which may regarded as protective or positive discrimination also known as reservation policy for uplifting the oppressed classes of the country who suffered lot from centuries to make as an egalitarian society. Even though provisions were made but the word “egalitarian society” could not found its true meaning in India, and the Constitution framers felt to achieve the idea of equality by introducing the idea of reservation policy. The main purpose of the reservation is to eradicate caste based inequalities and untouchability by ensuring them 50% of seats in educational intuitions and employment. The issue of reservation based on caste raises many arguments as it affect the spirit of the Article 14 of the Constitution which provides for equality before law. However, the reservation benefits and opportunities is justified by placing exceptions to it under Articles 15(4) and 16(14) to uplift the socially and educationally disadvantaged and deprived population for centuries especially the SCs, STs and OBCs making them equal to other crust of the society.

In India, social inequality was seen as a bigger problem as caste barriers prevented people from SCs, STs and backward communities to access opportunities. The prevalence of caste system always remained an impediment for these communities to gain access to educational institutions and government jobs. Our Constitution makers were deeply concerned with the harm done by centuries of discrimination in the name of the caste system under

which a group of individuals were discriminated for no fault of their own. They were in fact oppressed by the higher castes in hierarchy. The constitution of India made reasonable accommodation to them through the institution of reservation considering that economic backwardness as not a disability and it is individuals' incapacity to rise above backwardness due to caste system that need to be addressed.

Accordingly, the rationale behind reservation in India, as enshrined in the preamble is to secure social justice for its citizens. Our Constitution not only abolishes discrimination and exploitation of the lower strata of the society but provides for protective discrimination in favour of deprived sections of society. The aim of reservation is to uplift the deprived sections of the society i.e., the SCs, STs and backward communities and make them at par with other sections. The justification for reservation is also sustained by the obligation of a welfare state. The true purpose of reservation is not unemployment but removal of imbalance in governance, administration and removal of inequality. Our Constitution provides for reservation of only three social classes viz., SC's, ST's and OBC's. It does not permit reservation for the spurious, Economically Backward class. No such class is recognised by our Constitution.

On the contrary, in post-independence India, a significant section of the politically active population voiced concerns that caste-based reservations would be divisive and compromise national unity. Numerous academics and lawyers insisted that since 'class' did not mean the same thing as 'caste', the 'other backward classes' must be identified on an economic or class basis. The judiciary came to share these views on national unity, equality and reservations. In *Balaji v. Mysore*, [5] the Supreme Court noted that ultimately, poverty, rather than community identity, was the real marker of social and educational backwardness. While the court did not categorically reject using caste identity to determine the beneficiaries of quota or reservation schemes, the damage had been done. Soon, the central government confidently declared in parliament that it stood for the economic criterion, and encouraged the state governments to do the same. However, while reserving the seats the state had to rely on the economic condition of the people to determine the social and educational backwardness of the people, which finally led to caste-based reservation.

In the later years, when there was a dispute regarding the existing reservation policy, in *Indira Sawhney case* [6], the Supreme Court held that

exclusive "economic criteria" is unconstitutional since the category of "poor" did not reflect "social backwardness". For the court, 'social backwardness' meant extreme marginalisation in terms of social status, primarily in the form of caste.

The judicial interpretation social backwardness in *Indra Sawney case* brought the idiom of social justice and inclusion, based on the sharing of state power with historically and socially disadvantaged communities to the concept of constitutional equality. This formulation introduced a distinction between government welfare policies that aimed to address economic marginalisation and quotas that aimed to address the exclusion of socially and educationally backwards groups from state power. Welfare policies, as redistributive strategies, aimed to mitigate poverty.

2. Purpose of Reservation: Social Justice vis-à-vis Alleviation of Poverty

Reservation is a policy designed to redress past discrimination against lower caste people to improve their social status through measures of educational and employment opportunities. It is an attempt to promote equal opportunity. It is often instituted in government and educational settings to ensure that depressed groups within a society are included in all spheres of life. The justification for reservation is to compensate for past discrimination or exploitation by the ruling class of the nation.

India's first President Rajendra Prasad, while addressing the assembly once said: "the assembly and the government's aim was to end poverty and dirtiness to abolish distinction and exploitation and to ensure decent conditions of living and to find an egalitarian society" [7]. Hence, the principle of affirmative action adopted under the Constitution of India to promote social equality. Social equality is a social state of affairs in which all people within a specific society or isolated group have the same status in a certain respect. At the very least, social equality includes equal rights under the law, such as security, voting rights, freedom of speech and assembly and the extent of property rights. However, it also includes access to education, health care and other social securities. Social equality refers to social, rather than economic or income equality. The basis of providing reservation is giving proportionate opportunities to the people of the Scheduled Castes, Scheduled Tribes and Other Backward Classes. The reservation as a manifestation of social justice is intended to overcome the historical injustice caused to several groups of the society i.e., SCs, STs and OBCs.

The directive principles of State policy contained in Article 46 of the Constitution enjoins that 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. In that direction, The Constitution (Ninety-third Amendment) Act, 2005, clause (5) was inserted in Article 15 of the Constitution which enables the State to make special provision for the advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, clause (4) of Article 16 of the Constitution enables the State to make special provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Even the judiciary has contributed a lot in securing the social justice to such oppressed class from the beginning.

However, over the period, while determining the social backwardness 'caste' became a sole determining factor to decide the eligibility of the individual to get the reservation. In India, there are thousands of people who belong to the upper classes, who are deprived of their right to education or other facilities because of their economic conditions. Such economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of article 15 and clause (4) of article 16 are generally unavailable to them.

The intent of Article 46 is to promote with special care the educational and economic interests of the weaker sections of the people. Economically weaker sections of citizens have to get a fair chance of receiving higher education and participation in employment in the services of the State, and they should not be deprived of their fundamental rights because of the caste or the class they belong to. While interpreting the word 'backwardness' one has to interpret it as social, educational and economic backwardness. Otherwise, the constitutional value of equality will lose its meaning. However, Article 46 is a Directive Principle of State Policy, the State can adopt such measures to uplift the weaker sections of the society not by means of increasing

reservation from 50% to 60% which challenges the very idea of reservation.

However, the Union Government has endeavoured to provide 10% reservation to the economically weaker sections of society by introducing the Constitution (One Hundred and Third Amendment) Act, 2019 is rather a welcoming step. This amendment makes a provision for reservation to the economically weaker sections of society in higher educational institutions, including private institutions whether aided or unaided by the State other than the minority educational institutions referred to in Article 30 of the Constitution and also provides for reservation for them in posts in initial appointment in services under the State. This amendment states that, this 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. Here the reservation is an addition to the existing reservation and criteria of reservation is economical backwardness.

Some of the advantages of the reservation to the economically weaker sections of the society are:

- 10% reservation to economically weaker sections of upper Community/castes will improve the status of the economically backward community and bringing economic prosperity in the country. Such kind of reservation provides equal opportunity to all the citizens of the country irrespective of their caste, creed, race or sex.
- Equality is the basic feature of our Constitution. Hence, this 10% reservation upholds the principle of equality and enables a large population to come out and contribute to the growth of the country.
- Because of the reservation provision and the benefits available to the downtrodden sectors, now many castes are making attempts to be classified as backward to avail the benefits. For ex: Patels or Patidars of Gujarat who are an economically and politically dominant community. But the latest amendment will prevent the economically weaker sections to make attempts to be recognized as backward caste, which indirectly helps SCs, STs and OBCs to get fair share in the education and job opportunities.

But, 10% reservation offends the basic idea of reservation as the reservation is meant for securing social justice not economic justice. In the broader sense, social justice may be designed to elimination of poverty but its main objective is to secure social

equality rather than the economic equality.

The reservation cannot be used as a measure of poverty alleviation programme. The Government has every right to adopt such measures to eliminate poverty like Mahatma Gandhi Rural Employment Guarantee Scheme, Skill enhancement Schemes, Scholarships, Free-ships etc. But, the Government should not endeavoured to introduce the 10% reservation as affects the interests of the oppressed and downtrodden communities as yet their social conditions are improved even after the 70 years of Independent India.

3. The Purpose of Reservation (Equality) not yet been achieved

The history of the reservation is very recent compared to the history of social injustice caused to the certain group of the populations in India. The Framers of the Constitution felt that within a short span of the period the conditions of the oppressed or depressed people i.e., SCs, STs and OBCs are improved and becomes equal to the others in the Hindu society. This would happened when the reservation policy is been truly been implemented. But, the successive ruling governments were not able to implement the reservation policy in its true sense as visualised by the framers of the Constitution. Still the life conditions of the populations belonging to SCs, STs and OBCs are not improved drastically even after the 70 Years of Independent India. Untouchability was abolished under Article 17 the Constitution remained in paper as still untouchability is prevalent in rural India and in urban places indirectly. Still desired goals of educational and employment opportunities and empowerment of these communities has not been adequately achieved. These are the reasons for not achieving social justice: 1) the successive governments has not been implemented the reservation policy in its true sense; 2) Liberalisation, Privatisation and Globalisation process has strongly hit the reservation policy; 3) Disinvestment and closure of Public Sector Undertakings; 4) introduction of Out sourcing and contract system of the lower positions of the Government sector; 5) Non-filling of backlog posts across the country; 6) Non attempt of employment creations since long time; 7) abolition of existing vacancies under guise of attaining economic stability etc. Moreover, Article 334 of the Constitution provides for political reservation initially for ten years was extended up to 70 years until now but no one political leaders from these communities are capable of electing contesting the seat reserved for other than these communities i.e., general constituen-

cies. Even Dr. Mallikarjun Kharge, the opposition leader of the Lok Sabha in Parliament and Dr. G. Parameshwara, Deputy Chief Minister of Karnataka having standing of more than 40 years in active politics are not able to contests from general constituencies, they choses only SC constituencies. This indicates that the Dalits are not equal in parity with the others. Hence, the desired goals of reservation still not been achieved and the reservation needs to be continued to these communities till they attain the equality.

4. Reservation accorded under the Constitution of India cannot be exceeded beyond 50%

The Supreme Court of India have been clearly laid down that any reservation should go beyond 50%. If the reservation go beyond 50% which will harm the meritorious crust of the population and affect Article 14 of the Constitution. Actually reservation itself is harmful for any selections and appointment as it disturb the merit which should be basis any selection for admissions and appointments as it enhances the quality and standard of education and employment thereby efficiency and efficacy can be maintained in administration. However, 50% reservation in admission to educational opportunities and government employment is an exception to Article 14 for the purpose of giving due representation to certain communities in the educational institutions, employment and politics as they were been excluded from accessing the same for centuries in India in the name of caste not on the basis of economic criteria. To overcome the social injustice the concept of social justice evolved under Articles 15(4) and 16(4) and Article 334 of the Constitution of India.

The Sahwney v. Union of India in 1992, nine-judge bench verdict, also known as Mandal case, said and it was laid down that the overall reservation cannot exceed 50 percent. Hence, the Union Government Reservation is fixed as follows:

Sl.No.	Categories	Percentage
1	General Merit (GM)	50.50
2	Other Backward Classes (OBCs)	27.00
3	Scheduled Castes (SCs)	15.00
4	Scheduled Tribes (STs)	07.50
	Total	100.00

Before Amendment of Constitution in 2019 the total reservation was 49.5% within the stipulation of the Indira Sahwney Case. But, the Constitution Amendment provides for 10% extra reservation to the economically weaker sections of the society which can be shown in the table below.

Sl.No.	Categories	Percentage
1	General Merit GM)	40.50
2	Other Backward Classes (OBCs)	27.00
3	Scheduled Castes (SCs)	15.00
4	Scheduled Tribes (STs)	07.50
5	Economically Weaker Sections (EWS)	10.00
	Total	100.00

The 10% reservation definitely affect either the interest of general merit candidates or eat the reservation of the OBCs, SCs and STs if the Supreme Court of India struck down the 10% reservation based on the Indira Sahwney Case [8]. But, the recent Constitutional Amendment Act has violated by enhancing the quota limit to 59.5%. The same has been questioned before the Supreme Court of India seeking a stay in implementing newly inserted Articles 15(6) and 16(6) in the Constitution of India which empowered the government to grant quota to the poor of the general category candidates [9].

However, the Supreme Court of India has not been granted stay but admitted to speed up the hearing [10]. The matter was again came up for hearing on March 11, 2019 before the Supreme Court of India. The matter was taken up by three Judges Bench led by Chief Justice Ranjan Gogoi declined to pass any interim order to stay the implementation of the Constitution (103rd Amendment) Act, 2019, scheduled the matter for hearing on March 28, 2019 [11]. The Centre Government is geared up and notified by the Ministry of Human Resource Development and UGC to provide 10% quota for admissions to Central Educational Institutions and Universities [12]. However, 50% restriction is relaxed in respect of certain States in 2010 [13]. They can increase the reservation quota beyond 50%. But to do so, the States must ensure that there is an extraordinary situation and that State must be included in Schedule 9th of the Constitution [14]. Presently some States providing quotas beyond 50% are as follows:

Sl. No.	States	OBC	SC	ST	Others	Percentage
1	Haryana	OBC-A-16, OBC-B-11, Special Backward Class-10, Economically Backward General Class-10 and PWD-3	13	20		70
2	Tamil Nadu	50	18	1		69
3	Maharashtra	32	13	7	Maratha-16	68
4	Telangana	OBC-35, Muslims-12	15	10	--	62
5	Jharkhand	22	11	27		60
6	Rajasthan	26	16	12	--	54

Source: Vijaya Karnataka, Kannada Daily, January 8, 2019, P.10

5. Constitution (103rd Amendment) Act, 2019 providing 10% Reservation for Economically Weaker Sections is against the Basic Structure of the Constitution

The 103rd Amendment to the Constitution enable new clause 6 in Art.16, which enables the State to make such a provision. The Government move has been challenged by an NGO Youth for Equality on the ground that the present amendment violates the Basic Structure of the Constitution.

The word Basic Structure has been nowhere defined in the Constitution. Initially the leading freedom fighters were Members of Parliament; the Supreme Court reposed in the wisdom of then political leadership. In Shankari Prasad [15] (1951) and Sajjan Singh [16] (1965), it conceded absolute power to Parliament in amending the Constitution. After that the Parliament started amending the Constitution to suit the interests of the ruling party. Then the Supreme Court in Golkanath[17] in 1967 held that Parliament does not have the power to amend the Constitution, but it vests with Constituent Assembly. Again, in KesavanandaBharati[18] the Supreme Court by 7:6 majority held that Parliament can amend the Constitution but does not have the power to destroy it - no amendment can change its 'Basic Structure.'

After deciding all the above cases the court listed few principles of Basic Structure, i.e., federalism, secularism, democracy, Supremacy of the Constitution, Fundamental Rights and Directive Principles of State Policy etc.

What Context does Basic Structure have in Reservation?

From Poona Pact (1932) between M.K Gandhi and Dr. B.R. Ambedkar to the Constituent Assembly Debates, reservation was focussed about in the context of social backwardness of castes i.e., socially disadvantaged. The 103rd Amendment makes a departure by extending reservation to

the economically disadvantaged. In 1951, the 1st Amendment brought to the Constitution and Clause 4 to Art. 15 was inserted to enable the State to make special provision for socially and educationally backward classes. Art. 16 (4) permits reservation for any backward class if it is not adequately represented in services under the State. Art. 46 which is a non-justifiable Directive Principle, says that the State shall promote educational and economic interests of weaker section, in particular SCs and STs, and protect them from social injustices and from all forms of exploitation. The 103rd Amendment in its Statement of Objects and reasons uses Art. 46, seems the government overlooked the fact that upper caste neither face social injustice nor subjected to any form of exploitation.

According to P.S. Krishnan, who was behind a number of Constitutional and Legislative enactments told that, the Constitution did not provide similar provisions for those who were only poor. It did not take into account the economic reasons to provide reservations to those poor. But that does not prevent the government from giving them other help through subsidies, scholarship, loans, economic advancement etc.

Hence, it can be a ground for violation of Basic Structure of the Constitution which can be challenged. Another question remains unanswered. 49.5% already has been reserved on caste lines. If the government does not wish to touch the 49.5%, this 10% quota will come out of remaining 51%. In effect open competition will be restricted to 41%. Will this be justifiable?

The Finance Minister of India, whereas said that it does not violates the basic structure because poverty, however, is secular criteria and it cuts across communities and religions, and he further said that, poverty as a criteria for a carve out does not in any way contravene the basic structure of the Constitution.

The Youth for Equality said the new Bill also violates basic feature of the Constitution as reservation on economic grounds cannot be limited to the general category and goes against a Supreme Court ruling that 50 per cent ceiling on reservation cannot be breached. [19]

Senior most Advocate Sri. Rajeev Dhavan pointed out that the 50% quota limit was the part of the Basic Structure of the Constitution and the new Constitutional Amendment Act providing extra more 10% reservation for the EWS has tinkered the Basic Structure of the Constitution [20].

6. The Yardstick for Implementation of 10% Reservation which is afforded under the Constitution (103rd Amendment) Act, 2019

The Act does not provide any guidelines as to who are the how the 10% who would be eligible for reservation would be identified. The Amendment Act does not define the expressions "Economically Weaker Sections". The Amendment simply says in the explanation that "economically weaker section" shall be notified by the State from time to time based on family income and other indicators of economic disadvantage. According to news reports the criterion for availing the 10% reservation is fulfilling the following conditions [21]:

- their annual income must be below Rs. 8 lakhs,
- they mustn't own more than 5 hectare of agricultural land,
- their residential area must be below 1000 sqft and their residential plot should not exceed 109 yards in any notified municipalities. In the event that their residences are in non-notified municipality areas, the plot size must be below 209 yards.

On the face of this, seems to be totally within the discretion of the State. But what makes these conditions questionable is that even as per the 2017 and 2018 data, per person per day amount to be below poverty line is Rs. 44. [22] This amounts to Rs. 1320 per person per month and Rs.15,840 per person per year. The gap between a person line in poverty line and economically backward is 50 times. The number of persons who would come in this category would be in lakhs and there is no clarity on how some coming with an economic background of 15 thousand a year and 8 lakh a year be put in the same category for providing the same kind of privilege.

This Amendment Act further creates elite class with earnings of 8 Lakhs per year to capture the reservation benefits [23]. If the whole point of the reservation to actually to offer support to people who are actually economically deprived, particularly provide education the best means to provide the same is by government providing more facilities for education so that economic factors do not play a role in accessing the same.

7. Still Reservation is needed

The very purpose of Reservation for which it was introduced is still not achieved in its entirety. These are the reasons for not achieving social justice: 1) the successive governments has

not been implemented the reservation policy in its true sense; 2) Liberalisation, Privatisation and Globalisation process has strongly hit the reservation policy; 3) Disinvestment and closure of Public Sector Undertakings; 4) introduction of Out sourcing and contract system of the lower positions of the Government sector; 5) Non-filling of backlog posts across the country; 6) Non attempt of employment creations since long time; 7) abolition of existing vacancies under guise of attaining economic stability etc. Moreover, Article 334 of the Constitution provides for political reservation initially for ten years was extended up to 70 years until now but no one political leaders from these communities are capable of electing contesting the seat reserved for other than these communities i.e., general constituencies. Even Dr. Mallikarjun Kharge, the Congress Party leader in Lok Sabha and Dr. G. Parameshwara, Deputy Chief Minister of Karnataka having standing of more than 40 years in active politics are not able to contests from general constituencies, they choses only SC constituencies. This indicates that the Dalits are not equal in parity with the others. Hence, the desired goals of reservation still not been achieved and the reservation needs to be continued to these communities till they attain the equality. This is an example of politics, the other aspects of reservations are admission to the educational institutions and employment is still not been properly implemented so that communities belonging to the SCs, STs and OBCs can compete with the rest. Hence, reservation still needed to continue so long as the inequality prevails in the society based on the caste.

Conclusion

The reservation is like hot cake each and everybody wants to gain it but to what extent and to whom it is to be given matters great. The Constitution of India provides for caste-based reservation not economy based reservation. It is ridiculous to claim that dominant landowning castes like the Jats in Haryana, Patels in Gujarat or Marathas in Maharashtra are backward. Yet these castes demands for inclusion in the list of OBCs (Other Backward Classes) to qualify for OBC job and educational quotas. Instead of asking these historically privileged castes to stop this naked grab for privileges, all political parties have supported legislation to include these dominant castes in the OBC list, leaving it to the courts to strike down such absurdities. Backwardness is no longer a historical tragedy, not even a fact, but simply a path to sneak

in special privileges for the already privileged [24].

There is no either rationality or Constitutionality to provide 10% reservation for the economically weaker sections of the society affects the very idea of reservation and violates the essential feature and basic structure of Constitution of India. There is a strong basis for challenging the 10% quota for economically weaker sections of the society in view of *Indira Sawhney v Union of India* [25] which is a landmark judgement in the history of reservation policy in India and it faces several legal and political challenges [26]. The move for the reservation to economically weaker sections of the society dilute the very idea of reservation and defeat the very purpose of reservation in eradicating caste system and deepen the casteism and untouchability.

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