

Reservation to Economic Weaker Section of General Class: Merits and Demerits



Pooja

Research Scholar,
Dept. of Law,
Bhagat Phool Singh Mahila
Vishwavidyalaya
Khanpur Kalan, Sonapat, Haryana,
India

Abstract

103rd Amendment of the constitution has passed by the parliament in 2019. The government has given 10 % reservation to economic weaker section of general category. This Amendment has again boost the debate for the reservation and Art 15(5) and 16(6) is added to the Article 15 & 16 respectively. This Amendment has many merits and demerits. It will bring democracy in true sense as by this representation of all will be possible. If these people will be able to get quality education only then they can perform their fundamental duty and will be able to become a responsible citizens. Moreover, economy will be developed in all manner but by this reservation the quality of the work should not be compromised. Awareness to needy people must be made, so that the benefit can be reached to really needy people. They should not only provide reservation in the education but also the facilities for education must be given so that they can give full fledge contribution in the development of the country and the constitutional goal of equality can be achieved in true sense.

Keywords: Reservation, Economically Weaker Section, Cast System, Democracy, Development, Amendment.

Introduction

Reservation means reserving the seats in the government jobs, Educational institutions and legislature for certain classes of people. It is fixing a quota for certain categories of people. Earlier, there exist a quota for SC, ST, OBC but in jan 2019 gov has given 10% Quota to 'Economic weaker section' of general category. As per government to avail the benefit of this quota, the very person must fulfill the following conditions:-

1. Family income must be less than Rs 8 lakhs per annum.
2. The residential flat area should be less than 1000sqft.
3. The residential plot's area should be below 200 square yards if in a non-notified municipality sector.
4. Family must not own more than 5 acres of agriculture land.
5. The residential plot's area should not be 100 square yards or more if in a notified municipality sector.

Objective of the Study

The objectives of the paper are:-

1. To find out merits and Demerits of 103rd constitutional Amendment.
2. To find out some suggestions for its proper implementation.

Research Methodology

This paper is based on pure doctrinal research. The researcher has visited various websites and library.

Review of Literature

As earlier there was cast system in India. The upper class was exploiting to the lower class. Due to this Exploitation their development got hindered or stopped. In India, initially the reservation i.e. the quota system was introduced and provisions were made for 10 years which was later amended many times to extend the quota. The initial quota was only for the schedule cast and schedule tribes but later on other backward classes and Now Economically weaker section have also included in January, 2019..

Hypothesis

Do 103rd constitutional amendment has any merit?

Reserved category
A look at the details of the 10% quota and its ramifications

ELIGIBILITY:

- People earning less than ₹8 lakh annually
- People who own farm land below 5 acres
- People who own a house measuring less than 1,000 sq ft
- In its famous Indra Sawhney judgment, the Supreme Court had set a cap of 50% on quotas

PARLIAMENT PROCEDURE

- A Constitutional Amendment Bill would be required as the Constitution does not provide for reservation on the ground of economic conditions. It envisages Amendment to Articles 15 and 16 of the Constitution
- Constitution amendment: The proposed quota will be over & above existing 50% reservation. The government is likely to bring a Constitution Amendment bill in Parliament
- Under Article 368: The Bill must be passed in each House by an absolute majority (over 50% of total membership) and a two-thirds majority of members present and voting

YOUR SEATS ARE RESERVED IF

- Your annual household income is below **RS 8 LAKHS**
- You own agricultural land below **5 ACRES**
- Your house is below **1,000 SQUARE FEET**
- Own residential land not exceeding **100 YARDS IN MUNICIPAL AREA** and **200 YARDS IN NON-MUNICIPAL AREA**

Constitutional Provisions

103rd Amendment of the constitution has passed by the parliament in 2019, giving 10 % of reservation to Economic Weaker Section of general class. This Amendment has again boost the debate for the reservation. .Reservation is justified on the ground of the following provisions of Constitution of India.

Article 14

Reservation comes in positive aspect of equality under Article 14, which is a fundamental right provided in Indian Constitution, guarantees to every person 'Equality before law and equal protection of law 'by the state within Indian Territory.

Here Equality before law has two aspects i.e. negative & positive. Here the negative aspect is restrictive aspect and it comprises Rule of law, State shall not discriminate between the individual unless justifiable and state shall treat all the persons equally i.e. equality among equals.

Rule of law

The concept of rule of law is given by Prof. A.V.Dicey with respect to English law but it also implies in Indian context up to some extent. It means law is supreme and not an individual i.e. no individual is above the law rather everyone irrespective of his position and status is to be governed by law.

Non discrimination

The state can't discriminate while applying the law and giving the benefit,among individuals on any unreasonable ground. The doctrine of non discrimination is found under Article 15 (1),16(2) and in 29 (2).

All individuals shall be treated equally by law

The word law in phrase 'equality before law 'includes the plurals of law and therefore, it also refers to individual laws. Equality before the law is referred to individual equality i.e. individual shall be treated equally by laws but all individual are not equally placed for the purpose of equal application of laws and therefore, first of all it has to be found as to who are individuals who are equally placed in the eyes of that particular law. This process is called the process of classification. Firstly, the purpose of law has to be seen. Secondly, in the light of that purpose a reasonable differentia has to be determined as to be what should be criteria of differentiating between person to fall within domain of that law and the persons who are out of domain. Those criteria of differentiation should have nexus with the purpose of that law. Such person should be classified together and as per the doctrine of equality they shall all be treated equally by law. This is called doctrine of reasonable classification.

The real essence of social justice and Fraternity could not be attained by above three guarantees rather the state has to ensure that the existing inequalities and discrepancy in the society shall be removed and for that purpose state shall take the positive actions and play a proactive role. The large scale social injuries in the society and also existence of several vulnerable classes require the state to take positive action so as to develop large scale fraternity within the society. State has the dual role:-

1. It shall remove those circumstances which results into social injustice.
2. It shall prevent any social injustice that may be existed in the society.

This is called the protective and positive discrimination. In the view of large goal of social justice positive discrimination is constitutionally permissible. The concept of positive discrimination, upliftment and reservation fall under both the phrase of Article 14.

Equal protection of law

The phrase 'equal protection of law' has to be seen in the terms of benefits of law and in the terms of distributive justice. Every law has the policy of doing benefit to the people and it is the duty of the state to ensure that benefit is made available to all equally. There should not be any discrimination between the individual in the matter of benefit and at the same time the state shall take proactive action to ensure all vulnerable classes in the society get equal benefits of law and the other beneficial policies. The concept of proactive or positive discrimination is implicit in the phrase 'equal protection of law' as well.

Exception to equality

Art 361 provides that President and the governor shall not be answerable to any court for exercise and performance of power and duties of office. Foreign diplomats are immune from jurisdiction of the court.

Article 15

This article provides guarantee of non discrimination to the citizens only, on the ground of Religion, Race, Cast, Sex, Place of birth or any of them. This article provides particular application of general rule embodied in Art 14. Clause (2) of Art 15 is a provision for social welfare and it applies upon state as well as private individual. Any place own by private individual but dedicated to public use has to be open to all people equally and there can't be any discrimination on the ground of Religion, Race, Cast, Sex, Place of birth or any of them.

Exception to Art 15 (1) and (2)

1. As per clause (3), the state is empowered to make special provision for the uplift of women and children

2. Clause (4) empowers the state to make any special provision for the advancement of socially and educationally backward classes of citizen or far Schedule Cast & Schedule tribes and under clause (5) state have been empowered to make provision for persons of categories mentioned clause (4), in admission to educational institutions, including private ones whether aided or unaided by state, other than minority educational institution referred to in article 30 (1).

New clause (6) is added by constitutional amendment bill 124th to provide 10% reservation to Economically weaker section of general category for admission to educational institutions including private educational institutions (aided or unaided by state) other than minority educational institution referred to in clause (1) of article 30 .

Article 16

Art 16 guarantees equality of opportunities to citizen in the matter of 'employment or appointment'. Clause (2) of article 16 guarantee that there will neither discrimination nor ineligibility on the ground of Religion, Race, Cast, Sex, Descent, Place of birth, residence or any of them in respect of employment and office under the state.

Exception to 16(1) & 16(2)

Clause (3)

It empower parliament to make a law prescribing any requirement as to residence within that state or Union Territory.

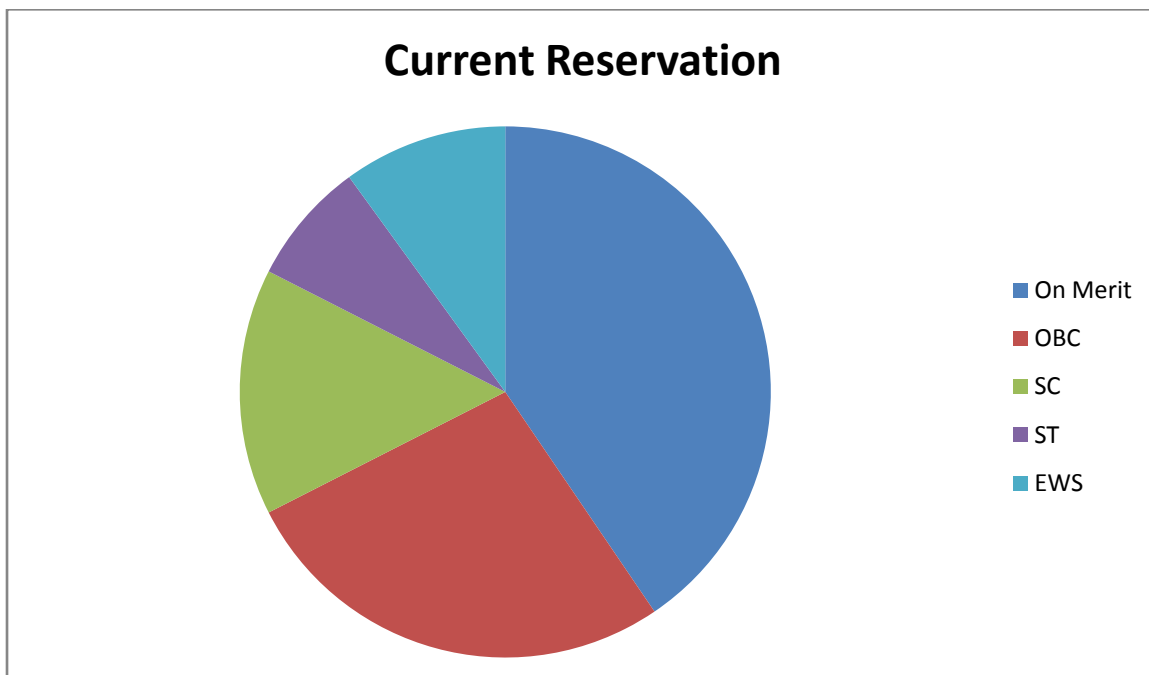
Clause (4)

It empower the state to make special provision for the reservation of appointment or posts in the favour of any backward classes of citizens, which in the opinion of state are not adequately represented in the services under the state. It must read with article 335 which says the claim of 'Schedule cast & Schedule Tribes' shall be taken into consideration constitutionally with the maintenance of efficiency of administration. But, by 82nd Amendment Act, 2000 restored the relaxation in qualifying marks and standard of evaluation in both 'job reservation and promotion to Schedule Cast and Schedule Tribes by adding proviso to article 335.

Clause (5)

Nothing in this article shall affect the operation of any law, which provides that the incumbent of office in connection with the affairs of any religious institution or any number of governing body shall be a person professing a particular religion.

New clause (6) was added by 124th Constitution Amendment Bill / 103rd Constitutional Amendment, which provides reservation to people from economic & weaker section in the government post. Explanation states that 'Economic weakness shall be decided on the basis of family income criteria.



Categories	Percentage of Reservation
Schedule cast(SC)	15
Schedule Tribe(ST)	7.5
Other BackwardClasses(OBC)	27
Economic Weaker Section(EWS)	10
On Merit	40.5

Commissions

Kaka Saheb Kelkar Commission

It was the 1ST Backward class commission set up in 1953 under clause (1) of Article 340. Kaka Saheb Kelker was appointed as a chairman of the commission, to identify social and backward classes and to ameliorate their situation. According to him, classes relate primarily to social classes base on casts.

Mandal Commission

This commission was set up in 1978 but its report was accepted in 1980. It recommended 27.5% reservation for Other Backward Classes (OBC) which raises a debate in the North Indian politics that continues today.

Judicial Decisions

Indira Sawhney Vs Union of India AIR 1973 SC 477

In this case, the scope and extent of Article 16(4) has been examined by the Supreme Court. The hon'ble Supreme court upheld the decision of union government to reserve 27% government job for Other Backward Classes (OBC) provided "creamy layer" among them are eliminated and reservation only confined to initial appointment and not promotions and the total reservation shall not exceed 50%. But in this case the court struck down 10% government job for economically backward classes among higher casts. It was also held that

1. Art 16(4) is not exception to Article 16(1).
2. Backward class includes Schedule Cast and Schedule Tribes and Other Backward Classes(OBC) including socially and

educationally backward classes, in addition to socially and educationally backward in Art 15(4).

I. R. Coelho versus State of Tamilnadu AIR 2007 SC 861

After the Indira Sawhney case government started to put such provision in 9th schedule so that it could become out of jurisdiction. But in this case Hon'ble Supreme Court held that schedule is open for scrutiny on the basis of Basic Structure Doctrine.

Post Graduate Institute of Medical Education and Reservation Versus Faculty association, JT 1998(3) SC223

Hon'ble Supreme Court held that application of reservation to 'single issolated' post will amount to 100% reservation which is not permissible.

Merits

Democracy in true sense

The provision for 10% reservation of economic weaker section of general class will ensure representation of their class in all the government jobs and in educational institutions and so this will bring democracy in true sense i.e. with the representation of all.

Fulfillment of Fundamental Right

10% reservation to the 'Swarna' class in the educational institutions will empower them and make them responsible citizens. So, they will perform their fundamental duty under Article 51A i.e. to strive towards the existence in all spheres of individual and collective activities so that nation constantly rises to higher level of Endeavour and achievements.

Social and Economic Uplift of Backward Classes

Due to reservation in educational institutions and in government jobs, the status of economically weaker section of general class in the society (socially and economically) will be uplift and other people will give them respect.

Economic Development in Overall Manner

When the economically weaker section of general class in the society gets good education, then they will be able to raise their voice for their rights. Their representative will bring in front, the problem faced by them. So problem of all will be considered and due to that their full contribution could be obtained which will increase the growth rate of the country.

Demerits**Procedure not followed**

The amendment has passed in the hasty manner and proper procedure of giving two days notice has not been followed. Moreover, Rajya Sabha's session extended to woo the voters.

Advantage to some people

Only those people take the advantage of reservation which has the knowledge. And practically it is found that the people who are in jobs, their family members are getting the benefits of reservation as they have knowledge.

Inequality

If a person got selected in reservation quota, the public look them with apathy and does not give them respect. The people assume them less capable, so inequality will be increased.

Quality Compromise

To provide such reservation, sometimes the really deserving candidate has to be left out but less deserving candidate has to be selected which is also not good for the economic development of the country.

Suggestions

1. Reservation benefit must be given at one level.
2. Such people must be given quality education so that they could become capable and would be able to get the job by their own instead of reservation.
3. There should not be any compromise with quality of the work.

4. These people must be provided education with all facilities of education, for example free books, conveyance etc.
5. Awareness must be created among all people of this general class so that they could get benefit of reservation.
6. People should not look them with apathy.

Conclusion

124th amendment Bill /103rd constitutional amendment, giving 10% reservation to people belonging to economically weaker section of general class in the society is a good initiative of the government towards the democracy, for development, for achieving equality i.e. fundamental right and will uplift the growth of the country by involvement/representation of all but the quality of the work should not be compromised, awareness of reservation must be made to needy people of EWS category and it must be at one level. .

References

Abhineet Maurya, .com Why I strongly believe that The Reservation 'crises' could become Dangerous if not solved, from www.youthkiawaaz.com

AIR1973 SC 477

AIR 2007 SC861

A. K. Jain, Law for Judicial Services Examination, Ascent Publications, Vol II, Pg 24

JT 1998(3)223

Dipti Khatri, UPES Dehradun, Equality of opportunity in public employment, dated 12 June, 2015 from www.Lawctopus.com

Dr. Jai Jai Ram Upadhaya, The Constitution of India, Central Law Publication, P 6-8

Dr.J.N.Pandey, The Constitutional Law of India, Central Law Agency, 2011,48 Ed., 2011

Reservation in India-Explained in layman's terms from www.clearias.com

Reservation in India, <https://en.m.wikipedia.org>.

Shubham Borkai and Neha Rani, 103rd Constitutional Amendment Act, 2018, 'Economic Reservation in India, Highlight and Analysis from www.mondaq.com

<https://indiankanon.org.doc>