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The New Economically Weaker Sections Quota: The Changing Idea of Affirming Action

ANIMESH NAGVANSHI¹

ABSTRACT

Every person has the right to an education, regardless of their tribe, ethnicity, or faith. The Right to Education Act 2009 was put into effect by the Indian government as part of its effort to make primary school education free and required for everyone. A significant milestone that gave low-income income groups equitable access to getting their children accepted to private schools was the 10% allocation for the Economically Weaker Section (EWS) in all private schools, government schools, and higher education. The government's plan was well-received throughout India, and it helped a lot of pupils from poor socioeconomic backgrounds. By enacting the 124th Constitutional Amendment Bill in 2019, the Indian Government established a policy of giving allocations or limits to the Economically Weaker Section (EWS). The group will be chosen according to salary factors, the administration added. This paper will give an overview of how reservations for EWS came into existence, the definition of the EWS category, the criteria for falling under this category, the significance of the Amendment, changes brought in the Constitution, and the Supreme Court judgment on its validity.

Keywords: Amendment, Constitution, Income, EWS.

I. INTRODUCTION

Societies must provide enough safety for their members to realise their full potential. When this is done, a process of growth and equal amounts of development is facilitated. Decisions made by nations show that not everyone is the same in terms of the social and occasionally rigid conceptions linked to a wide range of issues dictated by society. These choices are motivated by the notion that some people are more fortunate than others in this regard. The debate is on how they address this and ensure that minorities have access to their pictures while keeping in mind that these groups of individuals will suffer far more harm if left to their own devices. This arrangement becomes crucial because it closes a gap that society has created while also promoting communal growth and development. These groups of persons should be given the

¹ Author is a student at The ICFAI University, Dehradun, India.

required accommodations

II. CASES THAT BROUGHT EWS RESERVATION INTO THE LIMELIGHT

One of the landmark cases that aided the reservation system was the². The Apex Court gave a judgment that brought about an amendment to the Indian Constitution. The case was suited as a question of the validity of the reservation system, in the adept and concise judgment, it was stipulated that; Notwithstanding what was promulgated in clause (2) of Article 29 the state has the authority to take any single action it deems necessary to promote the development of both SC and ST or OBCs, thereby in turn upholding equality in all measures. With the application of the judgment, there became significant improvement in India regarding the reservation system. Apart from these Castes and Tribes, the government was in a bid to alleviate a means for those who are not economically or financially stable, in a belief to make things equal. This constituted the major reason why the reservation quota for the economically weak was propounded.

III. ECONOMICALLY WEAKER SECTION OF SOCIETY

Each nation should strive for growth and progress. The procedure used by the government to carry out this action is straightforward. They put into place rules that help those who require such development, which results in equitable rates of development for everyone. This idea was developed to emphasize social and economic fairness. To accomplish this aim, India has engaged in a variety of initiatives over the years, approving programs and regulations that provide enough benefits to individuals in need.

The quota system supports areas that promote development. The weaker groups are given precedence in both the workplace and school. The reservation system gives the weaker members of society a platform from which to emerge as independent individuals. Thus, the term "weaker portion" refers to the underprivileged, disenfranchised, and vulnerable segments of society, such as the ST, SC, minorities, women, and OBCs, as well as unorganized labour, people with special needs, the elderly, children, and minors. Yet, the fact that members of the upper caste are economically poorer and do not have access to chances to meet their needs is not emphasized here. As a result, they are also a less powerful group in society and should get development or reservation advantages. This concept benefited people who were seen as belonging to the "Economically Weaker Sections," providing them with the chance they needed to become more competent. What may easily make up the EWS and give it significance is the next point of

² State of Madras V Champakam Dorairajan AIR 1951 SC 226

debate at this point.

IV. DEFINITION OF EWS

There is no unified or common definition to determine who can be deemed to be in the Economically Weaker Sections in India, one will have to look at the point of view of each criterion that the government or its policies initiate. In 2019, a bill was passed to ensure the preservation of college admissions and government employment for those deemed to be in the category of Economically Weaker Sections. In generalization, Economically Weaker Sections can refer to those citizens or households with income below a certain specified level. Though there might be other determining factors that are placed by importance in decoding what the criteria to be the EWS is, family income is given the main priority in this case. EWS can be determined to be a group of people who can be classified and fall under the Un-Reserved Group and make less than 8 lakhs in yearly household revenue. The process began when the Union of Ministers approved a 10% reservation quota in terms of education admission and employment for those deemed to be EWS and part of the Un-Reserved Category of people, citing those who fall under the 50% reservation quota for the Scheduled Castes/Tribes or Other Backwards Class will not be part of the (EWS). The introduction of the³, was first given a hearing at the lower chamber of the Parliament, where it passed to the Upper house, and assent was given to that bill by President Ram Nath Kovind, bringing into existence the⁴. This amendment gave allowance for a 10% reservation quota for the Economically Weaker Sections in India, this reservation constitutes college admissions and employment opportunities for these categorizations of people. How does one belong to this class of individual, it has been mentioned that a family's yearly income must not exceed Lakh 8, but there are other criteria:

V. CRITERIA FOR FALLING UNDER EWS CATEGORY

- One must not belong to the Scheduled Castes/Castes and Other Backwards Class to meet the criteria for being considered a member of the Economically Weaker Section, as there is a reservation of 50% for such groups. Only those classified as Economically Weaker Sections (EWS) will be subject to the 10%. To satisfy this requirement, one cannot fall within both groups.

³ The 124th Amendment of the Indian Constitution, Act of Parliament, 2016

⁴ The 103rd Amendment of the Indian Constitution, Act of Parliament, 2019

- The family's combined annual aggregate revenue from all sources—salary, company, occupation, and other sources—should be less than Rs 8 lakh. Additionally included is the income for the fiscal year prior to the application year.
- Immaterial of family annual family income, any person whose family possesses or owns any of the aforementioned criteria cannot be eligible to be classified to be Economically Weaker Sections.
 - farming property of at least five acres.
 - Dwelling buildings that are 1000 cubic feet or larger in size. A domestic site of 100 square yards or more is necessary for informed areas. There must be a domestic allotment of 200 square yards or more in places other than the informed towns.

VI. SIGNIFICANCE OF THE AMENDMENT

1. Addresses Inequality

The 10% limit is egalitarian and could handle India's problems with educational and revenue disparity since the monetarily underprivileged parts of the population have been kept out of higher education and government jobs because of their financial inability.

2. Recognizing the Economically Backward

There are many individuals or groups besides the economically backward that are suffering from starvation and extreme destitution. The impoverished from the higher classes would receive statutory legitimacy thanks to the suggested quota through a constitutional change.

3. Elimination of Caste-Based Discrimination

In addition, because reservations have traditionally been linked with race, and because higher castes frequently look down on those who enter through reservations, this will progressively eliminate the shame attached to reservations.

VII. AMENDMENT IN THE CONSTITUTION

The amendment led to changes in ⁵of the Indian Constitution where it inserted clause 6 in both articles which allows the government to make provisions for the development of any economically underprivileged groups of its people, such as economic-based hiring preferences and reservations in higher education. In order to advance any monetarily disadvantaged set of

⁵ Indian Constitution, Articles 15 and 16, amended by The Constitution (103rd Amendment) Act, 2019

people, the Amendment⁶ permits the State to adopt exceptional measures, such as preferences in educational institutions. All educational institutions, including both publicly funded and independently run private schools, are required to make these adjustments, with the exception of minority-serving institutions as defined by⁷.

VIII. RECENT DEVELOPMENT

In the case of⁸, the case was brought before the Honourable Court that the Amendment violates breaches the core⁹ and foundational principles of the Constitution. The issue which was raised were-

- i. As a result of the Supreme Court's decision in *Indra Sawhney v. Union of India*, exemptions cannot be granted solely on the basis of financial considerations (1992).
- ii. Since it would violate the equity principle to exclude SCs/STs and OBCs from economic exemptions, it is illegal to do so.
- iii. The Change includes plans that exceed the 50% scheduling limit put in place by *Indra Sawhney*.
- iv. By imposing limitations on educational establishments that do not receive State support, the fundamental right to equity is breached.

The Bench concluded hearing all of the parties' arguments on September 27, 2022, and reserved judgment on the matter. The Court handed down the judgment on November 7th, 2022, and determined that the EWS Reservations and Amendment were constitutionally legitimate by a vote of 3:2.

IX. CONCLUSION

The competing field that is available to all categories—aside from the EWS—is reduced as a result of reservations. Empirically, it doesn't seem justified because there are already many EWS prospects in schools of higher learning. It is past time for the Indian political elite to overcome its propensity to keep broadening the definition of allocation to gain political advantage and acknowledge that it is not a cure-all for issues. The government should place more of an emphasis on the standard of schooling and other successful societal upliftment measures rather than making reservations based on various factors. They should become job-

⁶ Article 15(6) of the Indian Constitution

⁷ Article 30(1) of the Indian Constitution

⁸ *Janhit Abhiyan V Union of India* (Writ Petition 55 of 2019)

⁹ Right to Equality: Article 14 of the Indian Constitution

givers rather than job-seekers as a result of it, cultivating an entrepreneurial mindset.
