

**CASE COMMENTS ON ‘JANHIT ABHIYAN VS UNION OF INDIA’  
FAMOUSLY KNOWN AS  
‘EWS RESERVATION CASE’**

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**Abstract**

*In 2019, a Bill was introduced in the Parliament for having Economically Weaker Section (EWS) quota for those sections of society who are not getting any benefit from the earlier reservation. The Parliament passed the 103<sup>rd</sup> Amendment to the Constitution of India and thus 10% quota was fixed for those who though belong to general category but are economically weak.*

*This 103<sup>rd</sup> amendment added new clause 6 with explanation to Article 15 and clause 6 to Article 16 of the constitution of India wherein it provided for a maximum of ten percent reservation for “the economically weaker sections” of citizens other than “the Scheduled Castes”, “the Scheduled Tribes” and the non-creamy layer of “the Other Backward Classes” in Educational Institutions and jobs.*

*The 103<sup>rd</sup> Constitutional Amendment Act was challenged before the Apex Court by way of filing of different writs petitions/SLPs/transferred cases. The Constitution Bench of Hon’ble Supreme Court vide four separate judgments under Janhit Abhiyan V. Union of India, 2022 dated 07.11.2022 upheld the constitutional validity of the 103<sup>rd</sup> amendment vide 3:2 split verdict. The question before the court was whether the EWS reservation would be violating the basic structure of the Indian Constitution and whether it breaches the fifty percent ceiling of reservations as per already settled Supreme Court Judgments.*

*The Hon’ble court held that the 10% reservation would give due importance and acknowledgment to those poor from upper castes, who always aspire to get some help, but were always ignored from the governmental benefits in the name of being from upper caste. Further, this reservation would be a welcoming step in removing the stigma that reservation is always granted according to caste.*

**Keywords:** *Reservation, Indra Sawhney, 103<sup>rd</sup> Amendment, EWS, Basic Structure*

**I. COMMENTS ON JUDGMENT ‘JANHIT ABHIYAN VS UNION OF INDIA’ FAMOUSLY KNOWN AS ‘EWS RESERVATION’ BY SUPREME COURT OF INDIA.**

It’s true that India got independence from British rule way back in 1947 but it is also well-known fact that even after 75 years still certain sections of our community are facing discrimination on the basis of colour, caste, religion, sex, status, etc. The underprivileged people in any form are still discriminated and exploited at the hands of the privileged sections of the society. The drafters of our constitution dreamt of an egalitarian state where all are considered equal, regardless of caste, gender, race, religion, or age. This idea led to the formation of one of the Fundamental Rights known as Right to Equality enshrined under Articles 14-16 of the Constitution of India. Article 14 of the Constitution provides two types of equality, formal and substantive equality. Through formal, we mean where everyone is equal in the society regardless of gender, race, status, etc. and everyone will be treated as per the merit. The other form of equality aims at ending ‘individual discrimination’ meaning thereby taking

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cognizance of underprivileged groups and granting them some special protections, so that they can be uplifted and brought at par with the already privileged sections of the society. Finally, the idea of protective discrimination cropped up to ensure social justice in society through Articles 15 and 16 of the Constitution of India, whereby special provisions were made thereby granting reservations for Backward Classes, Women, Scheduled Tribes, Scheduled Castes in Educational Institutions and jobs for their overall advancement.

Initially in 1950 the provisions under Constitution of India did not consider inclusion of Backward Classes for the benefits of protective discrimination through reservations. Later during the 1970s when there were protests all over the country for including these Backward Classes under the provisions of Articles 15 and 16 of Constitution of India, need arose to consider such demands. As a result, in January 1979, Second Backwards Class Commission (Mandal Commission) submitted its report in 1980 with a proposal to grant 27% reservation to other backward class with already pre-existing 22.5 percent reservation for the SCs and STs. However, this could not be implemented due to political reasons.

In 1991, the government again tried to implement Mandal Commission report but with a modification of carving out a reservation quota in jobs and education for the Economically Backward Class in the 'General' category by proposing 10 per cent reservation for such sections through O.M. This led to increase in the total reservation to 59.50 per cent, considerably in excess of the ceiling of 50 per cent fixed by the Supreme Court. Resultantly, Indra Sawhney filed a writ petition against the implementation of Mandal report before the Apex Court.

Through its landmark judgment in **Indra Sawhney V. Union of India Judgment (Mandal Commission case)**<sup>1</sup> the Hon'ble Supreme Court established that there shall be a 50% ceiling on reservation including all the categories. Further, it was established that under Article 16(4) of Constitution of India, backward classes of citizens can be identified on the basis of caste only and not on economic criteria.

The concept of a creamy layer was laid down and it was directed that persons belonging to a particular family whose income is more than 8 Lakhs will be considered as creamy layer and shall be excluded while identifying backward classes. This decision ended the debate of giving 10% reservation on the economic basis.

Even after the Indra Sawhney judgment in 1992, the State of Tamil Nadu, which had 69% reservation, moved High Court and Supreme Court asking that the reservation policy of the state government should be allowed to continue for the benefit of the Backward Classes. However, the Supreme Court passed an interim order reiterating that the reservation should not exceed 50 per cent in the matter of

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<sup>1</sup> Indra Sawhney V. Union of India, AIR 1993 SC 477.

admission to educational institutions.

Thereafter, the Tamil Nadu government introduced a Bill, 1993 in the State Assembly to nullify the interim order passed by the Supreme Court. The Bill was passed by the State Legislature and later forwarded for President's assent. After getting President's assent, the 69% reservation in Tamil Nadu was settled. The said Act stating 69% reservation was also brought under the Ninth Schedule of the Constitution.

In 2019, a Bill was introduced in the Parliament for having Economically Weaker Section (EWS) quota for those sections of society who are not getting any benefit from the earlier reservation. The Parliament passed the 103<sup>rd</sup> Amendment to the Constitution of India and thus 10% quota was fixed for those who though belong to general category but are economically weak. This time the Government implemented the 10% quota through a more secure method which is constitutional amendment as compared to the earlier government which gave 10% reservation through an Executive Order. This 10% reservation was identical to the 1991 executive order except that the 1991 order did not have the backing of a Constitutional Amendment.

This 103<sup>rd</sup> amendment added new clause 6 with explanation to Article 15 and clause 6 to Article 16 of the constitution of India wherein *it provided for a maximum of ten percent reservation for “the economically weaker sections” of citizens other than “the Scheduled Castes”, “the Scheduled Tribes” and the non-creamy layer of “the Other Backward Classes”* in Educational Institutions and jobs. This new reservation provides reservation to the persons who are from general category but are economically weak. The financial position of a person to claim EWS category reservation depends upon his and his family's annual income, which should be less than ₹8 lakh.

The 103rd Constitutional Amendment Act was challenged before the Apex Court by way of filing of different writs petitions/SLPs/transferred cases, which were disposed of by 3:2 split verdict by the Constitution Bench of Hon'ble Supreme Court vide four separate judgments<sup>2</sup> dated 07.11.2022.

### **Following were the main issues before the Apex Court**

- (1) Whether the EWS reservation would be violating the basic structure of the Indian Constitution?
- (2) Whether exclusion of SEBCs/OBCs/SCs/STs covered under Articles 15(4), 15(5) and 16(4) of Constitution of India from the scope of EWS reservation is right?

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<sup>2</sup> Janhit Abhiyan V. Union of India, 2022 SCC OnLine SC 1540.

- (3) Whether providing 10% reservation to EWS breaches the fifty percent ceiling of reservations as per already settled Supreme Court Judgments.

## **II. Main Contentions raised by the petitioners challenging the 103<sup>rd</sup> amendment**

1. The petitioners challenged the above said amendment on the ground that reservations are granted to those sections of the society who were not deprived of basic resources and opportunities in life. This amendment empowers already privileged sections of the society, thus basic structure of the constitution shall be violated.
2. That the economic ground can never be the criteria for reservation as it is transient in nature and cannot be compared with the status of backwardness, which will never change. Reservation should be given to those who were disadvantageous because of birth and not by wealth. Moreover, there will never be an end to reservation as there would always be people in the society who would be poorer than others.
3. That the Apex Court in case of *M. Nagaraj & Others vs Union of India & Others*<sup>3</sup> had laid down width test. As per the amendment, there are no limitations or indicators that have been established to identify the people falling under the EWS. Whereas, for each category, be it SC, ST or OBC, the Constitution is providing the reservation by virtue of Articles 366(24), 366(25), 338, 340, 341 etc. Hence for this reason also, the amendment in question fails the guided power test.
4. That the Supreme Court in *Indra Sawhney*<sup>4</sup> case had held against the economic criteria to be the sole criteria for reservation.
5. That the reservation cannot uplift a person economically. For economic upliftment the government should provide subsidies as per DPSPs mentioned in the Constitution. In the present scenario, as per the statistics, even after providing reservation in favour of SCs/STs and OBCs, the reserved category is still poor.
6. This reservation of ten percent exclusively for general category, who are economically weak, would reduce the availability of seats of persons from creamy layer category in Socially and Educationally Backward Classes/Other Backward Classes. Thus, destroying the basic structure of the Constitution.

## **III. Contentions raised by the parties in support of 103<sup>rd</sup> amendment**

1. That the impugned Amendment neither violates the “basic structure of the Constitution” nor rule of equality by excluding the already reserved classes under Articles 15(4) and 16(4) of Constitution from the EWS category rather it strengthens basic structure.

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<sup>3</sup> M. Nagaraj & Others vs Union of India & Others (2006) 8 SCC 212.

<sup>4</sup> *supra* note 1.

2. That through Articles 38 and 46 and Preamble to the Constitution, State has been given a directive to eliminate social, economic and political differences and to encourage justice. Even Supreme Court had recognized poverty as a base for affirmative action as it is a main cause for social and educational backwardness. Thus, new class promotes 'Economic Justice', as set out under Preamble of our country, thereby fostering basic structure of the constitution.
3. That the 'Living Tree' approach should be followed to elucidate the Constitution which means that a constitution is organic and must be read in a broad and progressive manner so as to adapt it to the changing times. The right of EWS has emanated from Articles 21, 46, 51 (c) and 253 of the Constitution of India and "Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights". The amendment allows the State to achieve economic justice by removing poverty by giving reservation to economically weaker sections of the society.

#### **IV. Relevant provisions and Precedents analyzed by the Apex Court while deciding the matter**

While deciding the matter in hand, Hon'ble Apex Court had considered various provisions of Constitution of India in detail especially; Preamble of India which specifies the goal which the constitution drafters had in their mind while drafting the Constitution, Article 368 to check the procedure adopted for constitutional amendment. Articles 13 to 18 of the fundamental rights thereby specifying that there will be no discrimination among citizens of India on specific grounds, but calls for reasonable classification. Articles 38, 39, 46 are the directive principles of the State Policy and aim to achieve an "egalitarian socio-economic order and eliminate social, economic and political differences" and administer distributive justice. Further landmark **judgments like Kesavananda<sup>5</sup>**, which partially overruled **Golak Nath<sup>6</sup>** and established that there can be amendments in the Constitution but subject to the basic structure of the Indian constitution.

The main authority was **Indra Sawhney v. Union of India<sup>7</sup>** wherein it was held that "the economic criterion alone for determining backwardness of classes or groups is impermissible, because the indicators are social and educational backwardness having regard to the express terms of Articles 15(4) and 16(4)".

After all the relevant discussion and as per the already settled precedents the constitutional validity of the 103<sup>rd</sup> amendment was upheld vide 3:2 split verdict.

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<sup>5</sup> *supra* note 1.

<sup>6</sup> I.C Golaknath & Ors vs State of Punjab 1967 SCR (2) 762 (India).

<sup>7</sup> *supra* note 1.

While passing judgment in favour of impugned amendment, the Hon'ble Judges based their decision on the aim to achieve egalitarian socio-economic order, the State has the permission of the constitution to consider and cater the needs of economically weak sections of the society as explained from the texts of Preamble and provisions in Part III and Part IV of the Indian Constitution.

Practically, while observing vertical reservation, it has always been practiced that the target group is given benefit by excluding others from the reservation to achieve the desired results. The amendment which classifies EWS as a separate class from those who already exist under Articles 15(4), 15(5) and 16(4) of the Constitution falls under reasonable classification thereby making themselves eligible to get the reservation benefits. The same principle was applied when reservation was granted to groups of SEBCs, OBCs, SCs, and STs and others were excluded in their reservation. In other words, if exclusion of general EWS from SEBCs/OBCs/SCs/STs reservation is correct compensation then so is the exclusion of SEBCs/OBCs/SCs/STs from EWS reservation.

Moreover, while considering the precedent settled in case of Indra Sawhney which established a ceiling limit of 50% in reservation for the benefit of meritorious candidates of general category, the court commented that those who are already availing the benefits of reservation, should not raise any objection to the reservation which is given for the upliftment of other weaker sections of society through affirmative action of State.

The court even criticized that "basic structure" cannot always be used as a weapon to kill every effort of the State to do economic justice as given under Preamble and DPSP and, in particularly Articles 38, 39 and 46 of the Constitution. Articles 15 and 16 of the Constitution while providing reservation to the certain sections of the society act as exception to the general rule of equality.

Therefore, it was held that EWS can be validly treated as a separate class and will be a reasonable classification under Article 14 of the Constitution which lays down that "Equals cannot be treated unequally; unequals also cannot be treated equally". If unequals would be treated equally then it would defeat the provisions of equality as per Articles 14 and 16 of the Constitution. The 103rd amendment has not affected the rights given to SCs/STs and backward class of citizens covered under Articles 15(4), 15(5) and 16(4) in any way, it has just created another class within general category who are economically weaker without affecting already reserved category rights.

However, the parliament did not infringe substantive or procedural limitations under Article 368 of the Constitution of India. The 103<sup>rd</sup> amendment was passed through proper procedure and has acted within the allowed limits as per

Preamble, Fundamental Rights and DPSPs of the Constitution without violating the basic structure of the Constitution of India as held in *Kesavananda Bharti*<sup>8</sup> case.

Through the present judgment it is even considered that this might act as a first step in removing caste-based reservation from the system and will serve for the benefit, promotion and upliftment of those generals who are financially weak and are not covered under Articles 15(4) and 16(4) of the Constitution. Sooner, our Constitutional goal of social and economic justice for all sections of society can very well be achieved with the affirmative action of the State in the form of the 103<sup>rd</sup> amendment.

**Hon'ble Justice S. Ravindra Bhat had a different approach and considered that** the reservations for EWS category is not on sound grounds as the new category under EWS never faced any backlashes from the society nor were they discriminated with intention. Moreover, they had their chances of growth unlike the socially and educationally backward classes (and SC/STs), who were consciously made victims of discrimination and genuinely required some support to grow in their life, which they got in the form of reservations. However, the exclusion of other disadvantaged sections of the society from the EWS reservation, who are similarly placed, just because of reason that these sections are already getting the benefit of reservation, was considered as violation of equality code as well as basic structure of constitution.

The already reserved categories have been forced to confine to their already granted reservation quotas (15% for SCs, 7.5% for STs, etc.), which is again disadvantageous to them. Further, they cannot commute from their reservation to EWS reservation, even if they are economically weak.

## **V. WAY AHEAD**

The main concern of the of our Parliament and Judiciary must be to achieve social and economic justice through affirmative action by the State. Therefore, reservation solely on the economic criteria does not violate the basic structure of the Indian Constitution nor infringe the equality code by prohibiting already reserved classes under Articles 15(4), 15(5) and 16(4) from the benefit of EWS reservation.

It is also a matter of thought for all of us that for how long this reservation should continue in the name of underprivileged society when many among the reserved categories are holding top most positions in the country and still their next generation are filling forms for admission and jobs under reserved category. That according to Article 334 of the Constitution, the provisions

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<sup>8</sup> (1973) 4 SCC 225

relating to the reservation of seats for the SCs and the STs in the Lok Sabha and State Assemblies shall end on the expiration of a period of eighty years from the commencement of the Constitution. By the 104<sup>th</sup> amendment reservation pertaining to Anglo-Indian Community had already been ceased. Similarly, a time line has to be there with regards to the reservations/special provisions as mentioned under Articles 15 and 16 of the Constitution of India. Policy of reservation cannot be allowed for all times to come if we really want an egalitarian, classless and casteless India. In the words of **Sardar Patel** - “But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country; that in India there is only one community...”

That reservation should be implemented to secure social and economic justice and eliminate the social, educational and economic backwardness of the weaker sections. Those who have attained education and employment from backward class and do not need any more reservation should be excluded from the reservation so that the focus can be shifted to those classes who are in genuine need of help. The need of the hour is to check the criteria to check the backwardness.

That the 10% reservation to economically weaker sections of the society is a welcoming step that would address issues of educational and income inequality in India as this section has always been deprived of higher educational institutions and public employment due to scarcity of finances. This would give due importance and acknowledgment to those poors from upper castes, who always aspire to get some help, but were always ignored from the governmental benefits in the name of being from upper caste. Further, this reservation would remove the stigma that reservation is always granted according to caste.

## **References:**

### **List of Cases:**

- *I C Golaknath & Ors v. State Of Punjab & Anrs* 1967 SCR (2) 762
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