

EVALUATING THE CONSTITUTIONAL LEGITIMACY OF ECONOMIC RESERVATION POLICIES

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ABSTARCT

The constitutionality of economic reservation laws, which give preference to economically disadvantaged groups in the affirmative, has been a topic of much discussion. This assessment critically looks at how these policies comply with constitutional ideals, with a particular emphasis on how the Constitution strikes a balance between equity and equality. Reservations in India have always been made on the basis of social and educational deprivation rather than economic deprivation. A significant discussion concerning the constitutional legality of the reservation brought about by the 103rd Constitutional Amendment, 2019 arose when reserve was established for the economically poorer part. This essay critically investigates whether the Indian Constitution's fundamental construction is violated by the violation of the half-reservation cap. The author also considers the unlikely scenario that reservations may be made only on the basis of economic factors and the assumption that the 103rd Amendment broke the equality law. To appreciate the Indian judiciary's position on the 103rd Amendment's constitutional legitimacy, the author also provides insight into the dissenting and assenting decisions in the Janhit Abhiyan v. Union of India 2022 case. The article concludes that there are other ways to end poverty and assist the oppressed besides reservations, and it makes the case that violating the cap on reservations will have an impact on the rights of legitimate candidates.

Keywords: *Constitutional Legitimacy, Economic Reservation Policies, Constitutional Amendment, Indian Constitution*

1. INTRODUCTION

Economic reservation policies have emerged as a crucial facet of socio-economic governance, with the objective of mitigating inequities and advancing fair opportunities across diverse sectors. The goal of these policies is to bridge the economic divide and promote inclusive growth by giving economically disadvantaged populations a larger share of opportunities or resources. Whatever the case, their constitutional legitimacy frequently becomes a source of disagreement, especially in states whose laws are closely tied to the ideals of equality and non-discrimination.

The Constitution serves as the primary legal text that defines fundamental rights and sets forth the mandates that direct official policy in many democracies, including India. The Indian Constitution, for example, forbids discrimination based on race, religion, caste, sex, or place of birth and requires equality under the law (Article 15). Nevertheless, the Constitution also permits affirmative action policies to promote the advancement of particular groups in society and academia (Article 15(4) and 16(4)). While the goal of economic reservation policies is to increase possibilities for the poor, they must take into account these constitutional principles to make sure they don't violate the fundamental rights that all citizens are entitled to.

A thorough examination of multiple variables is necessary to assess the constitutional legitimacy of economic reservation measures. First and foremost, it entails determining whether or not these policies are consistent with the Constitution's value of justice and equality. Examining whether these measures alleviate past injustices without fostering fresh forms of marginalization or inequality is one way to do this. The review should also take into account the standards used to qualify for economic reservations and whether or not these standards are transparent, equitable, and grounded in actual economic disadvantage measurements.

Moreover, the validity of economic reservation policies is significantly shaped by the judicial interpretation of constitutional restrictions. Courts frequently examine these rules to make sure they don't unfairly benefit or discriminate against any group and that they comply with the constitutional framework. Legal analysis continues to be dynamic in examining how to strike a balance between upholding constitutional equality and advancing economic equity, reflecting continuous discussions about the role of affirmative action in modern society.

A complex combination of legal, social, and economic factors must be taken into account while assessing the constitutional legality of economic reservation laws. It is necessary to carefully consider how these policies affect different societal segments and whether they are consistent with constitutional ideals. The constitutionality of economic reservation laws is an important topic of legal and academic research as they continue to evolve, reflecting broader conversations about justice, equity, and the role of government in addressing socioeconomic imbalances.

2. LITERATURE REVIEW

Dippel, C. (2014) study looks into the economic effects of restricted conjunction on Native American reservations, with a particular emphasis on the benefits of past restrained integration programs for local economies. Dippel shows that restricted concurrence has had long-lasting effects on the economic turn of events using historical data and econometric approaches. These findings have important ramifications for policy-making and indigenous networks. According to the study, reservations subjected to restrictive integration policies frequently have slower rates of economic advancement than reservations that were not as negatively impacted by similar policies. This study adds to our knowledge of how past policies have shaped economic outcomes and emphasizes the need for customized policy interventions to deal with the unique issues that the Native American people group faces.

Eldredge, C. D., & Shannon, M. (2022) examine how social power dynamics influence people's reluctance and objections to human rights accords. Their analysis shows how nations maneuver around international standards and further their own interests by using objections and reservations as instruments. In order to demonstrate how states with substantial social power affect the drafting and execution of human rights accords, the paper looks at a number of case studies. Eldredge and Shannon shed light on the subtleties of international treaty-making and the influence of force dynamics on global human rights governance by emphasizing the strategic use of reservations and objections. Understanding the constraints and possibilities of human rights accords in accomplishing their intended purposes depends on this research.

Feld, L. P., & Wieland, V. (2021) analyze the effects of the German Federal Constitutional Court's decision on the monetary policy approach of the European Central Bank (ECB). Their research focuses on how the court's ruling may affect the European Central Bank's policies as

well as the larger European financial system from a legal and economic standpoint. The analysis provides a thorough evaluation of the ruling's impact on the ECB's capacity to implement its monetary policies as well as any possible repercussions for the economic stability of the Eurozone. The study sheds light on the difficulties the European Central Bank faces in striking a balance between legal requirements and its economic objectives by highlighting the conflict between national legal frameworks and supranational financial institutions. Understanding the relationship between national legal systems and international financial laws is made easier with the help of this study.

Gopalan, K. R. (2020) study looks on the reservations policy in the education sector that helps India's economically weaker sections (EWS). The study provides a thorough examination of how these reservations might enhance economically disadvantaged people's access to and performance in school. Gopalan assesses how reservations affect the enrolment, retention, and academic success of understudies. The report also discusses the difficulties and responses related to this policy, such as implementation concerns and striking a balance between equity and legitimacy. This study is important for comprehending the role of affirmative action in education and how it affects equality and social mobility.

Kampourakis, I. (2023) focuses on how political and legal frameworks influence economic policies and governance as it explores the idea of a "economic constitution" in Europe. This study examines the relationship between political economy and law, emphasizing the ways in which legal norms and economic theories interact. According to Kampourakis, the economic constitution is essential in establishing the bounds and tenets of economic policy in Europe. This study advances our knowledge of the implications of legal frameworks for economic governance and the ways in which political and economic variables interact to influence the outcomes of policy.

Li, Z. (2020) the link between political legitimacy, constitutional democracy, and Confucian meritocracy is examined in this essay. The study looks into the connections between modern notions of political legitimacy and democratic institutions and Confucian ideas of legitimacy and governance. Li contends that although Confucian meritocracy highlights the need of moral and intellectual ethics in government, it also poses problems for the popular power and individual rights tenets of constitutional democracy. The study compares and contrasts

democratic and Confucian conceptions of government, providing insights into the ways in which traditional ways of thinking might impact modern political systems. Understanding the theoretical and practical ramifications of combining traditional and modern governance principles is made easier with the help of this study.

3. 103RD CONSTITUTIONAL AMENDMENT 2019

In order to give 'Economically Weaker Sections' (EWS) 10% reservations in government jobs and education, the Ministry of Social Justice and Empowerment introduced the Constitution (124th Amendment) Bill in the legislature. The Constitution (104th Amendment) Bill became the Constitution (103rd Amendment) Act, 2019 after the Union government changed the constitution in about 48 hours. The modification received approval from the government on January 7th evening. The following day, January 8th, the measure was tabled in the Lok Sabha and, following five hours of deliberation, it was passed. The Rajya Sabha received the measure on January 9 in the afternoon, and the same evening, it was passed by the assembly with 165 votes in favor and 7 against. After that, the measure was sent to the president for his approval. On January 12, 2019, the then-President Ram Nath Kovind granted his assent, and on January 14, 2019, the bill became operative.

Although Congress, the opposition party, did not oppose the law, they felt that it was introduced too quickly in light of the impending elections and that a parliamentary panel should be convened and given more time to study it. Opposition lawmakers questioned whether the measure would withstand judicial examination after the P. V. Narasimha government's forward quota scheme was rejected by the Supreme Court in 1992. A number of opposition politicians questioned the government's reasoning for imposing the 10% limit.

The measure was opposed by the Rashtriya Janata Dal (RJD), All India Maki-E-Ittehadul Muslimeen (AIMIM), and the Indian Union Muslim League (IUML). Both Dravida Munnetra Kazhagam (DMK) and All India Anna Dravida Munnetra Kazhagam (AIADMK) rejected the bill in the Rajya Sabha; however, in the Lok Sabha, the bill was backed by 18 of 23 parties, including AIADMK.

3.1. Overview of the Amendment

The Economically Weaker Section (EWS) may be granted preference for admission to government and private educational institutions as well as appointments to government occupations. This is made possible by the 103rd Amendment, which added Articles 15(6) and 16(6) to the Constitution.

Eligibility to claim Economically Weaker Section Reservation:

- The candidate must fall within the "general category" and not be eligible for any other reservation (SC, ST, or OBC).
- The family's total annual gross income (from all sources) must have been less than Rs. 8 lakhs the year before.
- A family shouldn't possess five acres or more of agricultural property.
- A family should not possess a home property that is 1000 square feet or larger.
- In municipalities with notification, a family is not allowed to own a home site that is 100 square yards or larger.
- A family shall not own a residential plot that is 200 square yards or larger, unless they live in a notified municipality.

For EWS reservation, family includes:

- Candidate seeking benefit of reservation
- Candidate's parents
- Candidate's siblings below 18 years of age
- Candidate's spouse & children below 18 years of age

Evidence that you are a member of the Section on Economic Weaker To be eligible for the EWS reservation, a candidate must present a "Income and Asset Certificate." Any local government authority, such as a Tehsildar, must issue the certificate.

4. DOES BREACH OF 50% RESERVATION CAP VIOLATES BASIC STRUCTURE OF THE CONSTITUTION?

In India, the total proportion of reservations was 49.5%, with 15% going to Scheduled Castes, 7.5% going to Scheduled Tribes, and 27% going to Other Backward Classes, prior to the 10%

reservation for Economically Weaker Section. The overall proportion of reservations after the 103rd amendment is now 59.5%, exceeding the 50% reservation cap set in the Indra Sawhney case. The EWS reserve amendment violates the fundamental framework of the Indian Constitution because it exceeds the 50% reservation cap, according to a number of observations made by academics, lawmakers, opposition parties, judges, etc. Prior to scrutinising whether the Amendment breaches the fundamental framework of the Indian Constitution, it is imperative to comprehend the essence of the Indian Constitution.

Many cases have addressed the fundamental framework of the Indian Constitution; however, *Kesvananda Bharati v. State of Kerala* is a seminal case where the fundamental framework was thoroughly examined and established. According to Justice S. M. Sikri, the Indian Constitution's fundamental framework:

- Supremacy of the Constitution
- Separation of powers between judiciary, legislature and executive
- Secular character of the Constitution
- Federal character of the Constitution
- Democratic and republican form of government
- Unity and sovereignty of India

Over time, additional elements that have come to be acknowledged as the fundamental framework of the Indian Constitution include:

- Judicial Review
- Rule of law
- Parliamentary system
- Balance between fundamental rights & directive principles
- Rule of equality
- Dignity & Freedom of an Individual
- Power of Supreme Court under Article 32, 136, 142 & 147
- Power of High Court under Articles 226 & 227.

Now that the fundamental framework of the Indian Constitution has been established, let us examine some of the seminal rulings and cases regarding the 50% reserve cap.

In the case of *M. R. Balaji and Ors. v. State of Mysore*, the reservation cap of half was discussed without any precedent. In State Medical and Engineering colleges, the court was asked to decide whether it was reasonable to reserve 68% of the seats for SEBCs, SC, ST, and OBCs while only 32% were reserved for merit candidates. Reserving 68% of seats at universities, including as medical and engineering colleges, would be considered constitutional fraud, according to the ruling of the Apex court. Although reservation is required to help underprivileged classes advance, the court reasoned that merit students should not be prevented from obtaining admission to universities.

When deciding on OBC reservations in the historic case of *Indra Sawhney v. Union of India*, the Hon'ble Supreme Court established a half-reservation cap. According to the Honorable Court, there are "extraordinary situations" in which this reservation cap may be exceeded, although extreme caution and attention must still be taken. The judiciary has frequently used this ruling to halt reservations that are more than the half-cap.

The Hon'ble Supreme Court ruled in 2021 that the reservation does not fall under the extraordinary circumstances or extra-ordinary situation as defined in the *Indra Sawhney* case, in a case involving the Maharashtra State Reservation (Socially and Educationally Backward Classes) Act, 2018, which granted 12% and 13% reservation to SEBC on top of half reservation. The Court declared the Act to be unconstitutional and struck it down.

The court in the case of *Dr. Rajesh Baghel v. State of Chattisgarh*⁸ rejected the state government's amendment raising the reserve proportion for SC, ST, and OBCs to 58%. The Court held that no special situation existed that would support breaking the half-cap restriction.

In the case of *Janhit Abhiyan v. Union of India*, the Supreme Court considered whether the 103rd Amendment violated the fundamental framework of the Indian Constitution due to a breach of the half cap. The Apex Court ruled 3:2 in favor of upholding the 103rd Amendment, ruling that the half ceiling limit was not "inflexible" or "inviolable" and that it only applied to the reservations made possible by Articles 15(4), 15(5), and 16(4) of the Constitution for public employment and education. One of the three justices who voted in favor of the assenting order, Justice Dinesh Maheshwari, dismissed the argument that the inclusion of EWS reservations would cause the overall reservation percentage to exceed the Mandal Commission's half-limit, so breaching the fundamental provisions of the Constitution. Additionally, he said that the

fundamental principles of the Indian Constitution would not be broken by permitting or authorizing the State to create special provisions for reserves based on economic standing.

5. RESERVATION BASED SOLELY ON THE ECONOMIC CRITERIA

The primary goals of reserves were to uphold historical injustices against marginalized populations, encourage and adequately represent the lower classes, and enact laws that would improve access to jobs and education. Scheduled Caste, Scheduled Tribe, and other disadvantaged classes were acknowledged as the socially and educationally backward groups that experienced severe discrimination and hence need representation in society. Caste was the foundation for granting these reservations. There was a great deal of unrest in 2019 when the government implemented income-based reservations for the "Economically Weaker Section."

The fundamental argument against income-based reservations is that their major purpose is to give the underprivileged classes proper representation and that they cannot be utilized as a program to reduce poverty. The main causes of discrimination in our culture are not a person's financial situation, but rather characteristics like caste, religion, race, etc. It has been argued that the discrimination that the SC, ST, and OBCs experienced caused them to be socially and educationally backward; therefore, representation of these classes is necessary. However, what has prevented the economically weaker members of the forward class from advancing, which is the reason they require representation?

The term "backward classes" refers to a group of people who are economically as well as socially and educationally behind. The Supreme Court pointed out that caste isn't the sole criterion that can be applied to assess backwardness in *Ashoka Kumar v. Union of India*.

Additionally, the concept of income-based reservation has not been entirely rejected by the Indian judiciary. Justice D. Y. Chandrachud established two standards in *K. C. Vasanth Kumar v. State of Karnataka* to determine whether a specific class of persons qualifies as backward or not. The first requirement is that the concerned class of citizens must be as backward as members of the Scheduled Caste and Scheduled Tribe, or perhaps more so. In order to determine if a class of citizens is economically behind in light of the general economic conditions in society, the second test requires them to pass the "means test" established by the state government. The "only criterion that can be realistically devised is the one of the

economic backwardness," Justice Desai noted in the same case. He issued a warning, saying that if caste is the only criterion used to determine backwardness, this could unintentionally lead to the continuation of the caste system.

Any government initiative to provide reservations for economically disadvantaged sections cannot be categorically rejected or declared unconstitutional on the grounds that the basis for the reservations is economic. Reservations for those who are economically disadvantaged are not outright prohibited. The Supreme Court defended the idea that creating reservations for the economically disadvantaged is a first step toward achieving social justice and economic justice. Nonetheless, there are a few gaps in the amendment that persons can take advantage of in order to falsely claim this reservation. The underreporting of income is one such gap. A sizeable portion of the Indian populace, regardless of whether they work for themselves or in the organized or unorganized sectors, has various sources of income. Underreporting of income can occur in a variety of ways, but two situations are frequently seen: I) Individuals working in the organized sector may only reveal their primary source of income and withhold income from other sources; ii) Individuals working in the unorganized sector or as independent contractors may understate their primary source of income. One of the biggest risks associated with the EWS reservation is underreporting income by those who do not truly qualify as economically disadvantaged in order to receive the benefit of the reservation.

6. VIOLATION OF THE EQUALITY CODE

All Indian people are guaranteed equality before the law under Article 14 of the Indian Constitution. However, our country's constitution writers created specific provisions to end inequality and create an egalitarian society because social and economic disparity is so prevalent in our culture. "Equals must be treated equally while unequals need to be treated differently" is one way to express the equality principle. Applying this principle requires making a distinction between those who are equal and should be placed together, and those who are different and should be kept out of that group. This is known as sensible classification. Class-legislation is prohibited by Article 14, although fair classification is not prohibited. The idea of appropriate classification and compensatory discrimination for the upliftment of these classes who were exposed to hardships, injustice, and unequal treatment is the foundation for the reservation provisions for SC, ST, OBC, and SEBC. The classes and groups who were

already benefiting from the provisions listed in Articles 15(4), 15(5), and 16(4) of the Constitution were excluded from the provision when it was implemented in 2019 as a reservation for the economically weaker section. The Equality Code was claimed to be fundamentally violated by this exclusion, and the Janhit Abhiyan Case also touched on this subject.

In this instance, Justices Dinesh Maheshwari and Ravindra Bhat expressed differing views on the matter of the SC, ST, OBC, and SEBC groups' exclusion from the EWS reservation. According to Justice Dinesh Maheshwari, there is a strong case for extending the benefits of EWS reservation to those classes that are already eligible for reservation under other provisions. In the absence of this exclusion, the balance between the general principles of equality and compensatory discrimination would have been upset, giving undue advantage to classes that are already eligible for reservation under Articles 15(4), 15(5), and 16(4).

In contrast to the majority view, Justice Ravinder Bhatt said that the 103rd Amendment violates the fundamental framework of the Indian Constitution because it omits the SC, ST, OBC, and SEBC from the aforementioned provision. According to him, it is against the equal and open-door principle to use the doctrine of classification to distinguish between the poorest members of society (those who belong to the forward class and are not covered by any reservation) and other members of society who are protected by reservations because of caste stigmatization. He made the point that although poverty permeates all social groups and classes, extreme forms of it are more prevalent in areas where there has been a great deal of prejudice. When specific social groups are left out of the non-discriminatory laws that were designed for them, the non-discrimination principle is irrefutably broken. He pointed out that the excluded sections in Articles 15(6) and 16(6) violate the fundamental structure of the Indian Constitution since the 103rd Amendment gravely destroys the identity of the document by striking at the heart of the Equality law, which is non-discrimination.

Regarding this matter, Justice Dinesh Maheshwari's viewpoint appears to be more reasonable. The SC, ST, OBC, and SEBC are already protected by the compensatory discrimination listed in Articles 15(4), 15(5), and 16(4). Reservation for Economically Weaker Section is a sort of compensatory discrimination serving the sectors of society that are not covered under any reservation. Compensatory discrimination is by its very nature exclusive; it can only have

substance and significance if others are excluded. According to the equality rules, a reasonable classification is acceptable if it avoids a double benefit (S. Seshachalm and Ors v. Chairman Bar Chamber of Tamil Nadu and Ors¹³). Because the exclusion of SC, ST, OBC, and SEBC from the EWS reservation can be considered a reasonable classification that does not violate the equality code or the fundamental framework of the Constitution, it makes sense to exclude these groups from the reservation because doing so would result in a double benefit for the class of people receiving benefits under Articles 15(4), 15(5), and 16(4).

7. CONCLUSION

In conclusion, the intricate interaction between equality and social justice underpins the constitutional legality of India's economic reservation policy. The 103rd Amendment seeks to lessen socioeconomic inequality and assist the oppressed by reserving 10% of land for the Economically Weaker Section. But this isn't the way to end poverty. The government might put laws into place to support and train the economically disadvantaged group, allowing them to advance their skill levels and obtain better prospects in the workforce or in educational institutions. The amendment throws off the delicate balance between safeguarding the interests of merit candidates and granting reservations to the underprivileged, which leads to new forms of inequity against the rest of society. Notwithstanding their current eligibility for benefits under Articles 15(4), 15(5), and 16(4), SC, ST, OBC, and SEBC are excluded. This does not violate the equality law or the fundamental framework of the Indian Constitution. Strong controls are required to stop dishonest candidates from requesting reservations through EWS.

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