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103RD AMENDMENT ACT, 2019.

[EWS RESERVATION]

[JANHIT ABHIYAN vs. UOI]

“We'd have to concede, in full, the demand of those communities that have not yet been employed in public service to the fullest extent, but what would happen is that we'd destroy the first principle that we all agree on, namely equality of opportunity.”

- B.R. Ambedkar

Supreme Court upheld the verdict of the EWS reservation by majority of 3:2 and introduced it through the One Hundred and Third Amendment Act, 2019. This Amendment allows the state to give 10% reservation to the Economical Weaker Section in educational institutions and public services. In this blog, we will see the constitutional changes, the bench's opinions regarding this amendment, and the effect and criticism of the said amendment.

CONSTITUTIONAL CHANGE:

103rd Amendment mainly amends Article 15¹ and Article 16² of the Constitution of India. The said amendment includes Article 15(6)³ and Article 16(6)⁴ of the Constitution.

¹ INDIA CONST. art.15.

² INDIA CONST. art. 16

³ INDIA CONST. art. 15, cl. 6

⁴ INDIA CONST. art. 16, cl. 6

- Article 15(6) states that the state can make any special provision related to their admission to educational institutions including private institutions.
- Article 16(6) states that the state is free to make provisions for EWS people regarding the reservation of appointments or posts in public service.

There were three main issues before the Supreme Court to uphold the 10% reservation for the EWS category:

1. Can reservations be provided solely based on economic criteria?
2. Can SEBC, SC, and ST groups be excluded from EWS reservations?
3. Can EWS reservations exceed the 50% limit?⁵

JUDGES' OPINIONS:

Justice Dinesh Maheshwari, Bela Trivedi, and J.B. Pardiwala upheld the reservation solely based on economic criteria and stated that economic criteria for reservation are constitutionally valid. Reservations, according to Justice Maheshwari, are an affirmative action tool designed to combat not just socioeconomic and educational backwardness, but also other disadvantages.⁶ Justice Trivedi mentioned that “EWS is a category of the disadvantage of its own”. Further, she clarified that ‘Just as equals cannot be treated unequally, unequal cannot be treated equally’.⁷ By this rationale, three judges upheld that SEBC, ST, and SC people can be excluded from this reservation because they are already covered under the different reservations.

⁵ Editor_4, *Supreme Court by a majority of 3:2 upholds the validity of 103rd Constitutional Amendment Act, 2019*, SCC online (March 21, 2024. 10:10 P.M.) <https://www.scconline.com/blog/post/2022/11/07/supreme-court-by-a-majority-of-3-2-upholds-the-validity-of-103rd-constitutional-amendment-act-2019/>

⁶ Ayushi Saraogi, *EWS Reservation Judgment: SC Upholds 103rd Amendment in 3-2 Majority*, SCO (March 21, 2024. 10:30 p.m.) <https://www.scobserver.in/reports/ews-reservation-judgment-sc-upholds-103rd-amendment-in-3-2-split-verdict/>

⁷ Ibid.

People having a gross family income of Rs. 8 lakh can make use of the quota. The aforementioned advantage does not apply to groups that already hold reservations for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).⁸

In the case of *Indra Sawhney vs. UOI*⁹. The Supreme Court has established a reservation limit of 50%, and while this amendment immediately breaches the 50% ceiling restriction, the majority has said that it can be exceeded in unusual circumstances and is flexible in nature, therefore it is constitutional. Most notably, this 50% upper limit applies only to SEBC and not to all sorts of reservations.

On the other side, Justice Ravindra Bhat and Justice U.U. Lalit has stated that this amendment contradicts the essential structure of the constitution by excluding SEBC, ST, and SC from the beneficiaries. According to the Major Sinho Commission's (2010) report, the majority of economically disadvantaged individuals are from the backward class, and their marginalization will damage the fabric of social justice.

CRITICISM:

“Discrimination is the essence of classification”

Equality is breached when it is founded on an unjustified foundation. The idea of equality is limited by the very structure of the constitutional promise. Those in similar circumstances need to be treated equally. Equality is between equals. As a result, classification must be based on significant differences that separate those who are classified from those who are not, and such differential traits must have a reasonable and rational relationship to the goal being pursued. Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically, and educationally backward. Articles 15(4)¹⁰ and 16(4)¹¹ bring out the position of backward classes to merit equality.

⁸Indrasish Majumder, *Constitutional Validity of the 103rd Amendment Act*, CLATologue (March,21.2024, 10:45 p.m.), <https://lawctopus.com/clatalogue/clat-pg/constitutionlaity-of-the-103rd-constitutional-amendment-act/>

⁹ *Indra Sawhney vs. UOI*, AIR 1993 SC 477.

¹⁰ INDIA CONST. art.15(4).

¹¹ INDIA CONST. art.16(4).

In the present matter, differentiation is done between the general category and SCs/ STs, & OBCs, only based on economic condition which includes either income, landholding, or extent of resources controlled. Therefore, the social status and identities of the target groups are irrelevant. Merely saying that there is some basis of classification, whether relevant or irrelevant, that is sufficient to differentiate between members or groups, is no justification. The same was highlighted by this Hon'ble Court recently in the case of *Pattali Makkal Katchi v. A. Mayilerumperumal*¹²

As per the discussions of the Constituent Assembly Debates, "The 50% rule regarding reservation has been within the consciousness of the constitution makers. **B.R. Ambedkar** "expounded that the reservation should be for the minority of seats and that there has to be a balance exercised between the needs of the minority communities and formal equality".¹³ Therefore, the said amendment is violating the concept of formal equality and substantial equality, the main aim of granting the reservation is to maintain a balance between formal equality and substantial equality.

The Amendment is a crucial step in achieving social integration by encouraging a sense of inclusiveness and equity. It recognizes that poverty and inadequate financial resources can hamper access to educational and employment opportunities, leading to the perpetuation of social inequities. Furthermore, the Amendment seeks to create an egalitarian environment for all sectors of society by giving reserves to the Economically Weaker Sections (EWS), so breaking this repeated trend.

Developing rules for determining economic backwardness is a significant challenge that the law must solve. Many experts claim that the income requirement was unreasonably high without any relevant studies or studies.

Further criticism has been made regarding the possible marginalization of those deserving persons who may not meet the financial requirements but face sociocultural obstacles. Detractors argue

¹² Civil Appeal No. 2600 of 2022 (@ SLP (Civil) No.19574 of 2021)

¹³ Shubhangi Agarwal from, *Constitutional Validity of 103rd Constitutional Amendment Act, 2019*, iPleaders (March,21,2024, 11:00 p.m), https://blog.ipleaders.in/constitutional-validity-103rd-constitutional-amendment-act-2019/#_ftn1

that such persons may be denied necessary aid or opportunities for growth. The problem for policymakers is to reconcile the requirement of economic reserves to reduce social inequality¹⁴

¹⁴ *Supra note 08.*