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ANALYSIS ON 103 RD CONSTITUTIONAL AMENDMENT IN INDIA

INTRODUCTION

To understand the significance of the 103rd constitutional amendment, it's essential to mine into the historical background of reservation policies in India. The conception of reservation can be traced back to the British social era, where it was introduced as a means to give representation to marginalised communities in government jobs and educational institutions. The first reservation policy was introduced in the Indian subcontinent in 1901 by the British government, which handed for a certain percentage of seats reserved for backward classes in government jobs. This policy was further expanded in 1919 and 1935, with the preface of separate electorates for Dalits and other marginalised communities. Post-independence, the Indian government continued the policy of reservation, with the end of promoting social justice and equivalency in the society. The first indigenous provision for reservation was made in 1950, with the preface of Article 15(4) and Article 16(4) in the Indian Constitution. These papers handed for reservation of seats in educational institutions and government jobs for socially and educationally backward classes (SEBCs) and Scheduled Castes and Scheduled Tribes (SC/STs), respectively. In the following decades, several amendments were made to the reservation programs in India, with the end of furnishing further openings for marginalised communities. These included the 77th and 81st constitutional amendments, which handed for reservation of seats for OBCs (Other Backward Classes) in educational institutions and government jobs, and the 85th constitutional amendment which extended reservation to private educational institutions. Still, there was a growing concern that the existing reservation programs weren't addressing the issue of profitable inequality effectively. The reservation programs were primarily grounded on social and educational backwardness and didn't take into

account the profitable status of an existent¹. This led to the preface of the 103rd indigenous correction, which aimed to give reservation for economically weaker sections(EWS) in addition to the being reservation programs. Analysis of the 103rd Constitutional Amendment

The 103rd constitutional amendment introduced Article 15(6) and Article 16(6) in the Indian Constitution, which give for reservation of over to 10% of seats in educational institutions and government jobs for EWS. This reservation is applicable to individuals whose family income is below a certain threshold and don't belong to any of the reticent categories(SC/ ST/ OBC). The most significant aspect of this correction is that it introduces the conception of reservation grounded on profitable criteria, rather than social or educational backwardness. This move was met with mixed reactions, with some hailing it as a step towards furnishing equal openings for all and others criticising it as a bare political move to gain votes. The conception of reservation in India can be traced back to the social era, where the British introduced the Communal Award in 1932. This award handed separate electorates for religious and minority communities, which led to the marginalisation of the lower caste Hindus. After independence, the Indian government introduced reservations for the Scheduled Castes and Scheduled Tribes in 1950 and latterly for the Other Backward Classes(OBC) in 1990. still, there was no provision for reservation grounded on profitable status until the 103rd Constitutional Amendment was passed in 2019.² The 103rd indigenous Amendment added a new clause, Article 15(6), to the Indian Constitution. It states that “ nothing in this article or sub-clause(g) of clause(1) of Article 19 shall help the State from making any special provision, by law, for the advancement of any economically weaker sections of citizens. The purpose of this amendment is to give access to government services and educational institutions to economically weaker sections of society(EWS). According to the emendations, individualities with a regular extended family income of lower than Rs 800,000 won't be allowed to use agrarian land of further than 5 acres and an area of lower than 1,000 square bases or a house of lower than 200 square bases within a declared metropolis. Areas of undeclared metropolitan areas are eligible for reservations based on this share. This description of profitable weakness is grounded on the recommendations of the National Commission for Backward Classes(NCBC)

¹ The Constitution (One Hundred and Third Amendment) Act, 2019”, Ministry of Law and Justice, Government of India, <http://www.egazette.nic.in/WriteReadData/2019/210413.pdf>

² Jha, Gaurav. “The Constitution (One Hundred and Third Amendment) Act, 2019: A Critical Analysis.” Indian Journal of Law and Human Behavior, vol. 9, no. 1, 2019, pp. 1-14 (Last accessed in April 14)

RESERVATION FOR EWS

Need for 103rd Constitutional Amendment Despite the being reservation policy, large sections of the society, especially the economically weaker sections, continued to be subjected to discrimination and deprived of abecedarian rights. This is because the reservation was caste-grounded and the general order of economically underprivileged people wasn't included in its purview. The constitutional amendment in Article 103 was aimed at closing this loophole and furnishing reservations to EWS that weren't covered under the reservation policy. Article 103 of the indigenous Correction provides for 10 reservations in his EWS in advanced educational institutions and public services. The proposed amendments define economically weaker groups as those belonging to families with an periodic income of lower than Rs 80,000 and who aren't eligible for the being reservation orders. It also said that this reservation won't affect reservations for SCs, STs and OBCs. The 103rd Amendment to the Indian Constitution was passed by the Indian Parliament in 2019, furnishing for reservations for the economically weaker sections of society(EWS) in education and public employment.³ This movement aimed to give equal openings and social justice to the economically underprivileged sections of society. This change has been the subject of important debate, raising questions about its feasibility, effectiveness, and impact on India's reservation policy. Reservation in India is an affirmative action system aimed at furnishing equal openings to historically underprivileged and marginalized communities. Since independence in 1947, it has been an integral part of India's social and political geography. Reservation policy in India was originally introduced to address the inequality and demarcation faced by Scheduled Castes(SCs) and Scheduled Tribes(STs). still, in recent years, the demand for reservations for economically weaker sections(EWS) has increased in India. In January 2019, the Indian government approved a constitutional amendment that gives EWS a 10 per cent reservation in government jobs and educational institutions. The move sparked a public debate and raised several questions regarding the need and validity of EWS reservations in India. Reservation for EWS is seen as a step towards working through this problem and creating equal openings for all sections of society. Its purpose is to close the gap between rich and poor and create a level playing field for all. The government's decision to give 10 reservations for EWS is a recognition of the fact

³ Menon, Sudhir. "Debating the 103rd Constitutional Amendment." *Economic and Political Weekly*, vol. 54, no. 35, 2019, pp. 16-19.(Last accessed in April 14)

that profitable status can also be a hedge to social mobility and development. His EWS booking in India is a step towards promoting social justice and addition. It's a recognition of the fact that profitable status can also be a hedge to social mobility and development. still, its perpetration and effectiveness depend on government sweats to address challenges and insure it reaches its willed heirs. Reservation policy in India should be seen as a means to achieve equivalency and not as a tool of vote bank politics. A balanced approach that focuses on merit-based choices and provides openings for the economically underprivileged will help make further inclusive and just societies.

IMPACT ON EXISTING RESERVATION POLICIES

Impact on existing reservation policies The introduction of EWS 10 reservation has had a huge impact on being reservation programs answered in India. It increased the total allocated share to 59.5, raising enterprises about the necessary dilution and resource allocation. It's also argued that the reservation isn't grounded on social or educational backwardness, which violates the principle of recognition. This led to a debate about whether enrollment should be grounded solely on business models or should continue on a cultural and educational background. Another important impact of the 103rd Amendment Act is that it provides legal status to the NCBC. This encourages the commission to make recommendations to include or exclude communities from the list of backward classes. This led to a transfer of power from the executive to the NCBC, which some fear could lead to political repression of the ban. This will create unity and equivalency. Still, on the other hand, there are those who suppose that this change will exclude reservations towards SCs, STs and OBCs. This is because the current rate will increase from 49.5 to 59.5, meaning there will be smaller seats in the community. This doubt can lead to the addition of privileged groups into society and the target of reservation. It's also thought that this reform will lead to a decline in the quality of education and jobs because the private system will now be based on profit rather than social and backward literacy.⁴ Also, the 103rd Amendment has also been censured for not addressing the issue of

⁴ Vaid, Abhinav. "The 103rd Constitutional Amendment: A Judicial Analysis." National Law School Journal, vol. 23, no. 1, 2019, pp. 1-9.(Last accessed in April 14)

reservation in the private sector. Despite the reservation, the representation of SCs, STs, OBCs, and PwDs in India's private sector remains low.

This change doesn't give any result to this problem and underprivileged groups will continue to be discriminated against in the private sector. While he concentrated on giving opportunity to the weak economy of the general order, he also raised enterprises over changes in the special forms for families, tribals and OBCs. The lack of clarity in the definition of EWS and the exclusion of the private sector from the private policy perspective are also important problems. The government needs to resolve these issues and insure that the current political system doesn't interfere with the process of applying the 103rd Amendment. Only in this way can we achieve the thing of balance and equivalency.

CHALLENGES IN IMPLEMENTATION

- **Identifying Beneficiaries:**

One of the biggest challenges in implementing the 103rd Amendment is identifying the beneficiaries. This amendment defines the EWS category as people whose annual household income is less than 800,000 yen and who do not belong to any category. This definition has created confusion and ambiguity in identifying who is eligible. The lack of adequate mechanisms to identify and verify beneficiaries has resulted in many ineligible people accessing benefits while deserving candidates are left behind.

- **Limited scope and visibility:**

Another challenge in implementing the Article 103 constitutional amendment is its limited scope and visibility among target groups. Many people in the EWS category are unaware of the reservation policy or do not have access to information about the application process. As a result, the number of applications declined and the benefits of the changes did not reach the intended beneficiaries.

- **Infrastructure and Resources:**

Implementation of the 103rd Constitutional Amendment requires an increase in the number of seats in educational institutions and government institutions to accommodate the EWS category. However, due to a lack of infrastructure and resources, many educational institutions

and government agencies are unable to accommodate the growing number of beneficiaries, resulting in slow implementation of change.

- Legal Challenges:

The 103rd Amendment has faced legal challenges since its enactment. This amendment was challenged in the Supreme Court on the ground that it violates the basic structure of the Constitution, which prohibits reservations based on economic criteria. The court has not yet issued a final ruling on the issue, creating uncertainty and delays in implementing the changes.

- Fiscal Burden:

Implementation of the 103rd Amendment to the Constitution has placed a significant financial burden on the government. Due to the increase in the number of beneficiaries, the budget allocation for reservations has increased, putting a strain on government finances. This also affected the implementation of other welfare systems and programs, leading to compromises between different social policies.

- Inappropriate Budgetary Allocation:

The 103rd Amendment to the Constitution introduced the concept of reservation in funding government works for socially and educationally disadvantaged sections. However, the government has not allocated sufficient resources to implement this provision, resulting in lack of effective implementation. As a result, promotion of these ranks to government jobs has been slow, which is counter to the purpose of the amendment.

- Opposition from the privileged classes:

The reservation system has always been a controversial topic in India and the privileged classes of the society are often opposed to it. Amendment 103 faces similar objections from these sections, which argue that they violate meritocracy principles. This resistance often leads to legal issues and delays in implementing changes.

- Lack of adequate implementation mechanisms:

The success of constitutional reforms depends on the effectiveness of their implementation mechanisms. In the case of Amendment 103, the lack of an adequate enforcement mechanism was a major stumbling block. The lack of clear guidelines and monitoring mechanisms has led to a lack of accountability and transparency in the implementation process.

- Issues of Inclusion and Exclusion:

The 103rd Amendment to the Constitution has been criticized for its narrow definition of socially and educationally backward groups. The use of economic criteria and the exclusion of certain municipalities from the list of beneficiaries have raised concerns about the comprehensiveness of the proposed amendments. This has led to protests and demands for a broader and more inclusive definition of backwardness.

- Inadequate Representation in the Private Sector:

The 103rd Amendment provides for reservations in government jobs, but does not apply to the private sector. This posed a major challenge in implementing the transformation as the private sector is the main source of employment in India. Lack of representation in this field hinders the social and economic empowerment of backward classes.

- Caste-based politics:

India's reservation system has often been used as a political tool by various political parties to gain support from backward classes. This has led to the politicization of the implementation of the 103rd Amendment, as states parties use it for their own benefit. The result has been a lack of real effort to implement change effectively.

CONSTITUTIONAL VALIDITY

The 103rd Constitutional Amendment Act was challenged in the Supreme Court on the ground that it violates the basic structure of the Constitution. The petitioners claim that the proposed amendment violates the principles of equality and secularism that are the cornerstones of the

Constitution. They also argue that the proposed amendment violates the spirit of affirmative action because it benefits individuals based solely on their economic status and not on the basis of social or educational backwardness⁵. However, supporters of the amendment argue that it is a necessary step toward achieving social equality. They argue that economically weaker sections of society also face discrimination and exclusion and should therefore have access to reservation services. They also point out that the Supreme Court has upheld the validity of the economic standard of reservation in the past. The constitutionality of Article 103 of the Constitution has been a subject of debate since its enactment. The main argument against this amendment is that it violates the basic structure of the Constitution. The concept of basic structure was laid down by the Supreme Court in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973). According to this principle, Parliament cannot change the fundamental structure of the Constitution, including the principles of equality, secularism, and democracy.

One of the main arguments against this amendment is that it violates the principle of equality enshrined in Article 14 of the Constitution. Article 14 guarantees everyone equality before the law and equal protection of the law. The introduction of reservations based on economic criteria violates the principle of equality, as it would result in classification based on economic status. This classification is not meaningful because it is irrelevant to the purpose of the change. Moreover, this amendment also violates the principle of secularism as it introduces a new category of reservation based on economic criteria and not on the basis of social or educational backwardness. This goes against the country's secular structure and creates rifts between different sections of society. This amendment also adversely affects the concept of federalism, which is an important feature of the Indian Constitution. The power to make reservation provisions with the State Governments and the Central Government cannot be taken away by introducing constitutional amendments. This change will also take away the autonomy of state governments to decide on reservation policies according to the needs of each state.

Discussion of the 103rd Amendment:

⁵ Karnam, M. (2019). The 103rd Constitutional Amendment: Historic or Hysterical? *Economic and Political Weekly*, 54(6), 21-23.

Despite the above arguments, there are certain good reasons for the 103rd Amendment. The main objective of this amendment is to provide equal opportunities to economically weaker and historically disadvantaged sections of society. This change is aimed at empowering the marginalised sections of society and making them equal with the rest of society.

Further, The Supreme Court in *Indra Sawhney v. Union of India* (1992) held that economic backwardness can be a valid ground for reservation. The court also recognized Parliament's power to amend the Constitution to create reservations for economically weaker sections. This amendment is also in line with the Directive Principles of State Policy (DPSP) set out in Part IV of the Constitution. The DPSP directs the state to work for the welfare of its people and ensure social, economic and political justice for all. Amendment 103 is a step toward fulfilling this constitutional obligation⁶.

CRITICISM

One of the criticisms of the 103rd Amendment to the Constitution is that it introduces a new form of reservation based solely on economic criteria without considering social or educational backwardness. Critics argue that this could undermine the reservation's original purpose of empowering historically disadvantaged communities. Those who argue that imposition of economic reservations may lead to dilution of benefits to marginalised communities such as Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs). There are some too. They fear that limited resources and opportunities will be distributed more widely, making it more difficult for these communities to access the benefits they would otherwise benefit from. Another concern is that the implementation of economic reservations may not effectively address the root causes of inequality. Critics argue that economic status alone does not capture the complexity of social disadvantage, including: B. Discrimination

⁶ Patnaik, P. (2019). Reservation for the EWS: A Misplaced Calculation. *Economic and Political Weekly*, 54(11), 10-12. (last accessed in April 14)

based on caste or lack of access to quality education. They believe a more comprehensive approach is needed to address these issues.

There are also concerns about the potential for misuse and manipulation of economic reservations. Critics worry that people from privileged backgrounds could exploit loopholes to secure reservations for economically weaker groups. As a result, qualified candidates from disadvantaged backgrounds may be left behind. Some critics have questioned the timing of the change, suggesting it may be a political move to drum up support ahead of the election. They argue that policy decisions should be based on thorough research and analysis, rather than short-term political considerations. There are also concerns about the impact of financial reservations on the quality and standards of educational institutions and government departments. Critics worry that a focus on achieving reservation quotas could compromise merit-based selection and hinder overall excellence in these areas.

The 103rd Amendment has faced considerable criticism from various quarters. The main criticism concerns the possible impact of this change on the efficiency and effectiveness of the public sector. Many argue that withholding promotions solely on the basis of caste results in promotions for people who may not be qualified or competent for the job. This can lead to a decline in the quality of work and overall performance of the agency. Another concern is that this change may lead to dissatisfaction among reserved category employees, leading to a decrease in motivation and productivity. This may also lead to resentment among non-reserved category employees who may feel that their hard work and merits are being ignored in favour of caste-based reservations. Additionally, there are concerns that this change may lead to a reduction in the status of other marginalised communities, such as OBCs (Other Backward Classes) and economically weaker groups, in the government. Amendment 103 only places reservations in the promotion of SCs and STs, which may limit the ability of these communities to advance to higher positions in the government.⁷

Another criticism of the 103rd Amendment is that it undermines the concept of meritocracy. The Indian public sector has always prided itself on being a merit-based system where individuals are selected for jobs based on their skills and qualifications. Introducing

⁷ Mohanty, B. B. (2020). Reservation for Economically Weaker Sections: A Critical Analysis. Indian Institute of Management Kozhikode, WP No. 2020-04-22. (last accessed in April 14)

reservations for promotions violates this principle and can lead to people being promoted, especially those who are not deserving of the job⁸. There are also concerns that this amendment could be misused for political purposes. It is no secret that caste-based politics is prevalent in India, and the introduction of reservations in promotions could exacerbate this. There are apprehensions that political parties may use the amendment as a means to garner votes from reserved categories, leading to politicisation of the issue. Finally, The 103rd Amendment has been criticised for lacking adequate enforcement and monitoring mechanisms. The government has not given any guidelines or standards for conducting reservations under the promotion, leading to confusion and confusion among the authorities concerned. There is also a lack of a monitoring system to ensure that reserved category employees are not discriminated against in the promotion process⁹.

CONCLUSION

In conclusion, the 103rd amendment has brought about a significant change in the Indian reservation system. It has expanded the scope of reservation to include the economically weaker sections of the society and has the implicit to uplift a large section of the population. still, the success of this amendment will depend on its proper accomplishment and addressing the challenges it poses. It's important to strike a balance between social justice and meritocracy to ensure a fair and equal society. The 103rd amendment is a step in the right direction, but it's necessary to continuously evaluate and review its impact to ensure its effectiveness in achieving its intended goals

⁸ Dhanagare, D. N. (2020). The 103rd Constitutional Amendment: A Critical Appraisal. *People's Democracy*, 44(8), 8-11. (last accessed in April 14)

⁹ Das, S. (2019). How the 103rd Constitutional Amendment Will Affect Education in India. *The Wire*. Retrieved from <https://thewire.in/rights/103rd-constitutional-amendment-education-india> (last accessed in April 14)