



EWS Reservation Case: Janhit Abhiyan Vs Union of India
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Abstract

A bill to create an Economically Weaker Section (EWS) quota for the social groups that did not benefit from the prior reservation was introduced in Parliament in 2019. A 10% quota was set aside for persons who may fall within the general category but are economically underprivileged after the 103rd Amendment to the Indian Constitution was approved by the Indian Parliament. This 103rd amendment added new clause 6 with an explanation to Article 15 and clause 6 to Article 16 of the Indian Constitution, providing for a maximum of ten percent reservation in educational institutions and employment for the economically disadvantaged sections of citizens other than the scheduled castes, the scheduled tribes, and the non-creamy layer of the other backward classes. The 103rd Constitutional Amendment Act was contested before the Apex Court through the filing of several writs' petitions, SLPs, and transferred cases. The Constitution Bench of the Supreme Court confirmed the constitutional validity of the 103rd Amendment with a 3:2 split decision in four distinct rulings under the case Janhit Abhiyan V. Union of India, 2022, dated November 7, 2022. The court had to decide if the EWS reservation would go against the fundamental principles of the Indian Constitution and whether it would exceed the established Supreme Court rulings on the fifty percent cap on reservations. The Supreme Court ruled that the 10% reservation would provide the poor upper caste people the importance and recognition they deserve. These people have long yearned for assistance but have consistently been denied access to government programs because of their upper-caste status. Additionally, this reservation would be a positive step in dispelling the myth that reservations are always awarded based on caste.

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Introduction

The topic of reservation has often been vehemently debated in the nation. It was founded with the intention of giving the underprivileged members of society options they were unable to get because of their social standing or institutionalized injustice.² For the Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the First Amendment created a constitutional clause that gave the government the authority to implement reservation laws.³ People have embraced and rejected the idea of reservations over time. Then the 103rd Amendment was passed, adding 10% reservation to the already existing

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² Sagar Preet Hooda (2001), Contesting Reservations: The Indian Experiment on Affirmative Action, Jaipur: Rawat Publications, 2001.

³ Barman, Subhash, "Socio-Economic Status of the Scheduled Castes, Scheduled Tribes and Other Backward Classes in India" (2009) 2(1) Voice of Dalit 99

reservations for the upper caste's Economically Weaker Sections EWS.⁴ The validity of this reservation was questioned since it exceeded the 50% threshold established in *Indra Sawhney v. Union of India*. The 10% reserve for the EWS quota was recently affirmed by the Supreme Court of India, which ruled that it did not contradict the Constitution's fundamental principles and that the 50% cap was not inflexible and could therefore allow for the addition of the 10% reservation.⁵ To comprehend the context and history of the 103rd Amendment Act of 2019, as well as what significant court rulings have said regarding the reservation cap. It also aims to comprehend the most recent ruling that affirmed the 10% reservation.⁶ Reservation has always been a contentious issue in the country's constitutional framework. It was found with the objective of giving the backward members of society opportunities they were unable to get because of their institutionalized oppression or social standing.⁷ For the ST, SC, and OBC, the First Amendment created a constitutional clause that gave the government the power to implement reservation laws. People have welcomed and forsaken the ideas of reservation over time, along with sharp divisions in public opinion.⁸ Then the 103rd Constitutional Amendment was passed, adding 10% reservation to the already existing layer of reservations for the economically weaker sections (EWS).⁹ Since this reservation exceeded the 50% level imposed in *Indra Sawhney v. Union of India*, its legitimacy was called into question. There were other further reasons for contesting the same.¹⁰ The Constitution 103rd Amendment Act, 2019 which was passed by the Union Legislature and got presidential assent on January 12, 2019, amended Articles 15 and 16 of Part III of the Indian Constitution.¹¹ The modifications introduced a clause for the reservation of members of India's economically disadvantaged sections, or EWS for short. On January 14, 2019, the Amendment Act went into force.¹² However, a majority decision of the Supreme Court in the case of *Janhit Abhiyan against the Union of India*, which has been thoroughly covered in this Article, smashed this unfounded and accusatory criticism.¹³ The Constitution of India's Articles 15(1) and 15(2) guarantee general protection to its citizens and forbid the State from discriminating against them solely on the basis of their religion, race, caste, sex, or place of birth,¹⁴ Articles 15(3), 15(4), and 15(5) make special provisions for the reservation of women and children as well as the SEBCs that exist in Indian society.¹⁵ Similar to this, Articles 16(1) and 16(2) guarantee equal work opportunities for all citizens.¹⁶ The backward classes are reserved in public employment under Articles 16(4), 16(4A), 16(4B), and 16(5).¹⁷ Articles 15(6) and 16(6) of the Constitution were added by means of the Amendment Act, providing for a 10% maximum reservation for the

⁴ Singh, Simrandeep, "An Analysis of the Constitutionality of the Economically Weaker Sections (EWS) Reservation" [2019] SSRN Electronic Journal

⁵ *Indra Sawhney v. Union of India* AIR 1993 SC 477

⁶ 103rd Amendment Act of 2019

⁷ Constituent Assembly Debates, Vol VII, p. 494

⁸ Manoj C. G., Harikishan Sharma, In Parliament, Most Parties Favoured EWS Quota Bill Amid Concerns; DMK, RJD, AIMIM Opposed It, Indian Express

⁹ 103rd Constitutional Amendment of 2019

¹⁰ *Indra Sawhney v. Union of India* AIR 1993 SC 477

¹¹ Articles 15 and 16 of the Indian Constitution of India

¹² The Constitution 103rd Amendment Act, 2019

¹³ *Janhit Abhiyan v. Union of India* 2022 LiveLaw (SC) 922

¹⁴ Articles 15(1) and 15 (2) of the Indian Constitution

¹⁵ Articles 15(3), 15 (4) and 15(5) of the Indian Constitution of India

¹⁶ Article 16(1) and 16(2) of The Constitution of India

¹⁷ Articles 16(4), 16(4A), 16(4B), and 16(5).¹⁷ Articles 15(6) and 16(6) of the Constitution of India

economically disadvantaged class of citizens for entrance to educational institutions and public employment.¹⁸ On November 7, 2022, the Supreme Court issued a joint order in Writ Petition (Civil) No. 55 of 2019 that combined several writ petitions in a 3:2 split. However, the minority dissenting Judgment passed by the Supreme Court was to the effect that the Amendment Act was violative of the Fundamental Rights under Part III of the Constitution of India and therefore, is liable to be declared unconstitutional.¹⁹

Indra Sawhney Judgment (1992)

The Mandal Commission Report of 1980 served as the sticking point in this historic judgement.²⁰ In order to ensure the continued security of the constitutionally established right to equality under Article 14, the court affirmed the constitutionality of the 27% reservation but set a ceiling of 50% unless exceptional circumstances warranted the violation.²¹ The OBCs' advanced parts the creamy layer should not be included on the list of people who qualify for reservations.²² Supreme Court, Article 16(4) of the Indian Constitution does not permit discrimination in the area of promotions.²³ Supreme Court ruled that the 77th amendment was constitutionally valid and described these clauses as just enabling clauses. The court established the following rules: The bench held that the creamy layer among Scheduled castes and tribes is to be excluded from the reservation due to, quantifiable statistics proving the class's backwardness; and inadequate representation of that class in public employment.²⁴ The constitution bench nullified the requirement to collect quantifiable data in relation to scheduled tribes and scheduled castes but upheld the principle of applicability of the creamy layer in relation to scheduled castes and scheduled tribes.²⁵ The controversy in this case arose due to the interpretation of Article 16 (4A), which was added by the Constitution's 77th Amendment.²⁶

Current Reservation Scenario

In India, reservations currently make up 49.5% of the country's total land area. When the 10% extra reservation for EWS is taken into account, the total is 59.5%. Scheduled tribes, scheduled castes, and other backward classes each have quotas of 7.5%, 15%, and 27%. Only 40.5% of seats in educational institutions and jobs will be distributed based on merit if the EWS quota bill is passed into law.²⁷

EWS Reservation

The Constitution 103rd Amendment Act of 2019 amended Articles 15 and 16 and added provisions giving state governments the power to establish economic backwardness reservations.²⁸ The economically weaker section (EWS), as defined by the proposed amendment Bill, will be defined as having an annual household income of less than Rs 8 lakh, agricultural

¹⁸ Articles 15(6) and 16(6) of the Constitution of India

¹⁹ Janhit Abhiyan v. Union of Asian United States of America on July 2022

²⁰ Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217,

²¹ Article 14 of the Constitution of India

²² Mandal Commission Report 1980

²³ Article 16(4) of the Indian Constitution of India

²⁴ M. Nagaraj v. Union of India 2006

²⁵ Jarnail Singh v. Lachhmi Narain Gupta 2022

²⁶ Article 16 (4A), which was added by the Constitution 77th Amendment Act, 1995

²⁷ Department of Public Office 2016

²⁸ The Constitution (103 Amendment) Act of 2019

land of less than 5 acres, a residential home of less than 1000 square feet, a residential plot of less than 100 yards in the notified municipality, and a residential plot of less than 200 yards in the non-notified municipality area.²⁹

What is contained in the 103rd Amendment?

- Article 15(6) Up to 10% of seats for EWS may be earmarked for admission to educational institutions. Minority-serving educational institutions will not be subject to these limitations.³⁰
- The government may reserve up to 10% of all government employment for EWS under the newly added Article 16(6).³¹
- The reserve limit of 50% for SC, ST, and OBCs would be supplemented by a reservation allowance of up to 10% for the EWS. The federal government will inform citizens about the EWS based on family income and other signs of economic disadvantage.³²

Problems with the 103rd Amendment

In violation of equality standards, a maximum cap of 50% on reserved seats was enacted to balance the opportunity equality of the underprivileged 'against' the equality of all others. The quota standard is broken when it rises above 50%.³³

In *M. Nagaraj v. Union of India* (2006) a Constitution Bench held that equality is a fundamental component of the Constitution. Without the constitutional necessity for the 50% cap, the system of equal opportunity would disintegrate.³⁴

Adequate upper-caste representation in public employment, the upper caste is fairly represented. It's not apparent whether the government can provide concrete evidence that those from lower-income groups are underrepresented in government employment.³⁵

The existing definition of EWS has the drawback of being overly inclusive and includes significant portions of the population.³⁶

Implementing economic eligibility criteria would be a bureaucratic nightmare in a nation where the taxable population is still very low as a result of income fraud.³⁷

Different OBC and SC subgroups might desire to be subdivided according to economic standards within their own quotas.³⁸

²⁹ Government of India Ministry of Personnel, Public Grievances & Pensions 2019

³⁰ The Constitution (103 Amendment) Act of 2019

³¹ Ibid

³² Ibid

³³ *M.R. Balaji v. State of Mysore*, 1963 Supp (1) SCR 439 (hereinafter, "M.R. Balaji"), See para 21

³⁴ *M. Nagaraj v. Union of India* (2006)

³⁵ *Lingappa Pochanna Appelwar v. State of Maharashtra*, (1985) 1 SCC 479

³⁶ Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford University Press 2015) 6-9 (remarking on how legal scholars have offered different foundations or bases for discrimination law in the form of equality, liberty (or autonomy or freedom) and dignity)

³⁷ *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310

³⁸ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

The Supreme Court in the Indira Sawhney case (1992) had ruled down a clause that reserved 10% for the economically behind since the Constitution exclusively addresses social backwardness.³⁹

Distinctive clauses that contradict the Constitution's basic principles, such as economic-based hiring and educational preferences, are wholly unlawful. It is illogically unfair and violates the core framework of the constitution to deny the benefits of these specific provisions for EWS to socially and educationally underprivileged sections of SCs, STs, and OBC-NCLs.⁴⁰

Critical Analysis

Reservation has been a topic that deeply impacts every Indian since the constitution of India came into effect, regardless of the caste to which they may belong. Reservation-related policies have been in effect in India, after the creation of the Indian Constitution.⁴¹ However, it is to be noted that the post-independence reservation policies were implemented with the Indian society in mind; specifically, these reservations were implemented to give ST, SC, OBC, and SEBC groups, proportionate representation in employment and education as they suffered from social exclusion.⁴² The upliftment of the scheduled tribes, scheduled castes, socially and economically backward class, and other backward classes through reservation policies, however, has proven to be unfair for the upper caste individuals who are not equally wealthy given the changing socio-economic conditions of Indian societies.⁴³ Reservation rules that supported the scheduled tribes, scheduled castes, socially and economically retarded, and other retarded classes have always been ill-used for electoral gains, ignoring the reality of India.⁴⁴ Many state governments, including those of Telangana, Andhra Pradesh, Maharashtra, Tamil Nadu, and others, have been flagrantly flouting the precedent set by the Supreme Court in the case of Indra Sawhney, in order to use the reservation policy for political gain. The Supreme Court has, on occasion, ruled that these state government measures are unlawful.⁴⁵ The government has correctly grasped the reality of the socio-economic realities in the nation and passed the Constitution 103rd Amendment Act, 2019 because the actual objective of the reservations has always been rejected.⁴⁶ The government has also made sure that the upper caste group, which has been unable to represent itself in society, benefits the most from the Amendment Act by specifically excluding the SC, ST, OBC, and SEBC from the EWS quota.⁴⁷ A person who has unfairly benefited from these policies for generations is not permitted to utilize such reservations. The benefit of reserves should be used by only those from the lowest social sections.⁴⁸ EWS judgement, the Supreme Court has for the first time shown concern for the really weaker

³⁹ Indira Sawhney v. Union of India 1992 SCC 217

⁴⁰ University of Madras v. Shantha Bai, AIR 1954 Mad 67, pp.669-670

⁴¹ Meghnad S, The Hasty Passage of #ReservationBill Sets A Dangerous Precedent, NEWS LAUNDRY

⁴² Manoj C. G., Harikishan Sharma, In Parliament, Most Parties Favoured EWS Quota Bill Amid Concerns; DMK, RJD, AIMIM Opposed It, INDIAN EXPRESS

⁴³ Poddar, Umang, 2022a, 'Does the EWS judgment remove the 50% cap on reservations?', Scroll.in, 20 November

⁴⁴ Christopher J. Beshara, Basic Structure Doctrines and the Problem of Democratic Subversion: Notes from India (Pages 109-122)

⁴⁵ Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217,

⁴⁶ The Constitution 103rd Amendment Act, 2019

⁴⁷ Challenged in the case of Youth for Equality v. Union of India, WP(C) 73/2019.

⁴⁸ K .C Vasanth Kumar v. State of Karnataka, 1985 Supp SCC 714

segments of society that are barred from receiving a proper education due to their financial inability.⁴⁹ These people are neither qualified for reservations, nor they are financially able to afford the highest education. The Amendment Act was properly passed in order to represent the class of people who are marginalized and ultimately create an equal society.⁵⁰

Thus, the government has assured that the poor people of India have the same right to justice as the socially and educationally backward class by including Articles 15(5) and 16(6) in the Constitution.⁵¹ A significant step towards attaining economic equality in the Indian democracy was taken with the passing of the Amendment Act and the Supreme Court's affirmation of it.⁵²

Conclusion

The most recent ruling has removed all restrictions and increased the latitude for constitutional interpretation, sustaining the 10% EWS quota reservation. The world is developing, and as time goes on, so are social and economic conventions.⁵³ Flexibility is essential to fostering adaptation to changing circumstances and providing a wide range of opportunities to all social sections.⁵⁴ The Supreme Court of India has gone a little further with this ruling in *Janhit Abhiyan v. Union of India*, overturning the ceiling limit and allowing for a more open interpretation, stating that adding 10% to the existing reservations does not violate any fundamental principle of the constitution and does not harm the fundamental framework of the constitution of India because the ceiling limit of 50% was not adhered to.⁵⁵ However, it will be interesting to observe how the public responds and how this judgement will be used as a standard for other initiatives.⁵⁶ Although the issue of basic structure was brought up in this case, it ultimately had little bearing on how the court reached its decision.⁵⁷ It is also accurate to say that the few instances in which the Supreme Court actually implemented the theory to declare amendments, actions, and presidential actions unconstitutional have always been significant.⁵⁸ The fact that doctrine has occasionally been used to support the legality of laws has demonstrated that it is still relevant and will always have incomplete commercial to settle. So, it would always be available for petitioners to utilize as extra-legal backing.⁵⁹ The necessity for raising awareness arises from the fact that, although the unreserved segments continue to oppose the provision, the most needy sectors within the reserved segments are hardly aware of how to take advantage of the provision or even that such provisions exist.⁶⁰ Instead of handing out reservations for entrance to higher education or jobs on a silver platter, extreme options include eliminating the entire

⁴⁹ *Pramati Educational & Cultural Trust v. Union of India*, (2014) 8 SCC 1

⁵⁰ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212

⁵¹ Articles 15(5) and 16(6) in the Constitution of India

⁵² *Lingappa Pochanna Appelwar v. State of Maharashtra*, (1985) 1 SCC 479

⁵³ Sandeep Kumar, *Reservation that is Anti-Reservation*, 54, EPW, (2019)

⁵⁴ K.S. Chalam, *Caste-Based Reservation and Human Development In India* 43 (Sage Publications, New Delhi, 2007)

⁵⁵ *Janhit Abhiyan v. Union of India*, W.P.(Civil) 55 of 2019

⁵⁶ Sagar Preet Hooda (2001), *Contesting Reservations: The Indian Experiment on Affirmative Action*, Jaipur: Rawat Publications, 2001

⁵⁷ Devanesan Nesiah, *Discrimination With Reason*, New Delhi: Oxford University Press, 1997. P.170.

⁵⁸ K.L. Bhatia, *Judicial Review and Judicial Activism*, New Delhi: Deep & Deep Publications, 1997.

⁵⁹ *Madras Bar Assn. v. Union of India*, (2014) 10 SCC

⁶⁰ Challenged in the case of *Youth for Equality v. Union of India*, WP(C) 73/2019.

creamy layer among all castes from the reservation and boosting their talents.⁶¹ Instead of allowing entry barriers to be lowered, meritocracy should be promoted by providing financial assistance to the less fortunate.⁶²

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⁶¹ R. Chitralakha v. State of Mysore & Ors, 1964 AIR 1823

⁶² State of Kerala v. N.M. Thomas, (1976) 2 SCC 310