



AN ANALYTICAL STUDY OF ECONOMIC RESERVATION BILL (103rd AMENDMENT OF THE CONSTITUTION): TO WHICH EXTENT IT WILL BE USEFUL TO THE SOCIETY

ARUNABEN PRATAPBHAI DAVE

Research Scholar, Department of Law,
Sardar Patel University,
V.V.Nagar &. Adhyapak Sahayak,
Anand Law College, Anand. (GJ) INDIA

ABSTRACT

The walk of all advanced social orders is a walk from status to contract. On this premise, Western Societies are named as current and Indian culture is yet to enter this stage in light of the fact that, in Indian Society, the existence of an individual is as yet represented by the situation with his groups in the society. The social arrangement of India is chiefly founded on the nearby culture. Culture is the overall acts of individuals in the lifestyle which incorporates general traditions and convictions of a specific gathering and domain. To diminish the imbalance in the society Government of India had found few ways to lessen divergence like preferential treatment (Reservation). Reservation policy can give a benefit in admission to an educational institute or in the jobs of the government institute for special group of people. As of late passed Economic Reservation Bill can be supposed to be one of the means by Government to decrease imbalance in the public arena and can likewise be named as the impact of the past special approaches of the government which were made to review the affected. The quickly passed economic reservation bill in the Parliament has caused a significant discussion in the country. Numerous researchers and activists have expressed resistance to the bill on the ground that it is anti-constitutional. Shockingly, individuals from unlikely quarters hopped on the side of this new reservation out of a misinterpretation that the bill will profit individuals having a place with disadvantaged classes. This paper is an endeavour to basically analyze the contention for economic reservation dependent on information and literature.

Keywords: Economic Reservation Bill, Parliament, Individuals, Discrimination, Constitution.

2 INTRODUCTION –

India is a nation of variety. Individuals in this nation come from various races and practice various beliefs. Dividing individuals based on the caste was implanted in our way of life from the time immemorial. The belief that a specific segment of individuals will seek after a specific way of life has consistently bothered the educated personalities of the country. Thus, the caste based framework was concocted as methods for governmental policy regarding minorities in society which would help individuals persecuted by conventional caste framework to break its shackle by guaranteeing portrayal and positive discrimination in the then predominant public area. The Constitution of India thus relating to the said issue has given certain basic rights under Article 15 and Article 16 and Directive principles of State policies under Article 46 for the protection of the socially backward class of individuals.

Today a few educational foundations and occupations have reserved seats for the upliftment of these socially backward classes of individuals. Yet, the primary question which emerges here is that whether these reservations really address the reason and build up the country. Dr. B.R. Ambedkar surrendered the right to a different electorate on condition that Dalits and Tribals would be offered full citizenship. Reservation was just one of the strategy instruments which were devised to help them in giving full citizenship. Thinking about the current situation, we can investigate how far the Country has moved around there. It has been seen that it isn't just the backward class individuals yet additionally other general individuals who experience difficulty in getting the full citizenship. Hence, at numerous levels it tends to be reasoned that it's intellectual and ethical premise streams from unexpected governmental issues in comparison to simple government assistance ism. Consequently staying up with the cutting edge time it isn't reasonable to place the general public in a similar skeleton of reservation as it was sixty years back.

The constitutional assembly thought of various contentions while bantering on the issue of reservation. The fundamental contention whereupon the entire discussion was based was that there are classes in the general public which have not been given their share in the society. They are oppressed because of the absence of opportunities. They have not been given their privileges and due acknowledgment in the society and subsequently if the assembly is shaped to make a constitution for the future, the discouraged classes ought to be given satisfactory protections.

The Constitution gives equality to all and by uniformity we mean equality. In the event that individuals have not begun from a similar point, they ought not to be given equivalent facilities to arrive at the objective. Clearly to accomplish uniformity some uncommon rights must be given to those individuals who linger behind and thus the mark of reservation was put forward. There are disastrous countryman who has not offered sufficient chances to

education, jobs, extravagance life and so forth and subsequently unique endeavours ought to be made for them so they can come at standard with the rest of the country.

Making policies is simple yet one needs to guarantee whether the figured strategies are successful or would accomplish the ideal objective. Something comparable happened when the effectiveness of separate electorate was brought up in the assembly. It was raised by a member from the assembly that the discouraged classes or the Harijans are financial slaves. Regardless of whether you give them separate electorate influential individuals with cash can abuse them by getting them and afterward a Harijan leader would just be there for name and individuals with influence and cash would run the government. Thus isolated electorate was considered futile to defend the privileges of Harijans and rather the point that monetary assistance ought to be given was raised. Resulting to the discussion a report on minority rights was introduced in the assembly by Sardar Vallabh Bhai Patel. The report held that the minorities would get portrayal in governing body and reservation of seats as per their populace. Furthermore, additionally they would likewise be qualified to contest for the overall seats. The report was passed yet some dreaded for the majority part. P. S. Deshmukh expected that the larger part would be left minimized since the lion's share is very indistinct about their privileges and in giving uncommon shield to the minority, the dominant part is being ignored.

103RD AMENDMENT OF THE CONSTITUTION:

The provisions that have been amended by the Constitution (103rd Amendment) Act, 2019, are Articles 15 and 16 wherein Clause 6 has been inserted to the Articles as follows:

"In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

*Explanation — For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage."*¹

"In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

*(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category."*²

BENEFICIARIES OF THE AMENDMENT:

According to the Ministry for Social Justice Brahmins, Muslims, Baniyas, and Christians all will be qualified for this quota in education and jobs. It for the most part broadens to economically backward individuals of general class. It doesn't approve to residents who are profiting the advantage of some other sort of reservation. Likewise, the Constitutional Amendment states, it applies just to initial stage of appointments and not in promotions. Considering this amendment into light, the economically more vulnerable sections of the society will land in jobs and advanced education. From a third individual point of view, reservation will presumably profit the destitute yet fundamentally it additionally abuses certain standards set by the Apex court. As of now, two PILs have been recorded in the Apex Court Regarding the infringement of precept of fundamental construction of the constitution with this amendment.

LEGAL PRONOUNCEMENTS ON RESERVATIONS :

Since 1951 there have been a many decisions of the Supreme Court, which attempted to break down the standards to be embraced for reserving a spot for the backward classes. In the State of Madras v. Champakam Dorairajan case³ and another case the Supreme Court interestingly had managed the issue of reservation. In accordance with Supreme Court's judgment for this situation the Parliament corrected Article 15 and embedded Clause (4). The Supreme Court, in M.R. Balaji v. Province of Mysore⁴ has fixed a cutoff to reservations and held that the 50% roof limit should not to be crossed with the end goal of reservations. Not considering caste as the sole standard or predominant test in deciding social backwardness of gatherings or classes of residents, yet indeed thinking about financial backwardness as a

¹ Section 2 of The Constitution (One Hundred and Third Amendment) Act, 2019

² Section 3 of The Constitution (One Hundred and Third Amendment) Act, 2019

³ AIR 1951 SC 226: 1951 SCR 525.

⁴ AIR 1963 SC 649: 1963 Supp (1) SCR 439.

contributing variable, the Supreme Court has additionally seen as follows that Social backwardness is on a definitive examination the consequence of destitution, generally.

In the milestone judgment of *Indra Sawhney v. Association of India*⁵ the Supreme Court has disposed of economic backwardness as a rule for reservation and follows that Reservation of seats or posts exclusively based on economic backwardness i.e., regardless of proof of chronicled discrimination, as aforementioned, discovers no support in the Constitution. It has likewise rejected creamy layer among the regressive classes from the ambit of reservation. Concerning covering of reservations, it has been held that Reservation in all cases should be limited to a minority of accessible posts or seats so as not to unduly forfeit benefits. The quantity of seats or posts saved under Article 15 or Article 16 should consistently stay well beneath half of the all out number of seats or posts. The judgment has anyway explained that the articulation weaker segments of individuals under Article 46 is more extensive than the articulation backward class and incorporates the individuals who are socially, financially in reverse or delivered as more vulnerable segments because of any common cataclysm or actual impairment⁶.

BENEFICIAL ASPECTS OF THE AMENDMENTS:

1. Within the current structure and guarantee that people utilize their reserved category status only one time in their lifetime. This would necessitate that anybody utilizing reservations to get an advantage, for example, for taking admission in college one should enrol his/her Aadhar Number and he/she would be ineligible to utilize reservations for another advantage for example job in future.
2. Reservation framework was created in an alternate period that we have not had the opportunity or the tendency to consider its prosperity or to inspect potential alterations. The framework in this way merits genuine re-assessment.
3. It is critical to perceive that future financial development in India will come from the private area and business venture. To guarantee that all Indians paying little heed to rank, class and religion can participate in monetary development, we should focus on fundamental abilities. We need to focus on decreasing imbalances where they initially arise inside elementary schools⁷.

THE RULE OF 50% :

⁵ 1992 supp (3) SCC 217; AIR 1993 SC 477.

⁶ Aparna Mahishi, India: Economic Reservations: A Constitutional Challenge, (Mar 20, 2019), available at: <https://www.mondaq.com/india/constitutional-administrative-law/791818/economic-reservations-a-constitutional-challenge>, Accessed on 20/12/2020.

⁷ Gupta Aman Kumar, Economic Reservation in India: A Panacea or Mirage, Legal service e- journal, available at <http://www.legalserviceindia.com/legal/article-754-economic-reservation-in-india-a-panacea-or-mirage.html>



It is cliché yet in any case significant, to review that as the constitution stands changed by the bill, the constitutional challenge that remains is the basic structure challenge. Here it is beneficial to recollect that the constitution accommodates freedom and detachment of powers between the three groups of the State and the basic structure challenge as given by the legal executive in Kesavananda Bharti case⁸ give supremacy of judiciary. The Honorable Supreme Court in Indra Sawhney v Union of India covered the restriction of the reservation to 50%. Any legislative revision surpassing as far as possible would be unlawful and is violative of the basic structure of constitution. Concerning edge of 50%, it was held by the Supreme Court that since Article 16(4) [Reservations] was outlined as an exemption for equality of opportunity anything above half would infer the gulping of restriction.

In 2006, a question was raised under the watchful eye of the Supreme Court that whether the 50 % guideline is a part of the basic structure or not. For this situation, the court noticed that *"the ceiling limit of 50%, the concept of creamy layer, backwardness and inadequacy of representation are all constitutional requirements without which the structure of equality would collapse."*

REASONS WHY ECONOMIC RESERVATION SHOULD SOON TAKE UP THE PLACE OF CASTE BASED RESERVATION:

To comprehend the upsides of economic reservation it is productive to cause us to notice the reality with respect to why reservation should exist by any means. It is to advance the quick development and growth of that part of the society that has been falling behind when contrasted with most of the populace. The framework as is followed today keeps caste for example a birth of an individual to a particular caste, to be the sole models with respect to why there should exist positive discrimination against them. Caste driven reservation obliterates the significance of greatness. Reservation should be for poor people and oppressed and ought exclude inside its ambit the advantaged class of the minority networks. This produces an enormous contrast between comparative classes of individuals of two unique networks. Students having a similar classroom, getting a charge out of similar functions of social capacities and having comparable economical guidelines should have similar advantages and one shouldn't get an excessive benefit dependent on the caste the person is brought into the world to. Caste is in any case a cultural build which was a device to persecute most of the populace.

The difference between the rustic and the metropolitan areas could be diminished and brought to a consistency if the poor segment which in enormous numbers lives in our towns are allowed suitable opportunity to create. Significantly more conspicuously the financially

⁸ (1973) 4 SCC 225; AIR 1973 SC 1461



more fragile segment of the metropolitan populace will appropriately profit by such a plan. People from developed monetary gathering would quit getting the unjustifiable benefits that is so noticeable nowadays. There is definitely no substance with regards to why a child of an IAS official ought to get the advantage of reservation. It is unjust to the young people of the country at large. The scramble for the minority certificates to get the benefits is at a precarious ascent. Economic reservation is the solitary conceivable approach to check it. So the bank balances will talk and not the piece of paper which stamps you as a proper candidate for the schemes of the policy. Caste based reservation has at any rate neglected to carry the minorities into the position that had been longed for by our progenitors at the presentation of the caste based reservation bill. There still exist in huge numbers wrongdoings against the minorities even after such countless long periods of autonomy. It demonstrates that caste based reservation is of nothing but bad in the advancement of the socially in backward class of the society. Subsequently there is a quick need to change the manner in which reservation works.

Education will along these lines stand firm on a rich foothold in the country instead of caste. With education a ton of social marks of disgrace will breakdown into pieces which thusly will help settle the caste distinctions and the violations that are submitted in the name of caste. This strategy of caste based reservation should be a brief foundation which has now been extended up until this point and the unnecessary benefits are created as vote banks and unfair benefits to a generally created class. Reservation for the ignored was intended to be taken out with legitimate advancement of that class of individuals however its affectivity is poor to the point that improvement of these individuals are as yet an unrealistic thought. Caste driven turmoil in the society owes an incredible arrangement to such shameful reservation approaches. The needy individuals from the general classification have begun seeing themselves as the survivor of the system because of absence of seats in the government institutions; and the most effortless targets have been the poor denied class who scarcely at any point had anything to say about the current system by any means. Even after such countless strategies at work, the separation and barbarities against the minorities are at an ascent. News reports are an observer to the disappointment of such existing policies.

The deprived class of the society independent of the caste they have a place with has the right to get approaches in support of themselves in order to carry them at standard with the remainder of the general public. Economy puts a significant part in the improvement of individual families as a unit of the general public. The creamy layer should be kept from taking unnecessary benefits many ages. A fast look through the points advise us, that the economically more vulnerable sections, to serve whom the reservation strategy originally came into picture will in any case infer the help of the economic reservation. It is just the generally advantaged class that will be eliminated from the getting its advantages. Presently this methodology primarily takes care of two significant issues. First and foremost, poor

people who are in critical need of headway and government resources will be the ones who really receive it and furthermore, the undeserved class who has been filling their own pockets through such plans will be restricted from proceeding with this any further. This methodology it appears isn't thought about in light of the fact that it isn't solid for the vote banks. The second such a plan is presented a significant piece of the helpless area will begin revolting despite the fact that their advantages are not in question, but rather the solid affectation from the rich and amazing who might at this point don't determine baseless and excessive benefits.

CONCLUSION:

The makers of the Indian Constitution, at the hour of drafting the Constitution had remembered the predominant situation that unfavourably influenced the equality of the country. There were an enormous number of under-advantaged areas of individuals who experienced social separation through hundreds of years under the attire of caste system and the individuals from such alleged lower classes required a sufficient portrayal in the society. Endeavors had, accordingly, been made to carry these more fragile segments at standard with different segments of the society through the strategy of reservations, which is considered as a protective or positive discrimination executed in the Constitution. With the evolving times, caste presently don't can be the sole measure for distinguishing socially backward classes since some of them have accomplished financial status, subsequently tracking down a social standing also. Be that as it may, even today neediness actually stays a boundary to accomplishing uniformity and there is a critical separation between individuals of an alternate financial status. The Government has subsequently through economic reservations moved forward to kill this type of discrimination as a way to accomplishing equality in the country.

The system of reservation had consistently started a contention between the unreserved and reserved categories of society. The former criticizes it with rationales of numerous amplitudes and the latter supports. Seeing from a nonpartisan point of view it may be expressed that despite the fact that reservation is required for the country and yet there is a need to make a framework which upholds governmental policy regarding minorities in society more than settlement legislative issues. The reason ought to associate the poor to the standard. India is a quickly developing economy; any regrettable part of reservation ought not fill in as an obstacle for its turn of events. As it is said that the law is the public inner voice, the confidence of individuals is upon the summit legal executive which will think of the most ideal result for this contention.

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