



EWS reservation: A shift from caste based reservation to class based reservation

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Abstract

At present, it is difficult to understand the real nature of reservation; whether it is a Instrument of social justice, as it was intended, or just has confined to a instrument of Politics. However the nature of reservation has remain a subject of intense debate or contest among academicians and intellectuals since its inception. After the Implementation of 10 per cent reservation for EWS (Economically Weaker Section) Through 103rd Constitutional Amendment Act 2019, the debate over the nature of reservation get more intensified and vociferous. Scholars and academicians started calling this changing nature of reservation from caste based to class based as a 'Paradigm Shift'¹ or a watershed moment in Indian reservation system. This paper seeks to analyses and discuss the changing nature of reservation system in the special context of 103rd Constitutional Amendment Act and the concerns associated with legality and constitutionality of the EWS reservation. And also, how judiciary has provides different opinions at different moment over the criteria and base of reservation.

Keywords: EWS, reservation, caste, class, criteria, backward classes, SCs & STs

Introduction

Sometimes it seems that the reservation has turned into a enigma. Why is it so? Because the nature of reservation in India changing into a more vague and sometime imperceptible concept. Hence, it is difficult to understand the real nature of reservation; whether it is a instrument of social justice, as it was intended, or just has confined to a instrument of politics (not in Aristotelian sense). However the nature of reservation has remain a subject of intense debate or contest among academicians and intellectuals since its inception. Once again, by introducing 10 per cent reservation for EWS (Economically Weaker Section) through 103rd Constitutional Amendment Act, the debate over the nature of reservation heated up. The issue about the nature of reservation was very much discussed during the Constituent Assembly Debate. Some members of the Constituent Assembly were in the favour of to adopt economic or class based criteria for reservation. They were with the argument of that, to maintain secular democratic principles and to weaken caste structure from Indian society, we should not make any policy or program on caste line (Desai: 1984)^[3]. But it was argued that in past, injustice or discrimination has been done on the basis of caste; lower castes have been deprived from equal opportunities by the upper castes, therefore to rectify such historical wrongs we would have to provide special treatment to the lower castes. Prior to 103rd Constitutional Amendment Act, our constitution permitted reservation only for the socially and educationally backward classes; Article 15 (4), stipulate that nothing in this article shall prevent the State from making any special provision for the advancement of any *socially and educationally backward classes* of citizens or for the Schedule Castes and the Schedule Tribes. Article 16 (4) of the Constitution reads that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any *backward class* of citizens which, in the opinion of the State, is not adequately represented in the services under the

State. However, 103rd Constitutional Amendment Act, 2019 considered as a watershed or a paradigm shift in this regarding because now it enables the State to provide 10 per cent reservation to the Economically Weaker Section (EWS) of the society. Thus, this provision inserted the economic factor as a base to provide reservation which was not in practice before that. However, there are some prominent scholars who favoured this economic or class based criteria to provide reservation. I.P. Desai, who has been a member of Gujarat Backward Classes Commission, vehemently opposed the recommendations of Mandal Commission, which recommended caste as a sole criteria to provide reservation for Other Backward Classes (OBCs). He believes that if the State accepts caste as the basis of backwardness, it legitimises the caste system which contradicts secular principles of our country (Desai: 1984)^[3]. Ghanshyam Shah, another prominent scholar, is also reluctant to accept caste as criteria for the reservation. He opined that "it is not difficult to combine caste/social groups and class criteria" what he means by this is a system of reservation "for the persons belonging to poor strata of the low castes social groups of different religious". He pointed out two things; (a) Determination of caste/social group status in sub-regional context not caste-cluster at the State level. (b) Rescheduling should be inbuilt in the reservation scheme (Shah:1985)^[12].

No wonder, the debate over the 'caste vs class' is not new one. But the 103rd Constitutional Amendment Act greatly helped in intensifying this debate ahead. This paper is aims to analyses and discuss the changing nature of reservation system in the special context of 103rd Constitutional Amendment Act. To discuss the provisions related to EWS reservation and assess the legality of it. Along with that, this paper will also discuss briefly the major arguments given during the Constitution Assembly debate over the criteria of reservation. Now, before moving ahead it is necessary to understand what does the 103rd Constitutional Amendment Act say and what changes it introduced in the Constitution.

After that, we will look briefly over the criteria of EWS reservation and who are eligible for the this new reservation scheme.

What does 103rd Constitutional Amendment Act Say

The 103rd Constitutional Amendment Act, 2019 was introduced in the Lok Sabha on 8 January 2019 as the Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019. It was introduced by Thawar Chand Gehlot, then Minister of Social Justice and Empowerment. It was passed on the same day of its introduction from Lok Sabha and by Rajya Sabha on 9 January. The bill received assent by the President on 12th January and came into force on 14th January 2019. It amended article 15 and 16 of the Constitution and added a new clause (6) in both article 15 and 16. The clause (6) of the article 15 reads that; 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.

The *clause (6)* of the article 16 reads that; 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.

Criteria for identifying the Economically Weaker Section (EWS)

The 103rd Amendment Act also provides that, “economically weaker section” shall be such section of the people as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.’ Following criteria of income and assets have been determined for Identifying the EWS category.

Criteria of income & assets

Persons who are not covered under the scheme of reservation for SCs, STs And OBCs and whose family has gross annual income below Rs 800 lakh (Rupees Eight lakh only) are to be identified as EWSs for benefit of reservation. Income Shall also include income from all sources i.e. salary, agriculture, business, Profession, etc. for the financial year prior to the year of application. Also persons whose family owns or possesses any of the following assets Shall be excluded from being identified as EWS, irrespective of the family income:

1. 5 acres of agricultural land and above;
2. Residential at of 1000 sq ft. and above;

3. Residential plot of 100 sq. yards and above in notified municipalities;
4. Residential, plot of 200 sq. yards and above in areas other than the Notified municipalities.

The property held by a “Family” in different locations or different places/cities Would be clubbed while applying the land. Or property holding test to determine EWS status.

The term “Family” for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also His/her spouse and children below the age of 18 years.

Debate over the Caste vs Class As the Basis of Reservation in India

Before going into detail, let’s first understand the nature of ‘Class’ and ‘Caste’ in Indian politics. The notion of class has been discussed broadly in the writings of Karl Marx and Max Weber. Marx considered class as the positions of the group of people in structure of production and distribution; through which societies are produced and relationships are determined. Though, Max Weber has seen class in terms of power or status. In India, there is a great debate going on about the nature of castes and classes. It is believe that the concept of *class* spearheading the western society and politics and in India the notion of *caste* prevails in society and politics. But scholars like Bojja Tharakam has argued that both ‘caste’ and ‘class’ exist in Indian society and Politics (Tharakam: 2020) ^[13]. The fundamental differences between both are as; the notion of class is basically related to material sense and in which system people have upward mobility to upgrade themselves from lower class to higher class. It means, it is a open system which allows people to transform their social status and position by making change in their economic or material position. Unlike class, caste is closed system where generation to generation perform same work. In this system one cannot upgrade his or her position in social hierarchy. Some people believe that castes are not based on physical characteristics, but on spiritual characteristics, and that castes are instead based on social characteristics. It obdurately divide people and enduringly fixed their place in social scale (Chandra: 2009) ^[2]. Therefore, Ambedkar has said that caste system is not about division of labour but it is division of labourers. It is far from clear that it is caste not class which is dominated the gamut of Indian society and politics. This is also adhered by Lloyd and Susanne Rudolph, that class politics is not a strong determinant of political action; class politics in India is marginal (Harris: 2010) ^[5].

Coming over the criteria for reservation, it would be necessary to begin with the arguments given during the constitution assembly debate over the criteria for providing reservation for the disadvantaged or marginalized section of the society. Almost, all members of the constituent assembly were congruence on the opinion to provide some special protection to the members of such communities who have been historically deprived and vulnerable. To put it differently, there was a near consensus in favour of reservation for the SCs and STs on the ground that they had suffered extreme discrimination and exclusion and that access to power would stimulate their social advancement. Social backwardness was considered as the most reasonable ground to provide reservation (Hasan: 2009) ^[4]. The justification for the special provisions for the SCs and STs

was essentially based on the 'principle of compensation', to correct, what injustice was done in past to these communities. One thing is crucial to note here that the social backwardness, low status in society and exploitation by the dominant caste were taken as criteria for reservation in the case of SCs and STs by the Constituent Assembly. But when it came to the Backward Class, it became problematic to decide what should be the criteria or basis for reservation for the backward class or whether they should provide reservation or not. Article 10 (3) of the draft Constitution provided that; 'Nothing in this article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented under the State services.' Shri Guptnath Singh one of the member of constituent assembly has proposed the amendment in the article 296 which read out, 'that mainly claims for the members of schedule castes and schedule tribes would be taken into consideration or appointments in services'. He want to add the one more phrase that is, 'and such other castes which are socially and educationally backward' into that. He further argued, this amendment will protect the interest of the agricultural, pastoral and artisan classes which are not covered under Schedule castes and schedule tribes. However, said amendment was not approved. But, HV Kamath another member of the constituent assembly tried to eliminate Guptanath Singh's erroneous belief by explaining that the claims of all backward classes are covered under the draft Article 10 (3), which "is not a [mere] directive principle of state policy", but a fundamental right. Kamath contented that "if there is no representation for backward classes in the services they can take the Government to task on that account". That right, according to him, "would be an adequate safeguard for them so far as their share in the services is concerned", irrespective of draft Article 296, which did not include the word "backward". Aforesaid argument making it clear as I too have mentioned above that constituent assembly was able to make distinction between the SCs and STs communities and backward classes in the course of providing them reservation or special treatment in legislature and appointments. With respect to SCs and STs the almost all members of the constituent assembly were near to consensus on the criteria for providing them reservation benefits but as far as backward class is concerned the criteria was not yet clearly set out. However, article 10 (3) of the draft Constitution which is article 16 (4) of the present Constitution read, 'that the State shall make special provision for the socially and educationally backward class, who is not adequately represented under the services of the State'. Here the word 'socially and educationally backward' should be taken care while dealing with reservation for backward classes. Therefore, there should not be any misunderstanding in making interpretation of the criteria for backward class and also one should not be confused with the term 'class' it was not used purely in economic and material sense instead it is a social class which comprises many backward castes. As it was also cleared by Dr. Ambedkar during Parliamentary debates that, 'backward class is nothing but a collection of certain castes' (Jefferlot: 2003)^[7].

Moving ahead, just few years after the Constitution came into force in 1953 the first Backward Class Commission constituted under the chairmanship of Kala Kalelkar, the

task was assigned to it was to set out the criteria for identification of Backward classes for the purpose of reservation. It submitted its report in 1955 in which it recommended four criteria to define the backward class. These four criteria are; (a) low social position in the caste hierarchy of Hindu society, (b) lack of general educational advancement among a major section of the caste or community, (c) inadequate or no representation in government services, and (d) inadequate representation in trade, commerce, and industry. In above mentioned criteria caste was given key weightage in determining the backwardness. Consequently, report was rejected by the parliament because it provided key role to the caste in deciding backwardness and government was afraid that it undermined socio-economic criteria over the caste, it would help in sustaining the caste division in Indian society (Hasan: 2009)^[4].

Nevertheless, the rejection of the report of the first Backward Classes Commission has arose the demand for recognition among leaders and members of the backward castes across the country. By keeping this pressing demand and need for the recognition of backward castes, in 1978 Janta government headed by Morar ji Desai constituted a second Backward Class Commission under the chairmanship of Bindeshwari Prasad Mandal (also known as Mandal Commission). It was also endowed with the task to set out the criteria for identification of backward castes. For this purpose Commission has adopted eleven 'indicators' or 'criteria'. These eleven 'indicators' were grouped under three broad heads, i.e., *Social, Educational and Economic*. Each group was accorded different weightage according its importance in determining the backwardness, the Social indicators were given *three* points, Educational indicators *two* points and finally, Economic indicators were given only *one* point. The Commission was with the opinion that economic backwardness directly derived from Social and Educational backwardness or socially and educationally backward classes are also economic backwards. Therefore, putting it in this way, Mandal Commission recommended 'caste' as the sole criteria for determining the backwardness. However, the recommendations of the Mandal Commission were not implemented by then Congress government due to lukewarm attitude of the government towards providing legitimation to 'caste' as a sole criteria for determining the backward classes. In 1990, it was V. P Singh government which came out with the decision to implement the Mandal Commission Report that provide 27 percent reservation in government jobs for backward classes (OBCs). This decision has sparked extreme resistance among students of Upper Castes across the country. It was going to affect directly the carrier opportunities for the students belonging to Upper Castes. However, there were two groups among the Upper Castes which resisted the reservation for backward castes. One group of opponent was absolutely against in any kind of reservation scheme. But there was another group of Upper Caste student which relatively belong to a low economic family was totally against the caste based reservation and therefore they favoured economic based reservation (Upadhyay: 2018)^[14]. However, to resolve this contentious tussle the Congress government headed by P.V. Narasimha Rao in 1991 introduced the 10 percent reservation for 'Economically Weaker Section' who were not covered under prior exciting

reservation schemes. But to test the constitutionality of this 10 percent reservation for 'Economically Weaker Section' the decision of P. V. Narasimha Rao government challenged before the Supreme Court. The judgement, which Supreme Court delivered in this case (also known as *Indira Sawhney Case 1992*) has great importance and as well as little 'perplexing' in my consideration. The judgment is important since it upheld the caste based reservation for backward castes or other backward classes. The legitimization of 'caste' as a criteria for backwardness ended the long debating issue among our policy makers which was emerged during the Constituent Assembly Debate. The judgement seems 'perplexing' owing to the fact that on the one hand it outrightly rejected the 10 percent reservation for the 'Economically Weaker Section' of the society, which showed the Court completely neglected the economic basis for reservation. On the other hand, to identify the creamy layers among the OBCs it incorporated economic criteria to excluded them from the beneficiary list. Whatsoever, since onwards caste regarded as sole criteria for providing reservation till the parliament brought 103rd Constitutional Amendment Act 2019.

EWS Reservation and Changing Horizons of Judicial Pronouncement

As the Supreme Court in *Indra Sawhney & Others vs Union of India* (1992) ^[6] in it's nine members Constitutional bench had rejected 10 percent reservation for 'Economically Weaker Section' introduced by P.V. Narasimha Rao government other than 27 percent reservation for 'Socially and Educationally' backward classes which was recommended by Mandal Commission. The decision to undermine economic basis for the reservation has revealed the stance of judiciary that it was not in favour of any kind of economic basis of reservation at that time. However, the pronounces of the Judiciary regarding the 'base' of reservation has changed in a very recent perspective. In *Janhit Abhiyan vs Union of India* (2022) ^[8] case the Supreme Court has upheld the constitutionality of the 103rd Constitutional Amendment Act which provides reservation to the Economically Weaker Section of the society on the basis of economic backwardness only. Which is being considered as a paradigm shift or a watershed moment in the history of Indian reservation system. It is because what could not have had happened in last 70 years, it brought into existence only in 2019 when the ruling BJP government led by Narendra Modi had introduced 124rd Constitutional Amendment Bill in parliament for providing reservation for EWS which was not covered under any already exiting reservation scheme. This Amendment Bill passed by parliament and gave it final shape as 103rd Constitutional Amendment Act 2019. Although, it's constitutionality was challenged before the Supreme Court on the various grounds such as; it violates the judgment of the Indra Sawhney Case which has rejected reservation on the basis economic backwardness only as a criteria and also put the seal on limit of 50 percent reservation. It also violates the basic structure of the Constitution and Equality Code by excluding OBCs/SCs/STs from the scope of EWS quota. These are the some major grounds on which 103rd Act was challenged before the court. Whatsoever, finally the Supreme Court in *Janhit Abhiyan Vs Union of India* 2022 ^[8] validated 103rd Amendment Act by it's 3:2 decision. It upheld the legality of the amendment for the following

reasons; only permitting the State to make special provision, including reservation, based on economic criteria and exclusion of SEBCs/OBCs/SCs/STs from the scope of EWS quota cannot be said to it breach of the basic structure of the Constitution; Reservation for EWS up to 10 percent, does not breach of ceiling limit of 50 per cent, because, that ceiling limit itself is not inflexible and in any case applies only to the reservation envisaged by Articles 15 (4), 15 (5) and 16 (4) of the Constitution; the exclusion of the classes covered under Articles 15 (4), 15 (5) and 16 (4) from EWS reservation is also in consonance for maintaining the balance and it does not violate Equality Code. Along with these arguments to upheld the Constitutionality of the EWS reservation, Article 46 also has provision and reads that the State shall promote the educational and *economic interests* of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation. These are the major grounds and provisions on which the legality of the EWS was held. The change in the pronouncements of judiciary from Indra Sawhney judgement to in recent Janhit Abhiyan case witnessed a shift from 'caste' based reservation to 'class' based reservation. And it also considered a paradigm shift or watershed moment in the history of Indian reservation system.

Conclusion:

EWS reservation got legitimacy as well as acceptance by the Government, judiciary and people, particularly by those who belongs to upper caste group. Though one thing must be remember is that it is the same upper castes people who vehemently resisted against the any form of reservation in the government jobs and educational institutions on the basis of merit and consistently argued that all reserved category candidates as a meritless candidates. But today they are favouring and supporting the EWS reservation, for them reservation is not undermining merit now and EWS quota has metamorphosed the erstwhile critics into preachers of reservation policy (Sunny Jose *et al*: 2023) ^[9]. However, Supreme Court did it in good spirit. Keeping all criticism and challenges about EWS reservation it is up to the all policy executor to do it in just and spirited manner so that such type of policies can yield just consequences, instead confining it just as a instrument to serve the political interest of a particular political party or group. At the end the class based reservation justified if it addresses the interest of least advantage section of the society. If it is able to that than everyone is ready to embrace it and there will be no conflict left over the '*caste vs class*' criteria.

References

1. The Constitution Assembly Debate, reprinted in, 1999, 3-4-10.
2. Chandra, Bipin: History of Modern India, Orient Black Swan, New Delhi, 2009.
3. Desai IP. Should 'Caste' Be the Basis for the Recognising Backwardness? Economic and Political Weekly, 1984;19(28):1106-1116.
4. Hasan Zoya. Politics of Inclusion: Castes, Minorities and Affirmative Action, Oxford University Press, New Delhi, 2009.
5. Harris John. 'Class and Politics', in Niraja Gopal Jayal and Pratap Bhanu Mehta (ed.), The Oxford Companion to Politics in India, Oxford University Press, New Delhi, 2010.
6. Indra Sawhney vs Union of India judgment, 1992, SC.

7. Jefferlot, Christophe: *India's Silent Revolution: The Rise of the Low Castes in North Indian Politics*, Permanent Black, Ranikhet, 2003.
8. *Janhit Abhiyaan vs Union of India* judgment, 2022, S.
9. Jose, Sunny and Bheemsewar Reddy *et al.* 'EWS Quota: A Policy Against Evidence. The Sage Publication Private limited, 2023:53(1):117-123.
10. Kaka Kalelkar backward class commission, Report. (Delhi), 1955.
11. Mandal Commission, Report. (Delhi) December 31, 1980.
12. Shah, Ghanshyam. *Caste, Class and Reservation. Economic and Political Weekly*, 1985:20(3):132- 36.
13. Tharakam Bojja. *Caste and Class*, The Shared Mirror Publishing House, Hyderabad, 2020.
14. Upadhyay, Amit Kumar. *Reservation Policy in Uttar Pradesh: Socio-Economic and Political Perspective*, Bharti Prakashan, Varanasi, 2018.
15. *The Constitution (One Hundred and Third Amendment) Act, 2019*, Published in Union Gazette on, 2019.