

Economics and Exclusions

On upholding 10 % EWS quota by Supreme Court

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Paper - II
(Indian Polity)

❖ The use of the sole income criterion for quota is questionable but it should be made to work in a non-exclusionary manner.

The Supreme Court, with a split judgment of three and two judges, upheld the system of reservation for the Economically Weaker Sections (EWS) in government jobs and educational institutions. This has opened a new aspect in the ongoing debate about affirmative action in the country. By legitimizing 10 percent reservation for economically weaker sections, not only the government, but also this section has given a big relief. Though the decision justifying 10 percent reservation to the economically weaker sections was not given unanimously, and it is not going to affect its legitimacy. The important point of the decision of a five-judge bench that justified economic reservation by 3-2 majority was that it was not highlighted as a violation of the basic structure of the Constitution.

What is the definition

On January 31, 2019, the government notified EWS norms that the beneficiaries should not be covered by SC/ST/OBC reservation and their gross annual family income should be less than Rs.8 lakh. This notification specified what constitutes "income". Also, if their families have certain assets, they cannot claim benefits under the EWS quota.

Affirmative Action and the Supreme Court

Affirmative actions are steps that help women, dalits, underprivileged and minorities get adequate economic and educational opportunities to overcome past discrimination. In the process, the Court has recorded a major paradigm shift in its concept of what constitutes valid affirmative action. For the first time, the Court has upheld a kind of reservation that is specifically set out on the basis of economic criteria and exclusively outside the three existing categories of beneficiaries. When a nine-judge bench in the Indra Sawhney case 1992. upheld OBC reservation but favored exclusion of higher income groups of beneficiary communities from its purview. it introduced a form of economic criterion for the first time.

Supreme Court verdict and doubts

Three judges of the five-judge bench upheld the 103rd Constitutional Amendment, which was passed by Parliament in January 2019. It was said that this reservation does not violate the basic structure of the Constitution. The remaining two judges, however, disagreed with their view that a law that provides reservation to upper-caste families earning less than Rs 8 lakh per annum certainly tinkers with the spirit of the reser-

vation policy that was originally intended. It was focused on removing the historical injustice done to the Scheduled Castes, the Scheduled Tribes and later the Backward Classes. There is no evidence to suggest that there are similar prejudices towards people belonging to the economically weaker sections. It is certainly a fact that the reservation policy of the Backward Classes also uses the same formula of Rs 8 lakh for the 'Creamy Layer' and this suggests that the standards adopted for the 103rd Constitutional Amendment are questionable. Not only this, two dissenting Justices Chief Justice U U Lalit (whose term has ended today) and Ravindra Bhat said in their arguments that although this amendment keeps the Scheduled Castes, Scheduled Tribes and Backward Classes out of the purview of this quota, economically creates opportunities for the weaker sections but this amendment puts into practice the 'constitutionally barred principle of discrimination'.

In The Eyes of Critics

Apart from the legal arguments, critics have also pointed to the political nature of the law, alleging that the ruling party is taking advantage of the law to consolidate its traditional upper-class votes. This may have been the intention, but it is also true that a large Muslim population will fall within this income limit of Rs 8 lakh and in principle they will also benefit from it. Apart from this, if social justice is the norm of this law then other questions also arise such as the EWS quota is 10 percent in proportion to the share of 18 per cent of the population, which may lead to some discontent going forward.

In contrast, SCs and STs have relatively higher quotas and enjoy 15 and 7.5 per cent quotas, respectively, at 20 and 9 per cent of the population.

Other Backward Classes have got 27 percent reservation on 41 percent of the population. The EWS reservation is in addition to the 50 percent reservation limit, due to which the demands for reservation on grounds other than caste may arise from the new location.

Supreme Court's decision on reservation

A closer look at the judicial response to reservation policies from Dorayarajan (1951) to M. R. Balaji (1963) and from Indra Sawhney (1992) to M. Nagaraj (2006) reveals that the Indian judiciary is not very supportive of such policies. In many cases, it created new conditions in the implementation of such policies by introducing several exclusions, principles, rules, etc. Even Parliament had to amend the 77th Constitutional Amendment to overturn Indra Sawhney's decision against reservation in promotion. Similarly the 85th Constitutional Amendment was passed to undo the decisions of Virpal Singh Chouhan (1995) and Ajit Singh (1999) which introduced the "catch up rule", under which general candidates, who are not called SC/ST candidates was later promoted.

What is the 103rd Amendment?

In fact, the 124th Constitutional Amendment Bill was passed by Lok Sabha and Rajya Sabha on January 8 and 9, 2019 respectively. It received the assent of the President on 12 January as the Constitution (103rd Amendment) Act, 2019 and was subsequently notified. Through the amendment, Article 15 (6) and Article 16 (6) were inserted in the Constitution of India, so that the benefit of reservation could be provided to the economically backward people of the unreserved class.

- ↳ Article 15 prohibits discrimination on the grounds of: religion, race, caste, sex or place of birth.
- ↳ Article 16 guarantees equal opportunity in matters of public employment. Additional clauses gave Parliament the power to make special laws for EWS, such as for SC/ST and OBC.

In The Future

Despite all these things, it is difficult to deny that this amendment is politically motivated. This is usually what happens in such cases. It is not yet clear to what extent different states will be able to fulfill their obligations towards EWS families as most of the jobs are being created in the private sector. In such a situation, policies focused on increasing employment will prove to be better for the economically weaker sections rather than promising employment as there are very limited opportunities.

The government should work on improving the quality of educational institutions as it will reduce the demand for reservation in few institutions. Finally, the growing demand for new castes and communities to be declared backward also makes us aware of the dangers of new categories of reservation. In a country with an economy and diversity like India, due to this, social tension will increase. At this time the country needs to avoid such a situation.

Expected Question

Que. With reference to the Economically Weaker Sections (EWS) reservation, consider the following statements:

1. This is the first reservation in the country given on the basis of economic criteria.
2. Amendments have been made in Article 15 and Article 16 of the Indian Constitution for EWS reservation.

Which of the above statements is/are true?

- (a) only 1 (b) only 2
(c) Both 1 and 2 (d) None of the above

Answer : C

Mains Expected Question & Format

Que.: Reservation given to EWS is the first economic reservation of its kind in the country, in view of the current situation of the country, critically examine this reservation?

Answer Format :

❖ **Introduction (20-30 words)**

Tell about the economic reservation of EWS and also show the constitutional provision related to it.

❖ **Main Body (140-160 words)**

In this part, showing the provisions made earlier and the amendments made by the court, state the doubts and benefits associated with it.

❖ **Conclusion (30-50 words)**

In this part, tell that what can be the benefit of EWS reservation and what role will the country play in diversity and current economy.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.