

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**ECONOMICALLY WEAKER SECTION (EWS)**  
**RESERVATION – APPRECIATION OF**  
**CONSTITUTIONAL AMENDMENT AND CRITICAL**  
**ANALYSIS OF JUDGMENT**

AUTHORED BY - DIGVIJAYA SRIVASTAVA

[BA. LLB(Hons.) (CNLU BATCH'21), LLM (Allahabad University), UGC-NET.]

**ABSTRACT**

To make the Constitution a living document, provisions relating to the Constitutional Amendment have been made so that necessary changes may be brought alongwith the changing times. In furtherance of the same, a recent Amendment was done to the Constitution Article 15 and Article 16 by the 109<sup>th</sup> Constitutional Amendment in 2019.

It introduced the concept of Reservation to economically weaker sections of the society who belong to the so called Forward castes. It enables the Economic as well as social elevation of the persons belonging to such community, who are unable to afford proper education and land in Government services owing to their lack of economic resources.

This move of the Government has been subjected to severe criticism and has also been able to garner support from various sections of the society and consequently been challenged in the case of Janhit Abhiyan vs Union of India in which its constitutional validity has been subjected to scrutiny and consequently upheld.

**INTRODUCTION**

In order to further the goals enshrined in the Preamble to the Constitution relating to Equality of Status and Opportunity, and Justice – both Social and Economic, The NDA government took a historical step towards all inclusive social justice by introducing reservation on the basis of Economic criteria to the persons belonging to the so called “Forwad Community” also known as Sawarnas.

This step attracted reactions from all parts of the society, both positive and negative. Some saw it as Concept of equality in action whereas others regarded it to be an infringement to the concept of Merit.

Recently, putting an end to the dispute regarding the step, the Hon'ble Supreme Court upholding the validity of 103rd constitutional amendment, reservation policy is now extended to economically weaker section (hereinafter EWS).

## **REASONS FOR INTRODUCTION OF RESERVATION IN INDIA**

The Constitution of India has provided for the reservation to secure socio-economic justice to the vulnerable and downtrodden sections of the whole society to bring them to the main the nations life. For many centuries, the caste system in India has kept away the under privileged and downtrodden sections from the so the society. As a consequence of which they were denied access to education, shops, public places, temples and other places. Therefore, the Constitution makers deliberately inserted the element of equality in the Constitution of India in order to ensure equal treatment to all irrespective of their caste, religion, race, language and place of birth<sup>1</sup>. The framers of our constitution were of the firm view that equality needs to be secured to all persons in socio-economic life through State's intervention. One way to achieve this was by introducing the concept of reservation in matters of public employment and educational institutions. The provisions for the same have been envisaged in our Constitution under article 152 and 163<sup>2</sup>. The Constitution has provided reservation of seat in the various educational institutions and in the public employment to three categories people- (i) Persons who are socially and educationally weaker citizens (ii) Scheduled castes and (iii) Scheduled tribes The State is under Constitutional obligation to protect the interest of these groups through affirmative action. The reason behind formulation of such a policy was because for ages these groups have been oppressed, denied equal opportunity and respect owing to the presence of caste system. They have been under-represented in nation building activities.

Therefore, reservation was provided to them not just to ensure their equal participation by increasing their representation in educational institutions and jobs but also to compensate them

---

<sup>1</sup> Basavaraju, C. (2009). RESERVATION UNDER THE CONSTITUTION OF INDIA: ISSUES AND PERSPECTIVES. *Journal of the Indian Law Institute*, 51(2), 267–274.

<sup>2</sup> Constitution of India 1950

for the oppression and ill-treatment meted out to them in the name of caste system. Reservation is not meant just for economic upliftment of the oppressed class, rather it is to bring social equality and economic upliftment is just a by-product of it. Reservation is intended to realize the promise of equality enshrined in the Constitution of India<sup>3</sup>.

For approximately thousands of years, education was denied to the majority of the population of in India based on one's birth in a particular caste. All the mighty kings who ruled the Indian subcontinent were bound by the law provided by Manu Shashtra, the rulebook of the Hindu religion that proscribed education of the Shudras. Non-Brahmins were oppressed in many ways. Not only education but also the positions of power and lucrative jobs were also denied to them. Therefore, the intention behind giving reservation was for the upliftment of the historically marginalized communities like schedule casts and the schedule tribes. The rationale is not to eliminate poverty or to ensure prosperity but to overcome the handicap of the caste-based social discrimination.

The 103rd constitutional amendment allows 10% reservation for the EWS in jobs as well as seats in the institutions of higher education within general category. The amendment has been a bone of contention since it received the assent of the President of India in 2019.

The validity of the same was challenged in the case *Janhit Abhiyan v Union of India*<sup>4</sup> where the Supreme Court held the amendment to be constitutional by a 3:2 split verdict. This new scheme of granting reservation on the basis of economic criteria acknowledges the fact that a significant section among the social elites survive in the wretched poor conditions and hoped that such institutional support may bring some solace to the upper-caste downtrodden.

The government's announcement to implement the 103rd amendment of the Constitution, providing 10% reservation for the EWS has been seen as a major tool to appropriate the aspirations of the poorer groups among the upper castes. However, doubts were raised about its legal validity and the attempt was seen as a political ploy to impress the social elite constituencies. Despite receiving legal sanction from the court and political support, EWS reservation has been criticized for ignoring historical context and constitutional principles on the basis of which reservation policy was enacted.

---

<sup>4</sup> WRIT PETITION (CIVIL) NO. 55 OF 2019

The Hon'ble Supreme court had framed 3 major issues to be dealt with while it delivered its judgment:

1. Whether Economic criteria can be the sole determinant in allowing reservation for a specific section of society, and thus infringing the basic structure of the constitution.
2. Whether Exclusion of Socially and Educationally Backward Classes (hereinafter referred as SEBCs), i.e., SCs, STs, and OBCs, from these special provision for EWS is inexplicably discriminatory in nature, and thus violates the very basic structure of the constitution.
3. Whether the defined 10% upper limit of reservation provided for the EWS directly breaches the 50% cap of reservation put by the Constitution and hence directly goes against the ethos and jurisprudence of reservation as professed by the constitution makers, as it violates the Equality, and thus, stands in violation of the basic structure of the constitution.

The petitioners presented excellent arguments to support their cause. The petitioners included Janhit Abhiyan Akhil Bhartiya Kushwaha Mahasabha; Youth for Equality; SC/ST Agricultural Research and Education Employees Welfare Association; Peoples Party of India (Democratic), represented by Rajeev Dhawan; Meenakshi Arora Gopal Sankaranarayanan; MN Rao;. The submissions from the side of petitioner were,

The reservation granted by the Constituent Assembly in 1949 to the so called backward class of the society was based on an age-old and centuries old discrimination suffered by these communities. The rationale behind such a measure was to give them an equal playing field to compete and provide equal representation and address the historical inequalities suffered by the backward classes.

The petitioners side argued before the bench comprising of UU Lalit CJ, D Maheswari J, SR Bhat J, BM Trivedi J, JD Pardiwala that the court must invoke the principle of purposive interpretation of reservation considering EWS, and revisit the very purpose behind the reservation policy through the vision of the Forefathers of our Constitution and the As required, refer to the constituent assembly debates.

On the other hand, the 103<sup>rd</sup> amendment aims to extend the policy of reservation to a class of people which have been never subject to any kind of marginalization or discrimination on the

basis of their social background upon reference to their Castes, and hence such an amendment goes on to defeat the very rationale behind the reservation policy.

It was further submitted that constitution also endorses the concept of social as well as educational backwardness, rather than social 'or' educational backwardness, which is indicative of the fact that the social and educational criteria are not mutually exclusive of each other, and both criteria needs to be simultaneously fulfilled in enable a person or a group to put claim over reservation. In essence the said amendment extends the benefit given by reservation not only to the economically weaker but also financially incapable class of society and hence the furthers the individual-centric based idea of reservation which is very problematic to the very nature of democracy.

It was further argued that the EWS is perpetuating the monopoly in certain section of society since they have never been historically oppressed as opposed to the categories of persons belonging to SC, ST, SEBCs who actually were in a marginalized backward situation. This is also leading to a very individual centric reservation which basically goes against the very extent and the nature of reservation as the purpose of reservation was to enable the removal of the inter-group inequalities prevailing among the classes of society.

The identification of a backward class is possible only according to the benchmarks and guardrails which have been provided by the constitution, however, the same is very difficult in order to identify the EWS, as the financial capability as well as incapability is very temporary in nature. It was further submitted that, reservation cannot be any measure of poverty alleviation.

It was further contended that economic criteria can never be the sole basis of granting reservation since the same has been held in the Leading Judgment passed in the Indra Sawhney<sup>5</sup> judgment and consequently in the Mandal Commission report, and hence this 5-judge bench is incapable of implying otherwise as the concerned judgment was made by a 9-judge based constitutional bench. The backward class individuals would not be able to claim the seats in the open category, for the people belonging to the creamy layer SEBCs, which would damage the basic structure of the constitution.

---

<sup>5</sup> 1992 Supp (3) SCC 217

The amendment also fails to justify the fact as to how the poverty of forward class is in point different from that of the backward class.

It is further destructive towards the aim of caste-less society, and hence EWS reservation goes against the vision as enshrined in the Preamble to Constitution of India.

Union of India alongwith the Ministry of Social Justice & Empowerment and others represented by Attorney General KK Venugopal; Solicitor General Tushar Mehta contented the arguments filed by the petitioners . The submissions from the side of Respondent were as follows:

The concept of reservation goes on to make a distinction between classes of individuals and not specific to castes and hence present amendment is based on the reasoning of providing the special benefit to the various backward class which is backward by the virtue of economic inequality, thus furthering the very rationale of reservation , thus furthering the vision enshrined in Preamble relating to economic justice. The amendment is a further step towards furthering a utopian caste-less society which was the Nobel vision propounded by constitution makers.

The then Attorney General of India, Mr. K.K. Venugopal, further contended that the said amendment also vitalizes the very basic structure of the constitution rather than going against it. An amendment to the constitution may be struck down only on the points that when it is capable of changing the essential identity of the constitution.

The respondents side have argued that one must dynamically interpret the constitution of India in order to strengthen the vision enshrined in the constitution. A further reference has to be made to Articles 38 and 46 <sup>6</sup>of the DPSPs which render a duty on the State to eliminate all kinds of social, political as well as economic differences and to further promote the idea of justice.

Under 103<sup>rd</sup> Constitutional amendment, classification based on economic criteria alone is justified. The Supreme Court has on several occasions considered poverty as a big indicator of backwardness, while considering reservation in several cases, such as, *M.R. Balaji R Chitralakha vs. State of Mysore*, Vasanth Kumar

It is further argued that it is poverty that leads a community to social and educational

---

<sup>6</sup> Constitution of India 1950

backwardness and the said amendment tries to cure such a glaring discrepancy by creating a class of people which are in fact social 'and' educationally backward due to the economic inequality faced by them in the society, therefore, the Parliament is in the right to create such an enabling provision which minimises the economic inequality in the society.

## **REASONS AND JURISPRUDENCE BEHIND THE 103<sup>rd</sup> AMENDMENT TO THE CONSTITUTION AND ITS FUTURE RAMIFICATION**

The EWS reservation is a scheme which provides for 10 percent reservation of seats in jobs and educational institutions to candidates with family income less than Rs 8 lakhs per annum. Additionally, their family should not own more than 5 acres of agricultural land; residential flat area should be below 1000 sq ft. and residential plot's area should be below 100 square yards if in a notified municipality sector. The policy of granting EWS reservation, though upheld by the Supreme Court, has received a lot of criticism. The policy has been criticized for being passed in haste instead of holding proper debates and discussions around the issue. The Bill to grant EWS reservation was introduced in the Parliament in January 2019 and within a time span of 48 hours it was passed in both the Houses and later received Presidential assent. The Constitution (One Hundred and Third Amendment) Act, 2019 was notified on 12 January 2019 in the published Union gazette. As this was a Constitution amendment bill and the purpose of that bill was to insert 15(6) and 16(6)<sup>7</sup> in the chapter on the fundamental rights, so it should also have been discussed thoroughly in the highest Parliament. Ideally, the draft should also have been circulated to the Parliamentarians prior to its introduction, so that they could go through the overall bill and prepare their responses. Ideally, such bills with some far-reaching implications should be sent to the department-related committees for wider discussion and consultation. It's not at all illegal to introduce and pass a bill in haste, but this is certainly against constitutional morality and propriety. The bill didn't have any chance to go through a proper scrutiny of Parliament.<sup>8</sup>

Another point of criticism is that the policy is framed on unverified premise owing to lack of data. The Statement of Object and Reason in the bill introduced states that, "the economically weaker sections of the citizens have largely remained secluded and excluded from attending the higher

---

<sup>7</sup> Constitution of India 1950

<sup>8</sup> Ibid 4

educational institutions and public employment on the account of their financial incapacity to compete with the students/persons who are economically more privileged”, however, no data has been provided in support of this particular statement<sup>9</sup>. As a matter of fact, the Union or state governments have no statistical data to prove that any particular ‘upper’ caste individuals, who have been given less than Rs 8 lakh annual income, are not adequately represented in government jobs and higher educational institutions. There is a strong possibility existing that they are actually over-represented in these places.

Furthermore, 10% reservation breaches the 50% cap on the reservation. In the *Indra Sawhney v Union of India*<sup>10</sup>, the nine-judge Constitutional bench had deliberately and in expressed terminology put a cap of 50 per cent.

The judgement says that: “Reservation being an extreme form of a protective measure or an affirmative action should be confined to a minority of seats only. Even though the Constitution does not lay down any particular specific bar but the constitutional philosophy being always against proportional equality, the principle of balancing equality ordains reservation, of any manner, should not exceed 50%. While the courts have admitted that this particular 50% ceiling can be breached but it should be breached only in some exceptional circumstances, this was specifically held in *LM Thomas vs State of Kerala*.

Even father of our Indian Constitution Dr B R Ambedkar advocated that reservation of seats should be limited to only a minority number of seats<sup>11</sup>. Time and again Indian judiciary has been using this 50% cap to stay reservations which cross the cap.

But while deciding the constitutionality of 103rd constitutional amendment the Apex court said that 50% ceiling is not at all violative of basic structure of the Constitution owing to the fact that the same has been granted due to the exceptional circumstances prevalent in the Indian society relating to the economically weaker sections in the do called Forward category community. Furthermore, the 50% rule is a flexible one and was made applicable in the context of article 15(4) and 16(4) and it would not apply to affirmative action other than those based on caste.

---

<sup>10</sup> Basavaraju, C. (2009). RESERVATION UNDER THE CONSTITUTION OF INDIA: ISSUES AND PERSPECTIVES. *Journal of the Indian Law Institute*, 51(2), 267–274.

<sup>11</sup> Abhishek Anghad “Jharkhand Assembly Raises Quota to 77%, 1932 Land Records to Fix Domicile Status” <https://indianexpress.com/article/india/jharkhand-assembly-bill-raising-reservation-8262459/>

This will now open a Pandora's box as there are many states that owing to their policies and demographic politics have been planning to implement policies that exceed reservation to as much as 77%. Bihar and Odisha are also advocating for the removing the 50% cap. The whole concept of reservation was evolved for the upliftment of the historically oppressed classes of citizens who owing to their Socio – Economic background (with specific reference to their castes), to increase their representation in jobs and in educational institutions and in order to compensate for the past acts. Reservation is a tool for social and educational upliftment and not merely a tool for financial upliftment. If the drafters of the Constitution intended financial upliftment alone then instead of reservation, policies would have been formulated around providing scholarships or free education and various other like schemes. Moreover, the EWS reservation specifically excludes from its ambit communities which are already getting benefits of reservation i.e., the SCs, STs, and OBCs in the case of *Janhit Abhiyaan vs Union of India*<sup>12</sup> it was one of the major contentions which arose between the litigating parties wherein the Hon'ble apex Court specifically held that the SC, ST, OBC categories have been specifically excluded from the ambit of the EWS reservation due to the fact that there can not be any competition of affirmative action and these categories already have been recipient of the same.

This step is criticized on the basis of the fact that economic backwardness does not depend upon one's caste. Economic weakness is a factor that is applicable to all the communities and exclusion of certain segment would totally go against equality. Even the existing income criterion of Rs 8 lakhs a year has already been questioned by the Court in a separate case, as it is liable to result in excessive coverage of socially advanced classes.

When those exempted from filing I-T returns are only those with taxable income below Rs 2.5 lakh, it makes no sense to extend the reservation benefits to sections earning an income up to Rs 8 lakh<sup>13</sup>. There have been many cases in the past where on the issue of the EWS reservation, courts have said that EWS within upper caste do not constitute a specific homogenous group and the criterion of economy is also very fluctuating therefore, reservation to such class cannot be provided.

---

<sup>13</sup> Ambar Kumar Ghosh, "The New Economically Weaker Section Quota: The Changing Idea of Affirmative Action"

As discussed above, the whole scheme of providing reservation was meant for the overall upliftment of the historically oppressed classes. The present scheme of EWS reservation not only lacks specific data that can substantiate the policy but it is also based on the criterion which is fluid. A person may be rich today and due to various circumstances, become poor tomorrow and vice versa. Moreover there is an exclusion of SC, ST, OBC candidates, This has a specific tendency of furthering the social gap that already exists. The EWS scheme is bluntly exclusionary and discriminatory, where groups bearing double subjugation i.e. being poor as well as being from SCs/STs/OBCs, have been left out of the EWS reservation bracket which has caused massive prejudice to them .Although the amendment has been brought in order to alleviate the social position of the Economically weaker sections of the so called Upper Castes, To put that into perspective, a person belonging to a marginalised caste group who is also economically disadvantaged will not be able to avail the benefit of the EWS reservation, solely because of the reason that them not belonging to the so-called upper castes. There have been instances where marks for EWS criterion were the lowest for a particular examination<sup>14</sup>. The amendment seems to be arbitrary, given that no data has been provided. In my opinion, this EWS reservation needs further scrutiny. There are many gaps which need to be filled which includes how this amendment was brought in an undemocratic way, the arbitrariness in the amendment, exclusion of historically oppressed class etc. Therefore, this scheme in its present form is very problematic and deserves more debates and discussion around it.

## **BIBLIOGRAPHY**

- 1.) Basavaraju, C. (2009). RESERVATION UNDER THE CONSTITUTION OF INDIA: ISSUES AND PERSPECTIVES. Journal of the Indian Law Institute, 51(2), 267–274.
- 2.) Reddy, P.C. (2021), ‘Supreme Court And Legislatures On Reservation’ Puliani And Puliani Publication 2021

## **WEBSITES**

- 1.) SCC Online
- 2.) MANUPATRA