

EWS quota challenge in Supreme Court

September 16, 2022

Manifest Pedagogy:

The Supreme Court will examine whether The Constitution (103rd Amendment) Act, which introduced a 10 per cent quota for Economically Weaker Sections (EWS) in government jobs and admissions, violates the basic structure of the Constitution. Reservation is a constitutional scheme to ensure the participation of backward classes shoulder to shoulder with all citizens in the nation-building process. The EWS quota has some ambiguities which needs to be rectified otherwise it will lead to the subversion of the constitutional scheme for reservation.

In News: A Constitution Bench, hearing petitions against the 10% quota for Economically Weaker Sections in government jobs and admissions.

Placing it in the Syllabus: Polity and Governance.

Static Dimensions

- About 103rd Amendment
- How is EWS status determined under the law?

Current Dimensions

- Background of the issue.
- What is the basis of the challenge to the amendment?
- Government's stand in this matter
- Committee to revisit the Economical Weaker Section (EWS) criteria
- Significance of EWS reservation.
- Issues associated with EWS reservation.

Content

Background of the issue

A five-judge Constitution Bench led by Chief Justice of India (CJI) U U Lalit decided to examine three key issues to ascertain the validity of the amendment.

1. Whether the **103rd Constitution Amendment** can be said to breach the basic structure of the Constitution by permitting the state to make special provisions, including reservation, based on economic criteria.
2. Whether it (the amendment) can be said to breach the basic structure...by permitting the state to make special provisions in relation to admission to private unaided institutions.
3. Whether the basic structure is violated by “excluding the SEBCs (Socially and Educationally Backward Classes)/ OBCs (Other Backward Classes)/ SCs (Scheduled Castes)/ STs (Scheduled Tribes) from the scope of EWS reservation.

About 103rd Amendment

- The 103rd Amendment inserted **Articles 15(6) and 16(6)** in the Constitution to provide up to **10 per cent reservation to EWS** other than backward classes, SCs, and STs in higher educational institutions and initial recruitment in government jobs.
 - The amendment empowered state governments to provide reservation on the basis of economic backwardness.
- **Article 15** prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. **Article 16** guarantees equal opportunity in matters of public employment.
 - The additional clauses gave Parliament the power to make special laws for EWS like it does for SCs,

STs, and OBCs.

- The EWS reservation was granted based on the recommendations of a commission headed by **Major General (retd) S R Sinho**.
 - The commission, which was constituted by the UPA government in March 2005, submitted its report in July 2010.
 - The Sinho Commission recommended that all below-poverty-line (BPL) families within the general category as notified from time to time, and also all families whose annual family income from all sources is below the taxable limit, should be identified as EBCs (economically backward classes).

How is EWS status determined under the law?

- The EWS criteria for employment and admission was notified on January 31, 2019 by the Department of Personnel and Training (DoPT) based on the 103rd Amendment.
- Under the 2019 notification, a person who was not covered under the scheme of reservation for SCs, STs, and OBCs, and whose family had a gross annual income below **Rs 8 lakh**, was to be identified as EWS for the benefit of reservation.
 - The notification specified what constituted “income”, and excluded some persons from the EWS category if their families possessed certain specified assets.
- According to the EWS quota notification of 2019 issued by the Department of Personnel & Training, persons whose family owns or possesses **5 acres of agricultural land or residential plot of 1,000 square feet or a residential plot of 100 square yards in notified municipalities or a plot of 200 square yards** and above in areas other than the notified municipalities, will be excluded from being

identified as EWS, irrespective of the family income.

What is the basis of the challenge to the amendment?

- When a law is challenged, the burden of proving it is unconstitutional lies on the petitioners.
 - The primary argument in this case is that the amendment **violates the basic structure of the Constitution**.
 - Although there is no clear definition of basic structure, any law that violates it is understood to be unconstitutional.
- This argument in the present case stems from the view that the special protections guaranteed to socially disadvantaged groups is part of the basic structure, and that the 103rd Amendment departs from this by promising special protections on the sole basis of economic status.
- The petitioners have also challenged the amendment on the ground that it violates the Supreme Court's 1992 ruling in **Indra Sawhney & Ors v Union of India**, which upheld the Mandal report and capped reservations at 50 per cent.
 - The court had held that economic backwardness cannot be the sole criterion for identifying a backward class.
- Another challenge is on behalf of private, unaided educational institutions.
 - They have argued that their fundamental right to practise a trade/ profession is violated when the state compels them to implement its reservation policy and admit students on any criteria other than merit.
- Annual family income of ₹8 lakh as a ceiling to determine if someone belongs to the EWS is problematic.
 - If available consumer expenditure surveys such as the **NSSO report**, 'Key Indicators of Household

Consumer Expenditure, 2011-12', are relied on, a large chunk of the population will be eligible for reservations in the "below Rs. 8 lakh" EWS category and not just the truly deserving sections of the poor.

- The ₹8 lakh figure did not correspond to any data on the estimated number of EWS persons in the population with incomes related to it.
- Petitioners have also argued that the net effect of the exclusion of Backward Classes and SC/ST aspirants from the EWS has been that they are now denied an opportunity to compete in the general category to the extent of 10%, in effect, limiting the quota to the "forward classes".

Government's stand in this matter

- In counter affidavits, the Ministry of Social Justice and Empowerment argued that under **Article 46** of the Constitution, part of Directive Principles of State Policy, the state has a duty to protect the interests of economically weaker sections:
 - "The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."
- Against the argument of violation of the basic structure, the government said that "to sustain a challenge against a constitutional amendment, it must be shown that the very identity of the Constitution has been altered".
- On the Indra Sawhney principle, the government has relied on the SC's 2008 ruling in **Ashoka Kumar Thakur v Union of India**, in which the court upheld the 27 per cent quota for OBCs.
 - The argument is that the court accepted that the

definition of OBCs was not made on the sole criterion of caste but a mix of caste and economic factors; thus, there need not be a sole criterion for according reservation.

Committee to revisit the Economical Weaker Section (EWS) criteria

- **Income Limit**-The committee has termed the gross family annual income limit of Rs 8 lakh as 'just and fair in the present circumstances' as unlike the similar income criteria for OBC creamy layers reservation, the EWS regime includes income from all sources including agricultural income and salary for the household.
 - The committee concluded that the two sets of criteria are significantly different despite both using the Rs 8 lakh cut-off and that the criteria for the EWS are much more stringent than those for the OBC creamy layer.
- The panel has recommended that the residential asset criteria may altogether be removed, arguing that mere possession of a residential house may not correctly reflect the economic condition of the candidate or his family, especially if it is used only as a dwelling unit and not for generating any income.
- **Other Suggestions**
 - Suggested that 'a three-year feedback loop cycle may be used to monitor the actual outcomes of these criteria and then be used to adjust them in future.
 - It has also proposed that data exchange and information technology be used actively to verify income and assets and improve targeting for EWS reservations.

Significance of EWS reservation

- In **Ram Singh v. Union of India (2015)**, SC asserted that

social deficiencies may exist beyond the concept of caste (e.g. economic status/gender identity as in transgenders).

- Address the issues of educational and income inequality in India since the economically weaker sections of citizens have remained excluded.
- There are many people or classes other than backward classes who are living under hunger and poverty-stricken conditions.
- Give constitutional recognition to the poor from the upper castes.
- Remove the stigma associated with reservation because reservation has historically been related to caste.

Issues associated with EWS reservation

- Economic backwardness is quite a fluid identity. It has nothing to do with historic wrongdoings and liabilities caused to the Backward Classes.
- A constitutional amendment has been made with a few hours of deliberation and without consultation of the targeted group. This is certainly against constitutional morality and propriety.
 - It was passed in both the houses within 48 hours, and got presidential approval the next day.
- The government has not produced any data to back the point regarding exclusion from excluded from attending the higher educational institutions and public employment.
- The criteria used by the government to decide the eligibility for this reservation is vague and is not based on any data or study.
- Even the SC questioned the government whether they have checked the GDP per capita for every State while deciding the monetary limit for giving the EWS reservation.
 - Statistics show that the per capita income in

states differs widely – Goa is the state having the highest per capita income of almost Rs. 4 lakh whereas Bihar is at the bottom with Rs.40,000.

- **Metropolitan criteria:** There are other questions as to whether any exercise was undertaken to derive the exceptions such as why the flat criterion does not differentiate between metropolitan and non-metropolitan areas.

WayForward

- If an income criterion for identifying the economically weaker sections has to be the basis, it must arrive at a clearly determined figure.
- All sections of society, irrespective of caste, should be eligible to avail of reservation under this category.
- Instead of giving reservation based on different criterias government should focus on quality of education and other effective social upliftment measures.
- Create a spirit of entrepreneurship and make them job-givers instead of a job seeker.
- The centre needs to resort to more rational criteria for deciding the targeted beneficiary of this reservation system. Caste Census data can be useful in this regard.
- The per capita income or GDP or the difference in purchasing power in the rural and urban areas, should be taken into account while a single income limit was formulated for the whole country.

Mould your thoughts

1. “Economic Condition Can’t Be Sole Basis To Provide Reservation”. Critically Discuss 103rd Constitutional amendment act regarding reservation to economically weaker sections. (250 Words).

Approach to the answer.

- Background
- About 103 CAA
- Need for such a reservation.
- Issues associated with EWS reservation.
- About Supreme Court case and EWS Panel
- Wayforward and Conclusion.