



## 103<sup>rd</sup> Amendment: Not an Infringement of Basic Structure Doctrine

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### ABSTRACT

*Equality is a Basic Structure held by Supreme Court in various cases and in the Mandal's case it was held that in extra ordinary situation the 50% ceiling for reservation can be increased. Now that the Constitution has been amended, a 10% reservation has been made for the EWS, and EWS is defined in the Constitution in terms of the income cap and other assets. Additionally, it is unquestionably not inconsistent with the Mandal ruling and the Basic Structure Doctrine. With the times changing, caste cannot be the only criterion for identifying socially disadvantaged groups because some of them have attained economic status and a dominant position. India's Preamble guarantees social and economic justice, and the reservation system for those from economically disadvantaged groups aims to reduce economic inequality. The Indian Constitution was drafted with the intention of accomplishing a number of social and economic objectives. In India, there are many upper-class individuals who live in poverty and hunger, so this reservation helps to restore balance to some extent.*

**Keywords:** Basic Structure, EWS, Economic Status, Reservation.

### **Introduction**

When the country was under colonial rule, the dominant forces in society have consistently and vehemently opposed the concept of caste-based reservations in all areas of society. It was hypothesised that reservations were a British plot to "divide and rule" India through the use of artificial barriers. Even from liberal quarters, caste-based reservations were met with the primary criticism that it would lead to an inefficient bureaucracy. This was one of the primary criticisms that caste-based reservations faced. During the debates over the Mandal Commission, it was impossible for critics to differentiate between party politics and caste, and

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the commission was frequently viewed as a populist measure that would not result in any positive outcomes for the nation.

The 103<sup>rd</sup> amendment was passed after taking into consideration the findings of the Sinho Commission Report, which stated that a substantial portion of people who belong to the unreserved category are living below the poverty line. These economically weak classes are at a disadvantage due to the poverty and lack of resources, which has prevented them from being eligible for any of the reservations the backward classes, defined in the Mandal report, get. It modifies Article 15 and Article 16 to permit Parliament and every states to make "special provisions" for advancement of "economically weaker sections" of citizens (EWS). Reservations in educational institutions are now limited to 10 percent; in this reservation private schools and colleges are also included, but the colleges and schools which are operated by minorities are not included. In addition, 10% of appointments and positions can be reserved for the EWS.

### **ELIGIBILITY CRITERIA**

- i. People eligible for this 10% quota should not be covered by the scheme of policies governing reservations for SCs, STs, and OBCs, as well as those families with a total yearly income below Rupees 8 lakh would be referred to as EWSs for the benefit of reservation.
- ii. Because other sections candidates who avail benefits of reservation like OBC (27%) and SC (15%) and ST (7.5%) in India, this 10% EWS reservation quota would only apply to General section candidates.
- iii. The EWS candidate must have family who does not own or rent farming land that is at least five acres long and if they have residential house, it must be less than 1,000 square feet.
- iv. The residential plot must be less than 100 yards in the notified municipality.
- v. In the municipal area which is non notified the residential plot should not exceed 200 yards.

### **AMENDED ARTICLES**

- i. Article 15(6) is added to give economically weaker groups a chance to get into educational institutions, including private ones, whether they get help from the

government or not. This doesn't apply to minority educational institutions, which are covered by Article 30(1).

- ii. Article 16 (6) is added to give reservations for economically backward individuals in government positions.

## CHALLENGES

The only remaining constitutional question is whether the amended constitution complies with the basic structure doctrine. The Supreme Court's position on reservations made solely on the basis of economic considerations is a good place to start when examining constitutional issues. *Indra Sawhney*<sup>22</sup>, the landmark Case from November 1992, eight out of nine judges ruled that the Narasimha Rao Government's executive order—rather than a constitutional amendment—providing for 10% reservations based solely on economic criteria was unconstitutional. In the 124<sup>th</sup> Amendment Bill, Youth for Equality was from the petitioner's side. They argued that reservations cannot be made solely on the basis of economic factors and that SC, ST, and OBC cannot be excluded from economic reservations because doing so would violate their fundamental right to equality guaranteed by Article 14. Further, In the Case of *Indra Sawhney vs. Union of India*<sup>23</sup>, it was decided that 50 percent was the maximum number of reservations that could be made. After another landmark Case of *Keshavnanda Bharati vs. the State of Kerala*<sup>24</sup>, all constitutional changes have to pass the test of the basic structure principle, which takes into account the most important parts of the Constitution, such as democracy, secularism, equality, and republicanism. In *KC Vasant Kumar v. State of Karnataka*<sup>25</sup>, the Constitutional Bench discussed various aspects of what makes up the backward classes and established rules that included economic criteria as the prime factor. The class must meet the economic backwardness test and be comparable to scheduled castes and scheduled tribes in order to be considered a backward class.

After the 103<sup>rd</sup> Constitutional Amendment, 2019; the 50% cap in education and jobs goes to 60%. Since the Constitution did not allow for any reservations based on an economic basis as held by Mandal's case, there were no provision for reservation for EWS. Now that the Constitution has been amended, a 10% reservation has been made for the EWS, and EWS is defined in the Constitution in terms of the income cap and other assets. Additionally, since the

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<sup>22</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

<sup>23</sup> *Ibid*

<sup>24</sup> *Kesavananda Bharati v. State of Kerala* SC 1461

<sup>25</sup> *K.C. Vasant Kumar & Another v State of Karnataka*, AIR 1985 SC 1495

10% reservation applies to all religions, it will not infringe on the equality principle. In my opinion, the fundamental structure will remain intact. Additionally, it is unquestionably not inconsistent with the Mandal ruling. With the times changing, caste cannot be the only criterion for identifying socially disadvantaged groups because some of them have attained economic status and a dominant position. India's Preamble guarantees social and economic justice, and the reservation system for those from economically disadvantaged groups aims to reduce economic inequality. Hence, to reduce inequality by way of providing reservation to economic backward classes who have suffered a lot just because of falling in upper caste is a good initiative taken by government. This reservation helps to provide opportunities for upper-class individuals who cannot afford a good education due to the economic crisis. It eliminates the stigma associated with reservation, as many previously looked down on those who avail it. In India, there are many upper-class individuals who live in poverty and hunger, so this reservation helps to restore balance to some extent.

## **BASIC STRUCTURE DOCTRINE**

The Supreme Court of India is the one who came up with the idea of the basic structure. The whole plan and structure of our Constitution is based on the idea that some basic parts are supposed to be permanent and unchangeable. The Basic Structure is an offshoot of a lengthy struggle that took place between Parliament and the Supreme Court concerning the nature and scope of amending power. The Indian Constitution was drafted with the intention of accomplishing a number of social and economic objectives. At the same time, it included a number of provisions that were intended to safeguard individual rights.

In the *Indira Sawhney* case, the decision involved comparing an executive order to the Constitution. Right now, we're talking about a change to the constitution that was made possible by Parliament's power to make laws. Since we don't care about legislative or executive power, the amendment will be tested against the "basic structure," not against the Constitution as it was before the amendment.

The pertinent question would be whether measures based solely on economic criteria infringe the Constitution's "basic structure." Saying that "backwardness" in the Constitution can only refer to "social and educational backwardness" is insufficient, in my opinion. The Centre in his affidavit filed in Supreme Court said that the 103<sup>rd</sup> Amendment does not violate the Basic Structure:

"Merely affecting or impinging upon an article embodying a feature that is part of the Basic Structure is not sufficient to declare an amendment unconstitutional. To sustain a challenge against a constitutional amendment, it must be shown that the very identity of the constitution has been altered", reads the affidavit of Centre. It is further stated that a mere amendment to an Article of the Constitution, even if embodying a basic feature, will not necessarily lead to a violation of the basic feature involved."

The newly added clauses of Articles 15 and 16 are said to be enabling clauses for the advancement of the Economically Weaker Sections (EWS) and to be in line with the affirmative action principle. The argument that the EWS quota will go over the 50 percent limit for reservations is shot down by the fact that this limit, set by the Supreme Court in the Indira Sawhney case, no longer applies since the constitution is amended. The affidavit states that "conclusions made in Indra Sawhney are not applicable to the present case because the said judgement was rendered in relation to the constitutionality of some Office Memoranda issued by the Government of India in 1990.

## **CONCLUSION**

Since equality is a Basic Structure held by Supreme Court in various cases and in the Mandal's case it was held that in extra ordinary situation the 50% ceiling for reservation can be increased, the 103rd Amendment is not the infringement of the principal of Basic Structure. In year 1961, The Government in Centre wrote to the governments in all States and expressing its opinion that it will be preferable to use the "Economic Test" instead of Caste for the purpose of reservation. On June 27, 1961, Pandit Nehru communicated to all the chief ministers and wrote-

"The only real way to help a backward group is to give opportunities of good education. But if we go in for reservation on communal and caste basis, we swamp the bright and able people and remain second- rate or third- rate. I am grieved to learn of how far this business of reservation has gone based on communal consideration. It has amazed me to learn that even promotion are based sometimes on communal or caste considerations. This way lies not only folly, but disaster."

It is a completely wrong idea to think that only some castes are backward and should get special treatment because of the same. In reality, people who are weaker and have less money could belong to be any caste. The 10% quota will contribute to the establishment of equity and

the provision of equal opportunities, thereby enhancing the position of the disadvantaged in the majority group. It would help them compete with those who already have an abundance of facilities and ensure a fair distribution of wealth.

At the end, the writer concludes the article with the suggestion that the government's next step should be to change the entire reservation system so that only 'economic criteria' is used to determine reservations.

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