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## Constitutional Validity of the 103<sup>rd</sup> Constitutional Amendment Act 2019

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*The idea of the reservation is age-old and deep-rooted in India beginning from 1882 which was instituted by William Hunter and Jyotirao Phule<sup>1</sup>. This idea of bringing equality among every citizen of the nation has resulted in the formation of various Commissions, the addition of several Articles and provisions, and the creation of new laws relating to the reservation so that, each element is following the Basic Structure and the spirit of the Preamble. Hence, most recently there has been the 103rd Amendment of the Indian Constitution. It provides for 10% reservation to Economically Weaker Sections (EWS) of the society. The 10% reservation includes reservation in admission to central educational institutes and private educational institutions and reservation in recruitment to all central government jobs. The basic purpose of the research is to analyze the provisions of the 103rd Amendment Act, 2019 concerning various constitutional provisions related to reservation. In addition, there is inclusive research to find out the reason behind its enactment and its impact. Along with the case Janhit Abhiyan v UOI<sup>2</sup>.*

**Keywords:** *constitutional, reservation, amendment, ews, article.*

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<sup>1</sup> Rajat Kumar, 'The Concept, Origin And Evaluation Of Reservation Policy In India' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-6526-the-concept-origin-and-evaluation-of-reservation-policy-in-india.html>> accessed 02 December 2022

<sup>2</sup> *Janhit Abhiyan v UOI* WP (C) 55/2019

## **INTRODUCTION**

The idea of the reservation is age-old and deep-rooted in India beginning from 1882 which was instituted by William Hunter and Jyotirao Phule. This idea of bringing equality among every citizen of the nation has resulted in the formation of various Commissions, the addition of several Articles and provisions, and the creation of new laws relating to the reservation so that, each element is following the Basic Structure and the spirit of the Preamble. Hence, most recently there has been the 103<sup>rd</sup> Amendment of the Indian Constitution. The One Hundred and Third Amendment Act, 2019 through the insertion of Articles 15(6) and 16(6) provides for 10% reservation to Economically Weaker Sections (EWS) of the society. The 10% reservation includes reservation in admission to central educational institutes and private educational institutions and reservation in recruitment to all central government jobs. This Amendment Act inserted two new Articles in the Constitution of India which are Article 15(6)<sup>3</sup> and Article 16(6)<sup>4</sup>. The Economically Weaker Section is defined in Article 15 for the usage of Articles 15<sup>5</sup> and 16<sup>6</sup> is defined as those notified by the State Government from time to time based on annual family income and other economic disadvantages.

Hence, the creation of an EWS category does not overlap with other categories of reservation such as Scheduled Castes or Scheduled Tribes or Other Backward Classes, instead, it forms a separate head including people who are economically backward and are not covered under any caste-relating reservations prevalent in the system. This Amendment Act and according to the Government's notification it provides reservations to those citizens whose annual income is less than 8 lakhs per annum. It also includes those people who own farmland of fewer than five acres. It further includes those people who have a house area of less than 1000sq. ft. in a town or 100 sq. yards in a municipal area. This Amendment provides a total of 10% reservation to the existing reservation criteria. Therefore, this reservation is currently acting as a two-edged sword where on one hand it is acting as a tool to establish economic stability and justice in the nation,

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<sup>3</sup> Constitution of India 1950, art 15(6)

<sup>4</sup> Constitution of India 1950, art 16(6)

<sup>5</sup> Constitution of India 1950, art 15

<sup>6</sup> Constitution of India 1950, art 16

and on the other hand, it is being considered to infringe the basic structure of the constitution as there is an increase in the 50% cap of the reservation set forth by the judiciary. So, the following article deals with the nuances, needs, and criticisms, covering all areas of the Constitutional Amendment Act, 2019<sup>7</sup>.

## **HISTORY & DEVELOPMENT OF RESERVATION IN INDIA**

The origin of reservation in India can be traced to the age-old deep-rooted caste-based social stratification. The entire society was classified based on the nature of the work a person was engaged in. Thus, on the top of the classification were the Brahmanas engaged in teaching. Next, were the Kshatriyas engaged in administration, followed by Vaishyas who were primarily engaged in agriculture. On the bottom of the stratification were the Shudras engaged in menial work. The people of the upper caste had a higher social status than those people of the lower caste. All type of privileges was bestowed on the higher caste and the same was denied to the lower caste. In due course of time, this caste-based stratification became hereditary and unalterable. The classification became more rigid. As a result, the lower caste was exploited and tortured by the privileged. They were denied access to public places, places of worship, education, etc which in turn reaped them of their opportunity for growth. This social practice continued for years and became so entrenched that it was impossible to escape from the heritable fixed social status. Thus, some form of protection became necessary to protect the lower caste from the oppression of the caste system.

**Pre-Independence:** The notion of caste-based reservation started way before independence. This idea of reservation was first instituted by William Hunter and Jyotibai Phule in 1882. Jyotibai Phule, belonging to a shudra family, advocated for free and compulsory education for all as well as proportional reservation in government jobs. Thereafter, in 1902, Maharaja Chhatrapati Sahuji of Kolhapur issued an order which provided for 50% reservation for non-brahmin and backward classes. He implemented the idea of providing free and compulsory

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<sup>7</sup> 'Reservation for Economically Weaker Sections (EWSs) in direct recruitment in civil posts and services in the Government of India' (*Department of Personnel & Training*)

<<https://dopt.gov.in/sites/default/files/ewsf28ft.PDF>> accessed 04 February 2023

education and reservation in government jobs.<sup>8</sup> Thus, for the first time, an official order was issued for reservation in India. The Government of India Act, of 1909 (Morley-Minto reforms) made provisions for a separate electorate. The seats in the legislative bodies were reserved based on religion. Muslims were provided with separate constituencies and only people belonging to the Muslim community could elect their representative from that particular constituency. The Government of India Act, 1919 (Montagu Chelmsford Reforms) extended the communal representation which included Europeans, Sikhs, and Anglo-Indians.

The reservation system prevalent in the present day was introduced by Ramsay Macdonald, the British Prime Minister, in the year 1932. He introduced a scheme of communal awards which came to be known as the MacDonal Award.<sup>9</sup> The award provided separate electorates not only for Sikhs, Muslims, Europeans, and Anglo-Indians but also for the depressed classes (untouchables). This system was introduced as a solution to the rising tensions and conflict because of the caste system in India. However, Mahatma Gandhi opposed this award but Dr. B.R Ambedkar supported it. Gandhiji was distressed over this extension of communal representation to the depressed classes. He saw this system as a British attempt to split Hindus and create conflict. Therefore, he undertook fast unto death in Yerawada Jail, Poona to get the award modified. After a series of deliberations and negotiations, an agreement was reached which came to be known as Poona Pact. The Poona Pact was signed between Mahatma Gandhi and Dr. B.R. Ambedkar on September 24<sup>th</sup>, 1932. The agreement provided for a single Hindu joint electorate and reserved seats for the depressed classes within it. Thereafter, following the path of the Poona Pact, the Government of India Act, 1935 provided separate electorates for depressed classes, women, and workers.

**Post-Independence:** Even after India got independence, the practice of untouchability was prevalent. People belonging to a specific community were denied their basic rights. Therefore, the Constitution of India identified such groups as scheduled castes and scheduled tribes.

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<sup>8</sup> 'A Brief History of Reservations in India' (*Sanskriti*) <<https://www.sanskritimagazine.com/a-brief-history-of-reservations-in-india/>> accessed 01 December 2022

<sup>9</sup> Shinjinee Namhata, 'Caste Based Reservations In Education- The Never Settled 'Bone Of Contention' In India' (*IJALR*) <<https://ijalr.in/caste-based-reservations-in-education-the-never-settled-bone-of-contention-in-india/>> accessed 01 December 2022

Protection in the form of reservation was provided to protect their education, political and economic interests.

According to the then census reports, reservation percentage for scheduled castes and scheduled tribes was fixed at 15% and 7.5% respectively, taking the total reservation to 22.5%.<sup>10</sup> However, a significant change was introduced with the appointment of the Mandal Commission. In 1979, the Mandal Commission was appointed to evaluate the conditions of socially and educationally backward classes. The findings of the commission led to the introduction of Other Backward Classes (OBC). According to the report of the commission, reservation for OBCs was fixed at 27%. Thus, the total reservation now stood at 49.5% from the earlier 22.5%.<sup>11</sup>

However, in the case of *Indra Sawhney v Union of India*<sup>12</sup>, the reservation was capped at 50%, and if the limit is breached it would violate the equality principle enshrined in the Constitution. Also, in the same case, the Supreme Court excluded the creamy layer among OBCs from the ambit of reservation. The concept of the creamy layer was introduced by the 1<sup>st</sup> backward commission (the Sattanathan Commission). A person whose gross annual income is more than Rs 8, 00,000 would fall under the ambit of the creamy layer and thus would be excluded from the reservation. In 2019, the government provided 10% reservation to the economically weaker section by enacting the Constitution (one hundred and third amendment) Act, 2019.

### **NEED AND IMPACT OF THE 103<sup>rd</sup> AMENDMENT ACT, 2019**

The 103<sup>rd</sup> Constitutional Amendment Act, 2019<sup>13</sup> was a result of the assent of the President to the 124<sup>th</sup> Constitution Amendment Bill<sup>14</sup> which was given on 12<sup>th</sup> January 2019. With this Amendment Act, there was the insertion of Articles 15(6)<sup>15</sup> and 16(6)<sup>16</sup> in the Constitution of India creating a new category for reservation called the Economically Weaker Section (EWS).

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<sup>10</sup> 'Reseveration\_Brochure-2' (Department of Public Enterprises)

<[https://dpe.gov.in/sites/default/files/Reservation\\_Brochure-2.pdf](https://dpe.gov.in/sites/default/files/Reservation_Brochure-2.pdf)> accessed 1 December 2022.

<sup>11</sup> Naveed Naseem, 'Reservations are Restrictions of Present India' (2016) 5(4) International Journal of Science and Research <<https://www.ijsr.net/archive/v5i4/NOV162576.pdf>> accessed 1 December 2022.

<sup>12</sup> *Indra Sawhney v Union of India* (1993) SC 477

<sup>13</sup> Constitution (One Hundred and Third Amendment) Act 2019

<sup>14</sup> 124<sup>th</sup> Indian Constitution Amendment Bill 2019

<sup>15</sup> Constitution of India 1950, art 15(6)

<sup>16</sup> Constitution of India 1950, art 16(6)

This Amendment facilitates a 10% reservation of the EWS category in admission to higher educational institutions (including both government-aided and privately aided), along with the initial appointment in government jobs.

India is a land where caste is deep-rooted in all its functioning. The same could also be visualized in the case of reservations. With the enactment of the Constitution, there was the idea of bringing reservation for the upliftment of backward classes whereby reservation was allowed for socially and economically backward classes for a maximum of ten years from 1951 to 1961<sup>17</sup>. Further with the changing time and needs the requirement of reservation also changed and it is still prevalent in a different form in the 76<sup>th</sup> year of our independence.

Currently, the reservation for other categories counts like OBC has 27%, Scheduled Castes have 15% and Scheduled Tribes have 7.5%<sup>18</sup>. Now, the EWS category has further secured 10% reservation. There were several needs for amending the constitution to insert a new category for reservation such as described below:

- The 103<sup>rd</sup> amendment is structured to support all upper caste people breaking the stigma of caste division where children of upper castes who were unable to get into good higher educational institutions due to lack of monetary support would be given equal chance to stand in parance with others. Since the EWS reservation is excluding the people who already enjoy the benefits of reservation so, it provides a stance of protective equality for others and not only supports a smaller arena.
- Focusing on the needs of society reservation was brought into force to uplift all those categories of people who do not enjoy the same status or representation in society. The 103<sup>rd</sup> Amendment focuses on destigmatizing the concept of reservation as it is being perceived nowadays. Presently, many oppose reservations citing that their equality of opportunity is being hampered but the reservation was implemented with the idea of

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<sup>17</sup> Rajakumar, 'The concept, origin and evaluation of reservation policy in India' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-6526-the-concept-origin-and-evaluation-of-reservation-policy-in-india.html>> accessed 08 December 2022.

<sup>18</sup> Y. SRINIVASA RAO, 'Reservation in India' (*Legal Service India*)

<<http://www.legalservicesindia.com/article/1145/Reservations-In-India.html#:~:text=other%20backward%20classes,The%20reservation%20is%20intended%20to%20aggrandize%20the%20social%20diversity%20in,ra ce%2C%20caste%20or%20place%20birth.>> accessed 09 December 2022

treating equals as equals and unequal as unequal. Hence, economic segregation was required to provide equal chances to lower-income families as well and it applies to citizens irrespective of their religion and castes.

- There was a need for the upliftment of other classes of people keeping intact the basic structure of the constitution which was laid down in the case of *Indira Sawhney v Union of India*, which provided a cap of 50% to the total permissible limit for reservation. Since the new category is only concerned with economically weaker groups and not concerned with the socially backward classes it forms a separate category and the total reservation does not breach the ceiling of 50%.
- This new reservation would help in promoting the economic growth of the nation and ensuring economic inclusiveness among different classes prevailing in the society and it would support 190 million people of India. According to a report by UNDP, poverty in India will reduce by 27.5%<sup>19</sup>. Niti Aayog's report of 2018<sup>20</sup> also clarifies that most people in India are poverty-stricken. Hence, this reservation will reduce the economic gap and include members of lower-income families in streamlining the economy.
- As it is stated that 1% of the population owns the majority of the resources of the nation, this amendment is a step towards down striking that claim and maintaining economic equality, and ensuring proper distribution of resources among all members of the society. As support is provided to economically weaker sections of society.

**Focusing on the needs of this reservation system in the current scenario, now we emphasize the impact it has created on a whole by bringing amendments to Articles 15 and 16:**

- Since Article 16 talks about 'Equality of opportunity in matters of public employment' and the 103<sup>rd</sup> Amendment has inserted Article 16(6) which provides security and

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<sup>19</sup> Prasanna Mohanty, 'Budget 2020: Niti Aayog shocker; Poverty, hunger and income inequality up in 22 to 25 States and UTs' (*Business Today*, 9 January 2020)

<<https://www.businesstoday.in/business/news/story/budget-2020-niti-aayog-shocker-poverty-hunger-income-inequality-up-in-22-to-25-states-uts-poor-indians-241797-2020-01-08>> accessed 09 December 2022

<sup>20</sup> 'National Multidimensional Poverty Index Baseline Report' (*Niti Aayog*, 2021)

<[https://www.niti.gov.in/sites/default/files/2021-11/National\\_MPI\\_India-11242021.pdf](https://www.niti.gov.in/sites/default/files/2021-11/National_MPI_India-11242021.pdf)> accessed 09 December 2022

reservation to economically weaker sections on all posts of public employment up to 10%.

- Further, the 103<sup>rd</sup> Amendment also ensures an increase in the availability of seats in all government and privately aided higher education institutions to accommodate the 10% reserved EWS category i.e. in all IITs, IIMs, NITs, NLUs etc.
- The next impact it created was reducing the lines of division among people of different religions, castes, and beliefs where no preference is made on such a stereotypic basis it ensures that the lines of division based on caste are reduced and inclusiveness increases among citizens.
- It will impact the economic growth of the nation positively as there will be upliftment of economically weaker sections of the society by providing them an equal opportunity for education and employment which was previously beyond their reach.

Considering the above discussions we find that the 103<sup>rd</sup> Amendment Act of 2019 came up with a noble idea of promoting economic wellness of boosting economic growth so that India becomes a 5 trillion economy as an inclusively developed nation.

### **CRITICAL ANALYSIS OF THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019**

The Amendment aims to provide 10% reservation to Economically Weaker Sections (EWS) of the society. The 10% reservation includes reservation in admission to central educational institutes, private educational institutions (excluding the minority educational institutions), and reservation in recruitment to all central government jobs. The Amendment does not impose an obligation on the state government to incorporate such reservations in admission to their government-run educational institutions or state government jobs.

#### **Criteria for Reservation**

The Amendment lays down the following criteria to avail the benefit of reservation – Persons whose gross annual household income is below Rs 8 lakh and do not belong to any of the communities that already have reservations such as Scheduled Castes, Scheduled Tribes and the non-creamy layer of OBCs (Other Backward Classes) can avail of the benefit of reservation for



EWS. (The income is inclusive of income from all sources i.e., agriculture, salary, business profession, etc.<sup>21</sup>)

Irrespective of family income, persons or families who own the following assets shall be identified as EWS:

- 5 or more acres of agricultural land.
- Residential house of 1000 square feet or above.
- Residential plot of 100 yards or above in notified municipal areas.
- Residential plots of 200 yards or above in non-notified municipal areas.

### **Articles Amended**

The Amendment added new clauses under Article 15 and Article 16 of the Constitution.

**Article 15(6)** provides that the state is empowered to make provisions for the advancement of any economically weaker section. Reservations can be provided in any educational institution irrespective of aided or unaided, except minority educational institutions under Article 30(1) of the constitution.

**Article 16(6)** empowers the state to provide reservations in appointments or posts for any economically weaker sections. Such provisions shall be in addition to the existing reservation and will be subject to a maximum of 10%.

The Amendment, even though passed by the Parliament and received presidential assent, is not without flaws. It has been challenged and criticized on various grounds. The critical assessment of the Amendment has led to the following analysis-

**First-** The reservation system in India was primarily provided for the advancement of those communities who were not adequately represented, denied growth opportunities, and were victims of caste-based discrimination and historical injustices. Thus, social injustice or inequality is what makes a community backward. However, the category of EWS is not a product of social bias or injustice. Instead, the category of EWS is a result of unemployment, poor economic

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<sup>21</sup> Reservation for Economically Weaker Sections (EWSs) in direct recruitment in civil posts and services in the Government of India (n 7)

policies and other factors. Hence, economic criteria alone cannot be the basis for providing reservations. No doubt economic backwardness can be one of the factors of providing reservation but not the sole criterion. The same principle has been laid down in the landmark case of *Indra Sawhney v Union of India*<sup>22</sup>. The Supreme Court held that a class cannot be declared backward exclusively based on economic criterion. It can be a basis for providing reservations along with other social factors but can never be the only criterion.

**Second-** the 10% reservation for EWS is in addition to the existing reservations provided to Scheduled Castes, Scheduled Tribes and Other Backward Classes. Now the total reservation stands at 59.5% which exceeds the 50% reservation cap.

In the case of *Indra Sawhney v Union of India*<sup>23</sup>, it was held that reservation of seats/posts must remain well below 50% of the total number of seats/posts reserved.

Further, in the case of *M. Nagaraj v Union of India*,<sup>24</sup> it was reiterated that the 50% reservation limit along with other compelling factors is an essential constitutional requirement of the provision of equality of opportunity under Article 16.

Any reservation above 50% will destroy the concept of equality which is considered a part of the basic structure. The same has been reiterated in the recent case of *Jarnail Singh v Lachchmi Narain Gupta*<sup>25</sup>.

**Third,** an annual household income of Rs 8 lakhs has been fixed as the criteria for claiming reservation under the amendment. Thus, anyone having an income less than Rs 8 lakhs will be considered an economically weaker section. However, the threshold for the collection of income tax is fixed at Rs 2.5 lakh. Here, the question arises- if a person with an income less than Rs 8 lakhs is considered as economically disadvantaged then how income tax is collected from the same person.

The same question has been put forth in a petition at the Madras High Court. Despite inclusion in the EWS category, the collection of income tax violates the principle of equality and has no

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<sup>22</sup> *Indra Sawhney v Union of India* (1993) SC 477

<sup>23</sup> *Ibid*

<sup>24</sup> *M. Nagaraj v Union of India* (2006) 8 SCC 212

<sup>25</sup> *Jarnail Singh v Lachchmi Narain Gupta* SLP (C) No 30621/2011

rationality. Therefore, either the government should not collect incometax from people earning below Rs. 8 lakhs or the income slab for collection of income tax should be increased.

**Fourth**, the Amendment was to provide reservations for the economically poor. Thus, if the poverty line is taken into account then around 82% of people belonging to Scheduled Caste and Scheduled tribes and OBCs fall below the poverty line.<sup>26</sup> The constitution of India does not allow the principle of exclusion. Thus, by excluding a such category from the 10% reservation ambit, the amendment violates the principle of equality. As held In the case of *I.R. Coelho v State of Tamil Nadu*<sup>27</sup>, Articles 14, 15 and 16 are part of the basic structure. Thus, it can be said the exclusion in turn damages the basic structure.

**Fifth**, now with increased reservations only 40.5% of seats or posts will be filled based on merit. The merit system is open to all categories and is unreserved. Thus, the increased reservation does not justify the hardworking and meritorious candidates.

#### STATE-SPECIFIC LAWS ON RESERVATION

The constitution framers were optimistic that inducting a provision of reservation would aptly provide space to those sections of society who are completely neglected and ignored either based on their caste, religion or class. Hence, along with reservation by the central government in education and employment, the state government also has separate criteria for reservation in state government jobs as well. Therefore following are some Indian states have different criteria for reservation according to their requirements and population constitution.

**Jharkhand** is the state having the highest reservation for jobs in the state government. Culminating all the ratios it has a total of 77% reservation where 28% is for STs 27% for OBCs and 12% for SCs. This criterion is set beside the 10% reservation mandated by the central

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<sup>26</sup> Ajit Ranade, 'EWS Quota: Problematic in Many Ways' (*Deccan Herald*, 14 November 2022) <<https://www.deccanherald.com/opinion/comment/ews-quota-problematic-in-many-ways-1162386.html>> accessed 09 December 2022

<sup>27</sup> *I.R. Coelho v State of Tamil Nādu* (2007) SC 861

government for the EWS category by the constitutional amendment. This depicts a clear attempt to surpass the cap of 50% set by the Supreme Court in its rulings on the reservation<sup>28</sup>.

Next, the state of **Chhattisgarh** has also increased its reservation to 76% after passing two bills in Assembly. The unanimously passed bill now ascertains the criteria of the reservation where 32% of seats are for STs, 13% for SCs, 27% for OBCs and 4% for EWS categories. But in September this year, the Chhattisgarh High Court ruled out and quashed the 58% reservation quota in jobs stating reservation of more than 50% is unconstitutional. Also, the government was unable to represent itself aptly on the reason for the increase of its criteria for reservation<sup>29</sup>.

Further, **Karnataka** currently beholds around 32% reservation for OBC, and 18% reservation for SCs and STs. The state is also of the view of passing an ordinance increasing the reservation of Scheduled Castes from 15% to 17% and of Scheduled Tribes from 3% to 7%. They provide a contention that since their population is increasing rapidly there is a need to increase reservations to ensure adequate representation of all communities and groups. This hike would further help around 103 (SC) and 56 (ST) communities<sup>30</sup>.

Another, state **Tamil Nadu** stands at 69% reservation signifying the 50% cap in the reservation. In a case of a five-judge bench, Justice S. Ravindra Bhat authored a minority view that breach of the 50% limit directly strikes to attack the 76<sup>th</sup> Constitutional Amendment Act, 1994. The Act provides 30% reservation to Backward Classes, 20% for Most Backward Classes, 18% for Scheduled Castes and 1% for Scheduled Tribes which culminate to a total of 69% reservation. Hence, a further 10% reservation strikes reduce the opportunities for the general category who do not come under any reservation category to a very vulnerable position<sup>31</sup>.

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<sup>28</sup> 'Jharkhand raises reservations in govt jobs for SC, ST, others to 77%' (*Business Standard*, 15 September 2022) <<https://interviewtimes.net/jharkhand-to-have-highest-reservation-in-government-jobs-in-india/>> accessed 10 December 2022

<sup>29</sup> '12 states, UTs have implemented 10 pc reservation to economically weaker sections: Govt' (*The Economic Times*, 10 August 2021) <<https://m.economictimes.com/news/india/12-states-uts-have-implemented-10-pc-reservation-to-economically-weaker-sections-govt/articleshow/85216342.cms>> accessed 10 December 2022

<sup>30</sup> 'Karnataka to promulgate Ordinance for increasing reservation for SCs, STs' (*The Hindu*, 20 October 2022) <<https://www.thehindu.com/news/national/karnataka/karnataka-cabinet-to-promulgate-ordinance-for-increasing-reservation-for-scs-sts/article66035281.ece>> accessed 10 December 2022

<sup>31</sup> Krishnadas Rajagopal, 'EWS verdict may seal fate of challenge to T.N. quota law, Justice Bhat cautions' (*The Hindu*, 7 November 2022) <<https://www.thehindu.com/news/national/upholding-ews-quota-may-seal-the>

Next, is the state of **Andhra Pradesh** which has passed an Act named 'The Andhra Pradesh (50 Percent Reservation to BCs, SCs, STs and Minorities in all the Nominated Posts) Act, 2019, which aims to provide reservation for political upliftment of the groups for nominated posts. This Act has allowed social and political stability in the state providing equal opportunity of representation to all classes of people.

Also, the state of **Assam** has set 7% reservation for Scheduled Castes, 15% for Scheduled Tribes, and 27% for OBCs and it recognized 10% reservation for EWS in January 2019. It also facilitates sub-quotas for communities like Monras, Mataks and Tea Tribe, Ahoms and Chutias.

Also, there are several states in the nation including Haryana, Telangana, Tamil Nadu, Madhya Pradesh, Uttar Pradesh, Rajasthan, Chhattisgarh and Maharashtra have state reservations above the 50% cap where in some states the laws are either stayed by the competent court or it is still facing legal challenges. It is also to be noted after the 103<sup>rd</sup> Constitutional Amendment that eligibility criteria for the Economically Weaker Sections reservation are uniform across the country as it is provided by the Central government but its implementation is subjective to the needs and requirements of the state. As stated by the Minister of State for Social Justice and Empowerment Pratima Bhowmick twelve states namely Uttarakhand, Gujarat, Karnataka, Jharkhand, Maharashtra, Mizoram, Delhi, Jammu & Kashmir, Goa, Assam, Andhra Pradesh and Telangana have implemented the 10 percent EWS reservation in their respective states<sup>32</sup>.

## LAWS RELATING TO RESERVATIONS IN ABROAD

The reservation practice is followed not only in India but also in many countries like the U.S.A, Sri Lanka, Malaysia, Nepal and Russia, etc. Generally, the reservation system in other countries is based on an affirmative policy under which countries try to promote education and employment of those sections of the population who have faced discrimination in any form. This affirmative policy of reservation has also been supported by the United Nations. UNHRC (United Nations Human Rights Committee) affirms that the concept of equality sometimes

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[fate-of-the-challenge-to-tamil-nadu-quota-law-without-a-hearing-justice-bhats-note-of-caution/article66108661.ece](#)> accessed 18 December 2022

<sup>32</sup> Alok Ranjan, 'Existing reservation quota limit of the Indian states' (*India Today*, 7 May 2021)

<<https://www.indiatoday.in/news-analysis/story/existing-reservation-quota-limit-of-the-indian-states-1799705-2021-05-06>> accessed 10 December 2022

necessitates the countries to undertake affirmative action to reduce or eliminate factors causing discrimination that the covenant prohibits.

**The United States of America:** The U.S.A. follows the affirmative action policy for providing reservations. The affirmative policy in the United States is used as a tool to combat discrimination based on gender, race, creed, color, or nationality. The judicial precedents provided the foundation for putting affirmative action rules into practice. Additionally, the authorities are also empowered to enact any laws about such actions. The administrative policies that required universities to take into account as one of the elements for their diversification were abandoned on University Campuses in 2018.

**Japan:** In Japan, a community called Burakumin was considered untouchables. They lived as outcasts because of the extreme discrimination and ostracism in society. Even though the caste system was abolished in 1871, the Burakumin community still faced discrimination and exploitation. In the 1960s, affirmative action was taken by the government to integrate the Burakumin community with mainstream society. Affirmative action included policies related to education, employment, health, housing, etc.

**Canada:** The Employment Equity Act governs the affirmative action policies in Canada. Under the Act, women physically disabled and Canadian tribal people are provided reservations in universities and public sectors.

**United Kingdom:** In 2010, legislation was passed in the United Kingdom known as the Equality Act. It protects people from discrimination in the workplace and other areas<sup>33</sup>. The Act consolidated the earlier anti-discrimination statutes into a single Act. It clearly outlined the various forms of discrimination and the measures to be taken against such unfair treatment.

### **JUDICIAL ANALYSIS (*Janhit Abhiyan v UOI*)**

Before moving on to the current case questioning the 103<sup>rd</sup> Constitutional Amendment, the light should be drawn to a few essential cases which have dealt with the issue of reservation prior in India and the ratio they have set forth.

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<sup>33</sup> Equality Act 2010

Firstly, in the case of *Indira Sawhney v Union of India*<sup>34</sup>, the issue before the court was to decide whether Article 16(4) acts as an exception to Article 16(1) or is it exhaustive. Also, does the backward class enshrined in Article 16(4) also include 'Most Backward Class' within its ambit based on economic conditions? Hence, the court held in this case that reservation only based on economic criteria is not apt rather caste system must also be considered. Article 16(4) is not an exception to Article 16(1) instead an explanation or a classification of the same. Also, the concept of excluding the creamy layer was upheld. But most importantly it stated that reservations should not exceed a 50% cap which was the limit set to the same.

Next, was the case of *M. R. Balaji v State of Mysore*<sup>35</sup>, where the court majorly dealt with the issue that, whether reservation by the state can also be based on a more backward category. Also, the exclusion of students from educational institutions is violative of Article 15(4) when made unreasonably. Here, the Apex Court held that there can be no two distinctions of the backward class simultaneously a more backward class. Also, if reservation increases the 50% ceiling then it will be violative of the fundamental rights of all citizens. Poverty should also be taken into account as Article 15(4) encompasses class and not only caste.

Henceforth, coming to the case in question under the 103<sup>rd</sup> Amendment Act 2019 is *Janhit Abhiyan v Union of India*<sup>36</sup>. This case progressed by way of the following timeline through which finally the 10% reservation set for the EWS category was held to be constitutionally valid<sup>37</sup>.

On 8<sup>th</sup> January 2019 – the 103<sup>rd</sup> Constitution Amendment Bill was cleared in the Lok Sabha.

On 9<sup>th</sup> January 2019 – The bill was cleared in the Rajya Sabha.

On 12<sup>th</sup> January 2019 – The Ministry of Law and Justice issued a notice confirming the assent of President Ram Nath Kovind to the proposed bill.

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<sup>34</sup> *Indira Sawhney v Union of India* AIR (1993) SC 477

<sup>35</sup> *M R Balaji v State of Mysore* AIR (1963) SC 649

<sup>36</sup> *Janhit Abhiyan v Union of India* WP (Civ) No 55/2019

<sup>37</sup> Krishnadas Rajagopal, 'Reservation policy cannot continue indefinitely, says SC' (*The Hindu*, 8 November 2022) <<https://www.thehindu.com/news/national/reservation-policy-cannot-stay-for-indefinite-period-says-supreme-court/article66108033.ece>> accessed 15 December 2022

In February 2019 – The law was challenged in the Supreme Court.

On 6<sup>th</sup> February 2019 – A notice was issued by the Supreme Court to the government on pleas challenging the amendment to the Constitution.

On 8<sup>th</sup> February 2019 – There was a decline made to stay the 10% reservation for the EWS quota.

On 8<sup>th</sup> September 2022 – A bench of five judges was constituted to hear the appeals.

On 13<sup>th</sup> September 2022 – Supreme Court started hearing the arguments of the petitioner and the respondent.

On 27<sup>th</sup> September 2022 – Supreme Court reserved its order to be delivered on the next date.

On 7<sup>th</sup> November 2022 – The Supreme Court upheld the validity of the 103<sup>rd</sup> Constitutional Amendment providing a 10% quota to EWS in admissions and government jobs with a 3:2 majority.

Henceforth, while analyzing the case in detail the first consideration stands regarding the issue<sup>38</sup>.

- Whether considering only the economic stand of the nation is valid ignoring other criteria for reservations.
- Whether excluding the Scheduled Castes, Scheduled Tribes, OBCs and SEBCs from the Economically Weaker Sections, is constitutionally valid.
- Whether the 103<sup>rd</sup> Amendment Act violates the constitutional mandate of a 50% cap for reservations as laid down in the *Indira Sawhney case*.
- Whether under the ambit of this Amendment, the reservation will be granted in private educational institutions which do not draw government aid, or not.

Therefore, all the above-mentioned issues were dealt with by the five-judge bench of the Supreme Court consisting of U U Lalit (CJI), Dinesh Maheshwari, S. Ravindra Bhat, Bela M. Trivedi and J. B. Pardiwala who decided in favor of the 103<sup>rd</sup> Constitutional Amendment Act, 2019 with a majority of 3:2. Both the parties presented the following arguments for their counsel before the bench. The petitioners contended that the Amendment seems to go against the

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<sup>38</sup> 'EWS Reservation' (*Supreme Court Observer*) <<https://www.scobserver.in/cases/janhit-abhiyan-union-of-india-ews-reservation-case-background/>> accessed 12 December 2022



constitutional framework of India where if the reservation is provided only on an economic basis then socially backward people will be excluded. Also, this tends to violate the 50% cap set by the nine-judge bench in the Indira Sawhney case.

Similarly, the respondents were of the view that how valid is setting a limit of 8 lakhs for the consideration of the EWS category. They also highlighted that when reservation benefits are for people earning below 8 lakhs then the tax slabs for I-T returns should also be increased from 2.5 lakh to 8 lakhs. Also, the reservation is only in a vertical compartment and not segregated so it breaches the 50% cap turning it to 59.5%. Hence, the final judgment shows that all judges agreed to the point that reservation cannot continue for an indefinite period<sup>39</sup>. Even after that, there came out a dissenting view where 3 judges forming the majority held that the 103<sup>rd</sup> Constitutional Amendment was valid and not violative of the basic structure doctrine.

**The following was held in the case:**

- The reservation based on economic criteria is not per se violative of the basic structure of the Constitution. For Article 15, reservation based upon economic factors is progress towards the ejection of poverty. In this regard, Justice Bhat stated that the Indira Sawhney case had held that reservations cannot only be made based on economic factors whereas there is no bar to creating reservations based upon economic considerations.
- Then, segregation of people basing on economic lines is acceptable as it creates a standard of substantive equality and provides a definite limit on reservation for other castes based upon caste consideration. In this aspect, Justice Bela M. Trivedi opined that a time limit to this system of reservation is the need of the hour.
- Economic criteria are permissible per se under Articles 15(6) and 16(6) and are not violative, as it emphasizes empowerment and adequate representation by all communities present in the society and takes a broader consideration that is not only restricted or driven by caste. In this regard, Justice Dinesh Maheshwari that an additional 10% reservation is not violative of the essential features of the Constitution and the ceiling

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<sup>39</sup> Krishnadas Rajagopal (n 40)

limit provided is not inflexible and applies only to reservations enshrined under Articles 15(4), 15(5) and 16(4). The same view was assented to by Justice Pardiwala.

- Now, the dissenting views were presented by Justice Bhat who stated that caste-based and community-based reservations were impermissible. The Chief Justice of India Uday Umesh Lalit who were of the view that bulk and majority of poor belong to SC/ST/OBC categories, and excluding them from the EWS quota would be very arbitrary and discriminatory also supported this minority view.

Therefore, it may finally be adjudged from the case and differing opinions that, Articles 15(6) and 16(6) are enshrined in the Constitution with a view that they ensure protective equality for groups outside those on caste considerations<sup>40</sup>. Also, the court has leaped laws n reservations where the addition of 10% would not be violative of the basic structure of the Constitution. Hence, the view of the majority has prevailed over the minority view and held the 103<sup>rd</sup> Constitutional Amendment Act, 2019 as constitutionally valid and not violative.

## **SUGGESTIONS AND RECOMMENDATIONS**

The following points are recommended concerning the recent Amendment Act, 2019 which has transformed the facet of reservation in India-

- Reservation is not the only way for the upliftment of backward classes. Other ways to help the disadvantaged sections include providing scholarships, implementing other welfare programs, etc.
- The reservation must be provided for a fixed period and not beyond it. We must abide by the idea with which reservation was introduced and must develop a society that is reservation independent.
- Creating awareness is the need of the hour. Generally, the unreserved category opposes the reservation system. At the same time, the most vulnerable within the reserved categories are not aware of the benefits of the provision or how to avail the benefit which is why the idea of reservation is always opposed. There must be proper percolation of ideas relating to new laws done by the law enforcers.

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<sup>40</sup> Y. SRINIVASA RAO (n 18)

- The concept of the creamy layer can be introduced among all categories. Thus, instead of providing reservations to them, measures can be undertaken to develop their capabilities and skills. As developing skills nourish the future generations also and have a far-sighted view than only providing reservation to the present generations.
- Radical changes in the education system like the introduction of vocational courses, promoting teaching in different languages, etc, at the grass root level, is also the need of the hour. When education is imparted unanimously to all classes and castes in the nation, it will ensure inclusive growth of the nation and will reduce the probability of reservation in the future.

## CONCLUSION

At some point in time, almost every country in the world has been the victim of different forms of discrimination. Although the forms were different it meant the same thing- the superiority of one section over the inferior section of the population. The inferior class was subjected to prejudice and suppression. And over the generations, people started accepting them in the same way the previous generations accepted them without any change. Thus, countries around the world implemented certain policies to give voice to minorities so that they can be given an equal presentation in the mainstream of society. India has one of the oldest surviving caste systems where certain castes were victims of oppression socially, educationally and economically backward. Thus, the founding fathers incorporated a system of reservation for the upliftment of the backward communities.

Gradually with time, the backward groups used the reservation system to ensure equality in education and employment. Today, in some instances, the section of the creamy layer of those benefitting from the reservation is also using them for their future generation, leaving the people who need them helpless. Additionally, the system of reservation has been crucial to politics throughout history. It has occasionally been used as a tool to win votes which have led to delayed changes in the quota system in India for a very long period. Although this system has certain disadvantages, it has improved the conditions of the weaker groups by providing them with a sense of empowerment and uplifting their economic situation.

Equality in terms of opportunities has helped people to step to follow their passions. However, the present reservation system needs modifications. Changes need to be introduced to help individuals suffering because of the pre-existing reservation policy.