



# CRITICAL ANALYSIS ON THE VALIDITY OF 103<sup>rd</sup> AMENDMENT

**AUTHORS:**

**PALLE RISHITHA REDDY  
TAKKELLAPATI SRIVALYA**  
ALLIANCE UNIVERSITY, BANGLORE  
ALLIANCE SCHOOL OF LAW

## **Abstract:**

Recently through the 103<sup>rd</sup> constitutional amendment act 2019, the government has introduced extra 10 percent reservation to the economic weaker section. the problem which has raised because of this amendment act is that the reservation is exceedingly more than 50 percent which is violating the basic structure doctrine of the constitution. The paper is addressed with the challenges and the other consequences raised due to the amendment mentioned. The main aim of researcher is to understand about why reservation is required in India especially the extra 10 percent and the validity of the amendment act introduced.

Key words:

Amendment, Basic structure doctrine, constitution, equality principle, reservation.

## **Introduction**

Define EWS?

What is economic weaker section (EWS) reservation?

Whether the amendment is constitutionally valid or not?

## **Objective:**

The aim of the research paper is to address the unappreciated necessity of the 103<sup>rd</sup> amendment act of the constitution, 2019. This act introduced extra 10 percent reservation for the economic weaker section. India already has the capacity of maximum 50 percent reservation. The 10 percent reservation which was introduced by this act is now being questioned in this research paper by the critical analysis of the way how

it violates the equality and the basic structure doctrine of the Indian constitution. the researcher has a tendency to recognise the validity and the necessity of the reservation in India through this research paper.

### **METHODOLOGY:**

Doctrinal methodology is the method, which is adopted by the researcher, the amendment act introduced is affecting the equality principle and also it breaches the maximum limit of 50 percent of the reservation which violates the basic structure doctrine. These are the effects found by using this methodology.

### **LITERATURE REVIEW:**

Can the ten per cent quota for economically weaker sections survive judicial scrutiny – The Hindu Centre for Politics and Public Policy by author K. Ashok Vardhan Shetty.

In this article the author touches the history of reservations in both aspects of legislative and the constitutional and he also highlighted the legal ailments in the 103<sup>rd</sup> constitutional amendment. The author also looked at different scenarios which are before the supreme court and analyses if the basic structure doctrine can be challenged in the given case. All these years the major challenge in the reservation system is the 50 percent ceiling and thus this article of the author analyses the topic of reservation in detail.

Reservations in India – A constitutional Perspective by author Pranav Jitendra Divgi

In this article the author explained briefly about the highlights of the major questions of law which has raised before the supreme court of India in the Indra Sawhney case (the mandal commission case) along with the amendments which are made under the article 16 of the Indian constitution. In this article the author also discusses about the other amendments which are made under article 16 of the Indian constitution, considering the same opinion of the apex court and the ultimate impact upon the society at large. The author also summarizes the very soul meaning of the important landmark judgements on reservation which had a deep effect upon Indian Society.

### **RESEARCH PROBLEM:**

Over seven decades the policy of reservation is being continuing and expanding, the reservation policy was served for the purpose of upliftment of educationally backward and socially backward people of the society or did it gave rise to the social evils in other forms, including bitterness between the classes and further domination of the reserved classes as a means of criticism against them is the appropriate question to be considered in the policy of reservation. The present research paper mainly focuses on the validity of 103<sup>rd</sup> constitutional amendment act, 2019 which introduced extra 10 percent reservation for the economically backward sections.

**RESEARCH QUESTION:**

1. Whether the 103<sup>rd</sup> constitutional amendment act, 2019 affects the equality principle and whether it violates the basic structure doctrine?
2. Whether the extra 10 percent reservation for economically weaker section breaches the maximum limit of 50 percent reservation?

**INTRODUCTION:**

The system of reservation existed in India even before independence. After the independence, the constituent assembly framed the concept of reservation, during this the constituent assembly was chaired by Dr. B.R. Ambedkar. At the beginning the system of reservation was introduced in India only for the span of 10 years<sup>1</sup>. After the 10 years the legislators found that it is necessary to continue the system of reservation in order to overcome the discrimination of many years that happen to some parts of the society, the discrimination was not only in the society, the discrimination was in cultural also.

The reservation was introduced in India to create -<sup>2</sup>

1. Everyone should be equal irrespective of their caste.
2. For the advancement and promotion of the backward classes.
3. To rectify the injustice that was happened to backward classes in India in past years.
4. To ensure that there should be an equal representation to the people of all castes in the services under the state and Centre.

Initially the reservation was only given to the SC (Scheduled Caste) & ST (Scheduled Tribe), later in the year 1987, the reservation was extended to OBC (Other Backward Classes) after the introduction of mandal commission<sup>3</sup>. In 2019 the reservation was extended to EWS (Economically Weaker Section) through the amendment act 103. SC & ST gains higher benefits than OBC & EWS in this reservation policy.

The reservation of seats for admission and its extent in a Central Educational Institution shall be provided in the following manner, namely:<sup>4</sup>

Scheduled Caste (SC): 15%

Scheduled Tribe (ST): 7.5%

Other Backward Classes (OBC): 27%

<sup>1</sup> <https://byjus.com>

<sup>2</sup> MANU/SC/0011/2022

<sup>3</sup> Kshetrimayum Mahesh Kumar Singh and Ors. vs. The Manipur University and Ors.

<sup>4</sup> Kshetrimayum Mahesh Kumar Singh and Ors. vs. The Manipur University and Ors. MANU/SC/0011/2022

Later, 10% EWS reservation was introduced through 103<sup>rd</sup> constitution (amendment) act 2019, by amending article 15 and 16. Here the article 15(6) and article 16(6) are inserted.<sup>5</sup>

**Article 15(6):** enables the State to make special provisions for the advancement of any economically weaker section of citizens, including reservations in educational institutions.<sup>6</sup>

This section states that such reservations can be made in any educational institution, including both aided and unaided private institutions, except the minority institutions covered under article 30(1).

**Article 16(6):** Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.<sup>7</sup>

The economic weaker section reservation was introduced under 103<sup>rd</sup> amendment act 2019, and also it inserted article 15(6) and 16(6). It is for economic reservation in jobs and admissions in educational institutions for EWS. This is for the candidates who are not covered under any reservations who are not covered under any reservations such as ST, SC and OBC except physically handicapped and ex-serviceman criteria and who belong to EWS.<sup>8</sup>

In India EWS is a subcategory of people having an annual family income less than ₹8 lakh and who do not belong to any category such as SC/ST/OBC across India, nor to most backward classes (MBC) in Tamil Nadu. A candidate who does not fall under SC/ST/OBC and fulfils the EWS economic criteria are to be part of the EWS category.<sup>9</sup>

The government of India introduced a 10% reservation to this category of people who are not included in the ST/SC/OBC category but belong to the un-reserved category and fulfil the economically weaker section criteria. The candidates eligible for the economically weaker section reservation are from the general category that can now enjoy a reservation of 10% if they fulfil the criteria to fall under this category.

### **ELIGIBILITY CRITERIA FOR THE ECONOMICALLY WEAKER SECTION (EWS):**

There are some conditions for the candidates which are laid by government that should be fulfilled to claim the reservations under this new category of EWS,

To eligible for the reservation quota the conditions should be fulfilled they are:<sup>10</sup>

- People who are not covered under any reservation scheme for SCs, STs and OBCs

<sup>5</sup> Drishtiiias <https://www.drishtiiias.com> (last visited: 19/02/2023)

<sup>6</sup> Supreme court observer (SCO) <https://www.scobserver.in> (last visited: 19/11/2022)

<sup>7</sup> scconline <https://www.scconline.com> (last visited: 19/11/2022)

<sup>8</sup> Drishtiiias <https://www.drishtiiias.com> (last visited: 22/03/2023)

<sup>9</sup> Wikipedia <https://en.wikipedia.org> (last visited: 22/03/2023)

<sup>10</sup> vikaspedia <https://vikaspedia.in> (last visited: 22/03/23)

- whose family has gross annual income below Rs 8 (Rupees eight lakh only) Income shall also include income from all sources i.e., salary, agriculture, business, profession, etc. for the financial year and next to the year of application.
- Also, whose family owns any of the following assets they are not eligible for the EWS quota irrespective of their total family income.
  - Agricultural land of 5 acers and above.
  - Residential area of 1000 sq. ft. and above.
  - Residential plot of 100 sq. yards and above in notified municipalities.
  - Residential, plot of 200 sq. yards and above in the notified municipalities.

## **HISTORY OF RESERVATION:**

A long before the independence the reservation system was introduced in India for backward class people including the areas of princely states. After the introduction of the constitution in the year 1950, both centre and state introduced the reservations scheduled caste and scheduled tribes and various states introduced the reservation for the backward class people also. After the independence the mandal commission was introduced, after the introduction of the mandal commission major changes took place in the reservation system and it considered the citizens of educationally and socially backward.

Under the leadership of B.P. Mandal the mandal commission was introduced in the year 1979. This commission identified the citizens of educationally and socially backward classes. Educational criteria, economic consideration and social status are the bases on which the determination was made. Including Hindus and non-Hindus the mandal commission had identified nearly more than 3740 communities as the other backward class people, that means nearly 51 percent of the Indian population. The Morarji Desai government established the Mandal Commission in January 1979 to identify the socially or educationally underprivileged classes and to consider the issue of seat reservations and quotas for people to end caste discrimination. The Mandal Commission used eleven social, economic, and educational indicators to assess backwardness.<sup>11</sup>

## **CONSTITUTIONAL VALIDITY CHALLENGE OF 103<sup>RD</sup> AMENDMENT ACT:**

A "basic structure challenge" is the legal argument against the 103rd Amendment's legality. The Constitution's "Identity" is formed by certain structural concepts, which include federalism, equality, freedom, secularism, independence of the judiciary, power of judicial review, democratic form of government, republican form of government, and others. The basic structural theory established this, so it cannot be changed without destroying the constitution's unique character.

In the case of Kesavananda Bharati v/s State of Kerala<sup>12</sup> the Supreme Court ruled that the Parliament's power to amend the Constitution under Article 368 isn't absolute and indeed a indigenous correction can be struck down if it has the effect of destroying or rescinding 'The basic structure' of the Constitution.

<sup>11</sup> <http://www.ncbc.nic.in>

<sup>12</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

In the case of Indra Sawhney<sup>13</sup>, the nine-judge bench held that Article 16(4) does not provide for reservation in promotion as it only deals with reservation in appointment. The judgment put in all reservations in the promotion granted to SC/ST in public employment. The court took this into account. His judgment allowed the reservation of promotion to continue for five years after November 16, 1992.

In 1995, the government reversed the effect of Indra Sawhney by introducing Article 16(4A) through the 77th Amendment to the Constitution. Article 16(4A) allowed the State to grant reservation to SC/ST in matters of promotion if the State felt that SC/ST was not adequately represented in government services.

□ In 2000, two amendments were introduced to facilitate smooth reservation in promotion for SC/ST. The first was the 81st Amendment. Through the 81st Amendment, the government introduced Article 16(4B) which allowed reservations in promotions to exceed the 50% ceiling set for regular reservations. The amendment allowed the state to carry forward vacant positions from previous years. This became known as the carry forward rule.<sup>14</sup>

□ In 2000, the state amended the constitution for the second time. In the 82nd amendment, the state added a proviso to Article 335. According to Article 335, the claims of SC/ST for services and posts must be in accordance with overall administrative efficiency. He introduced a proviso which laid down that nothing in Article 335 prevents the State from relaxing the qualifying marks or lowering the grade level for reservation in matters of promotion to members of SCs and STs. The proviso to Article 335 overruled the Supreme Court's 1996 judgment in the Vinod Kumar case, which had specifically ruled against relaxation of qualifying marks in proviso cases.

□ In 2001, Parliament negated the Catch-Up Rule which the Court had established in Virpal Singh (1995) and Ajith Singh (1996). In the 85th Amendment, Parliament amended Article 16(4A) and introduced the principle of consecutive seniority for promoted SC/ST candidates.

Subsequently, the text of Article 16 (4A) was amended so that "in matters of promotion to any grade" became "in matters of promotion, with subsequent seniority to any grade".

### **Nagaraj vs Union of India**<sup>15</sup>

In Nagaraj, the appellants challenged the 77th, 81st, 82nd and 85th Amendments in the Supreme Court. The court finally confirmed the amendments as constitutionally valid; the five-member commission upheld the constitutional validity of the reservation in promotion to SC/ST. It confirmed the subsequent seniority rule under Article 16(4A) (mandal commission), the transfer rule under Article 16(4B) and the provisions of Article 335.

The court ruled that for the promotion clause to be valid, the state must meet three mandatory requirements:

- They should Show the SC/ST backwardness
- To demonstrate that SC/ST is under-represented in relevant government jobs
- To Maintain overall management efficiency

<sup>13</sup> Indra Sawhney v/s union of India 1992 scc 217

<sup>14</sup> Indra Sawhney v/s union of India 1992 scc 217

<sup>15</sup> Nagaraj v/s union of India (2006) 8 SCC 212

**Critical analysis:****Reservation**

Indian Constitution establishes an "equality code" to address historical injustices and the obvious inequality in higher education and state jobs. Everyone is guaranteed equal protection under the law and equality before the law under Article 14.

**M.R. Balaji v/s State of Mysore:**

In this case, the court agreed that reservations should primarily be provided to the weaker sections of society to uplift them, but it also clarified that this should not be done at the expense of the interests of the remaining sections of society. The powers granted to the State to provide reservation under Articles 15(4) and 16(4) are intended to promote the educational and economic interests of the weaker sections in order to protect them from social injustice.<sup>16</sup> When the state makes unreasonable concessions to weaker sections, it does injustice to the other sections and undermines the entire principle of social equality for which the provisions were originally introduced. This case also highlighted the importance of national interest above all, which would be jeopardized if qualified and competent students were denied admission to higher and technical education institutions for the sake of reservation.

The court attempted to reduce the complexities involved in determining whether or not the reservation is reasonable. It suggested certain factors to consider when determining whether a class is backward or not, and stated that caste cannot be used as the sole basis for this purpose, as was done in the current case. It also stated that reservations should not exceed 50% in any case, as this would be unreasonable. However, how much less than 50% the reservation must be left to be determined based on the facts and circumstances of the specific case for which it must be decided.

**State of Kerala v/s N.M. Thomas**

However, in State of Kerala v. N.M. Thomas, the Supreme Court ruled that Article 16(1), as a facet of the doctrine of equality, allows reasonable classification of all persons who are similarly situated in law, like Article 14. In other words, even without Article 16(4) of the Indian constitution, Article 16(1) allows for reservations and preferential treatment. Article 16(4) is not an exception to Article 16(1) and only seeks to make explicit what is already implicit in Article 16(1). The other argument contends that Articles 15(4) and 16(4), which provide for reservation in education and public employment, are "exceptions" to the equality and non-discrimination provisions of Articles 15(1) and 16(1), and that thus violating the "50 per ceiling" results in reverse discrimination.<sup>17</sup>

To summarize, the Supreme Court's decision in Indra Sawhney represents a compromise between M.R. Balaji and N.M. Thomas. It struck a balance between formal equality and substantive equality by reaffirming the '50% ceiling' rule.

<sup>16</sup> M.R. Balaji v. State of Mysore 1963 AIR 649

<sup>17</sup> State of Kerala v. N.M. Thomas 1976 AIR 490

## Basic structure doctrine challenge:

The viability of a Constitutional Amendment is assessed against the touchstone of the Constitution's Basic Structure. Because of the nature of the Basic Structure, it cannot be damaged or destroyed. As a result, the current constitutional amendment is unconstitutional in the following ways:

1. The Amendment violates the equality principle.
2. The Amendment exceeds the 50% reservation limit, and
3. The Amendment destroys substantive democracy.

### Amendment breached the 50% ceiling on reservations:

The 50% Rule was devised to strike a balance between formal and substantive equality. The reservations provided cannot exceed 50% of the total available opportunities or reservations, according to this rule. The 50% Rule, on the other hand, is part of the Basic Structure, and the current Constitutional Amendment violates it.

The power granted by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits, and what is more reasonable than to state that the reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained herein, it was further held in *Indra Sawhney v. Union of India*<sup>18</sup>.

Similar to Article 16(4) is an exception to the general rule of Article 16, (1), The objective of the rule is to guarantee equal opportunity in public employment, The ability of the State to offer special reservations for underrepresented backward classes constitutes an exception to this requirement, The reservation for underprivileged classes cannot be greater than 50% since an exception cannot override the rule, Backward classes have also been defined as Scheduled Castes, Scheduled Tribes, and Other Backward Classes in *Jarnail Singh v. Lachhmi Narayan*<sup>19</sup>.

The current constitutional amendment violates the 50 percent rule by allowing for a 15% reservation in addition to the existing 49% reservation because the 50 percent rule is a fundamental component of the basic framework. There have not been any strong arguments made to support the need for such a reservation. In other words, the principle of formal equality must be weighed against subclause (6) of Articles 15 and 16 because its ultimate purpose is to allow for reservations, which is a component of substantive equality.

### RECOMMENDATIONS:

When 10% reservation was introduced for economically weaker sections of society, the reservation went above 50.9%, which is 7.5%, 15%, and 27% for scheduled castes. Tribes and other classes had been set aside. However, with the implementation of the 103rd Act 2019, only 40.9 percent of the seeds will be allocated in jobs based on the candidates' merits. Is there a compromise in the merit quota person as a result of the increase in reservation?

<sup>18</sup> *Indra Sawhney v/s union of India* 1992 scc 217

<sup>19</sup> *Jarnail Singh v/s lacchmi narain Gupta* (2018) 10 SCC 396



This is not justified in any way for those who deserve a chance based on their hard work and merit. Some suggestions based on a reservation can be:

1. The purpose of reservation was social advancement, and it still can be accomplished by different strategies like scholarships, coaching programs, etc.
2. Reservations that are only based on economic considerations are not a justifiable solution.
3. Instead of extending the reservation system time span each time, it should be fixed.
4. Reservations must adhere to a rigorous 50% cap and not go above that.
5. The minimum requirement of marks must be met, regardless of the category to which they belong, using the 27% reservation when it is essential to do so.
6. The reservation system would be stricter and only permit reservations for the first generation of a family.

### **CONCLUSION:**

The reservation system is not entirely based on casteism, which divides society and leads to discrimination and conflicts between various categories. It's the opposite of communal living. Reservation system reforms are urgently required. The reservation system has primarily resulted in conflict between the country's reserved and unreserved categories. From a neutral standpoint, it can be stated that, while reservation is necessary for the country, there is also a need to create a system that promotes affirmative action rather than appeasement politics. Any negative aspect of reservation should not be used to stymie India's rapidly growing economy.

The current amendment violates the principle of equality because it undermines the constitutional identity of the Articles enshrined in the Equality Code, and the Parliament has overreached in enacting this Amendment. Furthermore, the Amendment is in violation of the Basic Structure's 50% Rule. Furthermore, by granting reservations to well-represented classes, the current amendment undermines the principle of Substantive Democracy.

As a result, the 103rd Amendment has the effect of increasing and solidifying the representation of individuals who are already disproportionately overrepresented in the public sector compared to other populations and who hold a disproportionate share of the nation's wealth. This violates the idea of equality as it is generally understood, transforms it beyond recognition, and doesn't pass the "identity test" outlined in M. Nagaraj.

The Supreme Court has the authority to invalidate a constitutional amendment if it has the result of destroying or repealing the "fundamental structure" of the Constitution as stated in the Preamble.

## **BIBLIOGRAPHY:**

### **Books:**

12<sup>th</sup> edition, P.M Bakshi, the constitution of India

### **Cases:**

Indra Sawhney v/s union of India 1992 scc 217

Nagaraj v/s union of India (2006) 8 SCC 212

Jarnail Singh v/s lacchmi narain Gupta (2018) 10 SCC 396

B.K Pavitra v/s union of India (2019) 16 SCC 129

M.R. Balaji v. State of Mysore 1963 AIR 649

State of Kerala v. N.M. Thomas 1976 AIR 490

Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

Kshetrimayum Mahesh Kumar Singh and Ors. vs. The Manipur University and Ors.

### **Website:**

Drishtiiias <https://www.drishtiiias.com>

Supreme court observer (SCO) <https://www.scobserver.in>

scconline <https://www.scconline.com>

Drishtiiias <https://www.drishtiiias.com>

Wikipedia <https://en.wikipedia.org>

vikaspedia <https://vikaspedia.in>

Supreme court observer (SCO) <https://www.scobserver.in> (last visited: 19/11/2022)

scconline <https://www.scconline.com>

