

EWS Got Off on the Wrong Footing

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Abstract

Against the backdrop of the Government of India's efforts to support the weaker economic section of India, it proposed another amendment to the Indian constitution. India has a historical structure of caste system, which is still prevalent, and we as a community are still trying to figure out what is leading to social backwardness in society. A caste plays a vital role in society, and people have limited their interactions within the system. Since independence India has seen tremendous growth. However, it strives to make people literate and uplift economic standards through various policies. For overall development, one needs to cater to all the classes divided into haves and have-nots. This has led to conflicts of interest among the people. The first backward class commission came in 1953, but the suggestions of the same were rejected because the government was in pursuit of creating a casteless society. Indra Sawhney's judgement was written in stone by the Indian judiciary but was still violated after the 103rd constitutional amendment, which led to another 10% RESERVATION. What is enforcing the political parties to cheer up reservations more and more rather than removing the barriers leading to inequity in Indian society? Is it judicial pragmatism or political parties taking this as an opportunity to increase their political influence?

Keywords: EWS, Social Backwardness, Judicial Pragmatism, Political Opportunism, Inequity Reservations, SC, ST And OBC

INTRODUCTION

A current population of 138 crores accommodates an incredulous cultural variety between languages, caste and about 70% of the population belongs to a scheduled caste, scheduled tribes and other backward classes [1] India has a historic, highly stratified social structure known as the "caste system." The word "caste" derives from the Portuguese term "casta," which was used to describe the social stratification of Indian civilization. The caste system is a Sui Generis of the social structure in the Indian sub-continent in general and Hindus in particular. An individual's position is inextricably linked to the Jati social group to which they belong. The idea of purity and contamination has generally served as the system's guiding principle. Each person must keep their interactions within that particular Jati community. The division of labour throughout history has created a caste system of haves and have-nots.

The bourgeoisie class continued to exploit the labour of the have-nots with their supreme power, while the former continued to own excellent means of production and political influence. This practice persisted for so long that certain rights for the exploited class were granted to the anguished for the uplift of society. The instrument of DPSP (Directive Principle of State Policy), derived from Article 45 of the Irish Constitution [2], was one of many significant ideas that our Constitution borrowed from other nations' constitutions. The DPSP is in Part IV (Articles 36-51) of the Indian Constitution. The goal of this is to guarantee socioeconomic justice in Indian society. In 1954, 20% of seats in educational institutions should be

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reserved for SCs and STs, the Indian government's Education Ministry stated in a letter to the states. Caste-based reservations were acceptable because caste rejected a deeply entrenched form of marginalization and exclusion. These incentives and stratagem are compliant with Indian Constitutional law. Our Indian Constitution only permitted reservations for SC/ST during the initial period of independence, that too for the period of 10 years (1951–1961). It got extended since the implementation of the Mandal Commission Report in 1990 [3]. Later on, the scope of reservations was expanded to include the other backward class (OBC).

WHAT IS EWS?

Every student who appears for a competitive exam or those who take admission must fill up the form that asks about the category. What does that category mean? That category asks you to select among **All India General, Scheduled Caste, Scheduled Tribe and Other Backward Class**. Choosing one type all happened before coming up with the 103rd constitutional amendment. What did this amendment change? It provides for 10% reservation to the economically weaker sections (EWS); thus, all the high caste Hindus and Sikhs, all Muslims and Christians who are not listed as the STs and the OBCs, non-SC Buddhists and all Zoroastrians and Jains will be eligible under this quota provided they meet the specific *economic criteria*_added one more column to your exam and admission form that is of **EWS CATEGORY**.

Except for minority educational institutions, private institutions of higher learning are likewise covered by the 103 Constitutional Amendment Act. One step towards uplifting the people who belong to the un-reserved category whose socioeconomic background doesn't allow them to contribute as effectively to society as they could; how can one categorize thyself as economically weaker? Those with a family income of less than 8 lakh rupees per year or less than 5 acres of agricultural land. Anybody who is not a recipient of any reservations that are currently in place. Owners of homes less than 1,000 square feet or properties more significant than 100 yards. Owners of residential lots with a minimum size of 200 yards dwell in unadvertised municipal areas. The income cut-off of Rs. 8 lakhs stated in the 124th amendment bill [4] seems excessive. It's unclear whether this sum is intended to be pre-tax or post-tax. Income standards alone may indicate poverty, but they may not often reflect characteristics that perpetuate poor living standards, participation barriers, or a wide range of other essential requirements that reflect a severe lack of economic strength.

CHICKEN AND THE EGG SYNDROME

A question that we all are familiar with is which came first egg or the chicken. At the time of independence, 1947, both the partitioned countries had economic crises, and people on the borders were striving for their lives, accompanied by social backwardness. Hardly 12% [5] of the total Indian population was literate; people with different castes and communities surfaced together during that period; here comes the fundamental question of whether it was the caste leading to social backwardness among people or the lack of education and economic factors. There was a significant dispute of opinions between the majority and the minority. The minority was of the idea that inadequate representation should be the only parameter for the identification of a class under **[art 16(4)] [6]** It can be said that the minority believed that either educational or economic backwardness was leading to social backwardness and that such social backwardness was not emanated primarily because of caste. Social backwardness is unsurmountable, and the factors which can identify these changes with the change in the economic structure of the society don't mean that it has been eradicated automatically. However, the State, which considers this to be a baffle in the overall social development of the community, takes action to change the social structure and creates conditions whereby socially backward groups and individuals can overcome backwardness.

THE ADDITION CAN BE GRUELLING AT TIMES

The creators of our Constitution included a unique clause to give all Indian citizens equal access to public jobs when it was written. The Indian Constitution's Article 16 (There shall be equal opportunity

for all citizens in matters relating to employment or appointment to any office under the State). However, considering the underprivileged class, a particular clause was added to the same article, i.e. **[art.16(4)]**, to set forth conditions for those not equally represented in the State's service. It wasn't wide enough to bring inside its fold reservation in matters of promotion. Several petitions were filed in the Supreme Court of India stating that this violates the fundamental structure doctrine of the Constitution. **INDRA SAWHNEY JUDGEMENT [7]** This viewpoint—that reservations cannot be made based only on economic considerations—was unequivocally affirmed by the Supreme Court in this judgement, which attempted to find a suitable resolution that strikes a delicate balance between society and the rights of the underprivileged classes. This reservation brings the total reservation up to roughly 60% after adding it to the current maximum of 50% reservation for the Scheduled Castes, Scheduled Tribes, and Other Backward Classes. In India, little direct income data is available to the general public. Income criteria alone may indicate poverty, but they may not always reflect conditions that maintain poor living standards, participation barriers, or a variety of other essential standards that reflect egregious economic weakness. Moreover, The Constitution (Seventy-seventh) Amendment Act of 1995 added Article 16(4A) [8], which allowed reservations for promotions. A double whammy has been created, one leading to the other.

OBJECTIVITY AND CONCLUSION

How many people in India fall into this EWS category is now a question. This question comes under the ambit of the criticism of the EWS category reservation. The income cut-off of Rs. 8 lakhs declared in the 124th Amendment Bill specifies requirements for ownership of assets and income. However, since *binami* and dual land ownership are common in India and personal income assessment is challenging, determining eligibility based on these standards will ultimately be incorrect. It's unclear whether this sum is pre-tax or post-tax. More than 43%, 29% and 21% of Scheduled Tribes, Scheduled Caste and Other Backward Class populations live in poverty (Tendulkar line) [9]. 12.5% of people in other socioeconomic classes—not in the SC, ST, or OBC categories—live below the poverty line.

The populace that belongs to a scheduled caste, tribe, or other backward class is not the only group considered to be among the poverty-stricken; the general caste is also included. The proportion of Indians who earn more than **Rs 8 lakh** does not exceed 2%. This will make it possible for almost everyone to fall under this group. Several petitions were filed in the Supreme Court of India stating that this violates the fundamental structure doctrine of the Constitution [10]. In the Landmark Judgement of **Indra Sawhney Vs Union of India Case, 1992** With the backdrop of widespread anarchy and violent demonstrations against the implementation of the terrible Mandal Commission Report, this unusual case was the wonder child of Indian judicial pragmatism. The court unequivocally decided that economic criteria could only be utilized in conjunction with social backwardness and that backward class could not be defined solely based on financial criteria. More significantly, the ruling set a 50% cap on the total number of reserved seats that have been violated. Why don't you anticipate that the government won't serve 75% of the population? As they are essentially their vote banks Suppose the programme is intended to eliminate ingrained and generational types of economic disadvantage that standard welfare measures cannot fully address. In that case, reservations for the economically weaker parts are appropriate. But things go otherwise in some states; there are reservations for people belonging to specific classes with such conditions exceeding the 50 per cent cap. Everything has advantages and disadvantages, but in this case, the disadvantages outweigh the benefits due to the legislation's flaws and the selection procedures, which effectively render the quota unnecessary. Government should work on the concept of liberation, which means eradicating things leading to inequity in society. This concept is not alien to Indians but is reluctant to accept it because of the sense of identity they feel with their own caste.

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