

10% QUOTA BILL MAY FAIL LEGAL TEST

Relevant for: Indian Polity & Constitution | Topic: Indian Constitution – Amendments, Schedules, and Important Articles

A proposed law, which got Cabinet approval on Monday, to provide 10% reservation for upper castes (or the unreserved category) exclusively with reference to their economic backwardness may run into rough weather if challenged in the Supreme Court.

A nine-judge Constitution Bench of the Supreme Court in the Indira Sawhney case of 1992 specifically answered the question “whether backward classes can be identified only and exclusively with reference to the economic criterion.”

It categorically held that “a backward class cannot be determined only and exclusively with reference to economic criterion.”

“It may be a consideration or basis along with, and in addition to, social backwardness, but it can never be the sole criterion. This is the view uniformly taken by this court...” said the majority judgment authored by Justice B.P. Jeevan Reddy, now retired.

The Indira Sawhney judgment declared 50% quota as the rule unless extraordinary situations “inherent in the great diversity of this country and the people” happen. Even then, extreme caution is to be exercised and a special case should be made out.

If the government proposes to bring a constitutional amendment to include the 10% quota for “unreserved economically weaker sections”, the 11-judge Kesavananda Bharati judgment may stand in the way. The judgment held that constitutional amendments which offended the basic structure of the Constitution would be *ultra vires*. Neither Parliament nor legislatures could transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14.

The government, it is reported, proposes to bring the 10% over and above the 49% quota — 7% for Scheduled Castes, 15% for Scheduled Tribes and 27% for Socially and Educationally Backward Classes, including widows and orphans of any caste, which is permitted. But a total 59% (49%+10%) quota would leave other candidates with just 41% government jobs or seats. This may amount to “sacrifice of merit” and violate Article 14.

This proposed Bill finds an echo in an ordinance promulgated in Gujarat in 2016. The ordinance provided 10% quota to upper castes there.

All the arguments here are based on the 104-page judgment of the Gujarat High Court in the Dayaram Khemkaran Verma versus State of Gujarat, which quashed the ordinance in August 2016. The case has been referred to a five-judge Bench of the Supreme Court

Gujarat had justified the ordinance by referring to how Article 46 of the Constitution, which deals with the Directive Principles of the State Policy, required the State to promote weaker sections.

It had categorised the 10% quota as a ‘reasonable classification’ under Article 14 and not ‘reservation’. It said the 50% ceiling limit in the Indira Sawhney judgment applied only to SC/ST and SEBC. But the High Court said “reservation is nothing but an act of booking, kept blank, destined for a particular use of a particular person.”

The court observed that the “unreserved category itself is a class” and economic criteria was too fluctuating a basis for providing quota.

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