

10% QUOTA FACES SEVERAL LEGAL AND POLITICAL CHALLENGES

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Who will the new 10% quota apply to?

To all those who are not covered in existing quotas and have a family income below Rs. 8 lakh a year or agricultural land below 5 acres. Those who have a house above 1,000 square feet or a 100-yard plot or above in a notified municipal area or a 200-yard plot or above in a non-notified municipal area are not eligible.

What steps are necessary for its implementation?

The 124th Constitution Amendment Bill, 2019, which the Lok Sabha debated on Tuesday, will have to be passed by both Houses of Parliament by a special majority of two-thirds of the members present and voting, which should not be less than one-half of the total strength of the House. If it is not passed by both the Houses within the term of this Lok Sabha, it will lapse. The Bill will also have to be ratified by at least half the State Assemblies.

Once the Constitution is amended to add economic backwardness as a ground for reservations, it will most likely have to stand the test of judicial scrutiny, as the Supreme Court had in the Indra Sawhney case capped quotas at 50% of the available seats.

What are the future implications, should the Bill stand judicial scrutiny?

If the Supreme Court indeed agrees to lift the 50% cap, all States of India can extend the quantum of reservation and “upper castes” will stand to lose in State services.

If the Supreme Court rejects the idea of breaching the 50% cap, Economically Weaker Section (EWS) quotas can be provided only by eating into the SC, ST and OBC quota pie, which will have social and political implications.

How will it help the economically less prosperous “upper caste” Hindus and such groups in other communities?

It's a complicated question. If the EWS is treated as a category just like the SC, ST and OBC, a large chunk of general category candidates will apply for just 10% seats and the cut-offs can rise. While ideally the non-reserved 40% open seats should be open seats based on merit, there are complexities here too. For example, the UPSC accepts a reserved candidate in the civil services examination making it in the general merit list as general only if she has not benefited from reservation in the preliminary, mains, service choice (if one gets a better service, say IAS or IPS, due to reservation, one is counted as reserved irrespective of one's overall rank) and State cadre choice (if a reserved candidate is in the general merit list but is getting a cadre of her choice as a reserved candidate, she is counted as reserved), say bureaucrats. So, many who are above the general cut-off may still occupy this 10% quota, as they get a better service or cadre in it.

A senior IAS officer told *The Hindu* that it is possible that a provision will be made for accommodating those who fall below the 10% EWS quota — in case its cut-off is above the

general cut-off due to fewer seats — in the open, or general, seats, but this can give rise to litigation.

What are the political implications of this move?

Upper castes may react positively to the move, but they are believed to be largely with the BJP anyway.

The move may have some appeal to upper castes in States where the BJP is weak, but one does not know the extent of the political benefit.

The moot question is the impact on the existing reserved categories in States where the BJP is strong and takes a chunk of OBCs.

While the government says the quota will be above the existent 50% reservation, the Supreme Court-mandated cap may make some OBCs wary, as they may feel it may eat into their pie if case the apex court refuses to relax the cap.

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