

IS THERE A RENEWED QUOTA DEBATE?

Relevant for: Indian Polity & Constitution | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

Who is this reservation for?

The constitutional amendment passed by Parliament last week seeks to expand the concept of reservation, a form of affirmative action, to favour the “economically weaker sections.” Those who are covered by the existing reservation for the Scheduled Castes, the Scheduled Tribes and the ‘socially and educationally backward classes,’ a constitutional category known in popular parlance as Other Backward Class or OBC, are not eligible for the proposed new reservation of 10%. The amendment makes it clear that the new reservation in public sector jobs and education in both public and private sectors will be above the existing quotas. The Supreme Court had ruled earlier that the total quantum could not exceed 50%. Politically, the move by the Narendra Modi government aims to placate upper caste Hindus, though those not covered by any quota among the followers of other religions too are potential beneficiaries.

What is the problem?

The amendment raises questions about its compatibility with the basic structure of the Constitution, which the court has held cannot be altered even by Parliament. A petition has already been filed in the Supreme Court, alleging the amendment violates the basic structure doctrine. The idea of giving 10% reservation to the upper castes also raises other ethical and moral questions that may not be justiciable. Reservation is currently covered, primarily under clauses (4) and (5) of Article 15 and clause (4) of Article 16, which allows the State to make special provisions “for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.” The court has examined the concept of ‘socially and educationally backward classes’ and has ruled that caste can be a basis for inclusion in that category. In the *Indra Sawhney vs Union of India*, the court examined the decision of the government to implement the Mandal Commission report that stipulated 27% reservation for OBCs and ruled that economic criteria could not be the sole basis for reservation and the 50% ceiling ought not to be crossed. All these questions will be reopened in the light of the new amendment.

What is the government stand?

The government invoked the Directive Principles of State policy contained in Article 46 to defend its proposal for reservation for the economically weaker sections. This could be questionable. Article 46 says “the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” The “economically weaker sections of citizens were not eligible for the benefit of reservation. With a view to fulfilling the mandate of Article 46, and to ensure that the economically weaker sections of citizens get a fair chance of receiving higher education and participation in employment in the services of the state, it has been decided to amend the Constitution of India,” the amendment Bill stated.

Will it benefit the poor?

In the *Indra Sawhney* judgment, the court had said: “...the concept of ‘weaker sections’ under Article 46 is different from that of the ‘backward class’ of citizens in Article 16(4), but the purpose

of the two is also different. One is for the limited purpose of the reservation and hence suffers from limitations, while the other is for all purposes under Article 46... While those entitled to benefits under Article 16(4) may also be entitled to availing themselves of the measures taken under Article 46, the converse is not true. If this is borne in mind, the reasons why mere poverty or economic consideration cannot be a criterion for identifying backward classes of citizens under Article 16(4) would be more clear." Whether the economically weaker sections among the OBCs, the SCs or the STs could be excluded from reservation meant for the economically weaker sections is a contentious question.

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