

## ECONOMICALLY WEAKER SECTION RESERVATION

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INTRODUCTION :

**“Reservation is not poverty alleviation scheme ”**

-O.Chinnappa Reddy

(Retired Judge ,Supreme Court of India)

The EWS 10% Constitution Amendment Act was introduced in 2019 and 10% reservation for citizens other the SC, ST and OBC. Reservation was provided to public employment and public educational institutions including private educational institutions but expected minority educational institutions.

The Criteria for applying for EWS are mentioned below, GOVERNMENT ORDER :

- i. The person should not own agricultural land of 5 acres and above;
- ii. The person should not own Residential flat of 1000 sq. ft and above;
- iii. The person should not own Residential plot of 100 sq. yards and above in notified municipalities;
- iv. The person should not own Residential plot of 200 sq. yards and above in areas other then the notified municipalities;

The EWS 10% reservation act was passed during 14<sup>th</sup> January 2019, were by the parliament asamended Article 15<sup>2</sup> and 16<sup>3</sup> of the Constitution of India by adding the two new clauses viz., clause (6) to Article 15 with explanation and clause (6) to article 16; and thereby this Constitutional amendment bill was changed into an act within 72 hours in parliament only.

**Research Questions :**

- 1) What is Reservation and whether the Reservation is a fundamental right or Not?
- 2) Why EWS 10% reservation is different from a caste reservation?
- 3) Give a brief note based on the following data.
- 4) Whether the EWS Challenge case laws and relevant legal provisions?
- 5) What are the Impacts of EWS 10% Reservation?

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<sup>2</sup> ARTICLE -15, of Indian Constitution -Author MP JAIN

<sup>3</sup> ARTICLE -16 of Indian constitution- Author MP JAIN

## 1) WHAT IS RESERVATION AND WHETHER THE RESERVATION IS FUNDAMENTAL RIGHTS OR NOT?

A Reservation is provided by unrepresentative group or disadvantage groups. Reservation is an expression of social justice and a way for those who are inculcated with social injustice. **“Reservation is tools of representation”**. Reservation is the purpose of primary reason are Advancement and adequate representative, Empowerment , improve social and improve educational status for justice for injustice people . The answer to Whether reservation is a fundamental right is answered in case study of **Mukesh Kumar VS State of U.P<sup>4</sup>**.The Supreme court held that Reservation is not a fundamental rights in a similar case where all political from the state of Tamil Nadu<sup>5</sup> filed a Writ Petition in The Supreme court, the Bench laid by **Justice Nageswara Rao** held that there is no any fundamental rights.

## 2) EWS RESERVATION IS DIFFERENT FROM CASTE RESERVATION?

EWS reservation is based on a criteria of income of a family for a year should be 8 lakh or less than 8 lakh and below. compared to EWS the Reservation is based on criteria of income of a person for a day Rs 32 and for a month Rs 962 under poverty line in Urban area and in Rural area per day income is Rs 26 and per month income is Rs 768

EWS reservation concept tell us about upper caste economical reservation, but the question is economy is variable within a time like Gambling , Lottery etc. But caste is a society in which a man is born till he dies. In constitution assembly conduct a debate on the time Honourable Former Prime Minister Jawaharlal Nehru told that Economically based reservation is changed by time to time. But reservation is only based on socially and education backwardness criteria , **“ There is a Equality only among equal to equate un equals is to perpetuate inequality ”**. EWS 10 % reservation real purpose is to by stopping the enter of Unrepresented groups the reason will provided in data later.

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<sup>4</sup>Mukesh Kumar VS State of UP -29239|2022 AIR

<sup>5</sup> 474\ 2022 Writ petition

### 3) GIVE A BRIEF NOTE BASED ON THE FOLLOWING DATA.

EWS 10 reservation is provided on the basis of Sinho Commission report<sup>6</sup>, The purpose of Sinho Commission report identification of Economically Backward Classes for those who does not get the benefit of that reservation. The Sinho Commission was submitted in 2010. The Committee clearly defines that *non availability of data on Economically Backward Classes*<sup>7</sup>. The States and UT's could also not make available the population figures or percentage of Economically Backward Classes. Empirical research based information on such classes was also not available<sup>17</sup>.

**Government Data** 95% of Indians households earn less than **8 Lakhs**. The opinion further highlighted that as per the Sinho commission's report which is based upon the census of 2001 and the statistics of **2004 and 2005**<sup>8</sup>, 31.7 crore people who were below the poverty line,

- a) SC population was 7.74 crores which is 38% of the total SC population.
- b) ST population was 4.25 crores which is 48% of the total ST population.
- c) OBC population was 13.86 crores which is 33.1% of the total OBC population.
- d) General Category was only 5.5 crores which is 18.2% of the total General Category of the population of the India

There was no data available of the EBC population in the report of Sinho commission so the data was from the National Sample Survey Organisation [NSSO], National Family Health Survey [NFHS]<sup>9</sup>. From the resources the Commission came to the fact that the EBC's would emerge from the Unreserved categories, and if the NSSO survey of 2004-2005<sup>10</sup> was taken into account then EBC's are identified out of 31.2% population of the general category.

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<sup>6</sup>Sinho Commission report 2001

<sup>7</sup> REPORT OF SINHO 2010 -Pg number -03

<sup>8</sup>upon the census of 2001 and the statistics of 2004 and 2005

<sup>9</sup>National Family Health Survey [NFHS]<sup>9</sup>.

<sup>10</sup>NSSO survey of 2004-2005

Levels of Education according to NSSO report

CATEGORY	ST	SC	OBC	GC
Not literate	556	496	406	243
Literate and up to				
Primary	224	229	235	221
Middle	118	141	167	175
Secondary	49	68	95	143
Higher secondary	29	36	49	90
Diploma	5	7	12	18
Graduate and above	19	23	37	111

From the data we can observe that the Article 14 and 15 has not been violated.

According to the central **Government's law department**<sup>11</sup> only 15% judges appointed in the last 5 years in the country they all belong to SC, ST, OBC and the minority classes. Only 11% belong to the Backward class. Similarly 1.3% of Non – Tribals , 2.8% of the scheduled caste, 11% from the Other Backward Class and 2.6% from the minority community.

According to the RTI report of Ministry of labour and Employment <sup>12</sup>Directorate of General of Employment community wise percentage of central government employees in the year of 2022-2023 state wise list.Government of Uttarakhand regional employment office campus, reply of RTI application received under section 6(3) RTI act 2005<sup>13</sup>

1. FC/OC - 04
2. OBC/DNC - 00
3. SC - 02
4. ST - 00

<sup>11</sup> Government of India law ministry.

<sup>12</sup>RTI report of Ministry of labour and Employment

<sup>13</sup>RTI application received under section 6(3) RTI act 2005

As per the record of Assistant Director (EMP) Kanpur national career for differently abled, information under the RTI act. Details of Community Wise percentage of Employees NCSC for DA Kanpur U.P.<sup>14</sup>

1. SC - 31.25
2. ST- 0
3. OBC - 31.25
4. GENERAL - 37.50

And the information of DGE information sought under RTI act of 2005, Tripura<sup>15</sup>

1. OC \_ 03 NOC
2. OBC – 01 NO
3. SC – 01
4. ST – 03
5. BCM – NIL

Also with the records of ministry of labour and employment DGE –Ludhiana<sup>16</sup>

1. FC/OC – 33.3
2. BC - 0
3. BCM - 0
4. OBC/DNC – 11.1
5. SC – 33.3
6. ST – 22.3

Deputy director of employment and labour the below information under RTI act of 2005<sup>17</sup>

1. FC/OC - NULL
2. BCM - NULL
3. OBC - 21
4. SC - 26
5. ST - 10
6. UR – 42

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<sup>14</sup>Employees NCSC for DA Kanpur U.P

<sup>15</sup>RTI act of 2005, Tripura

<sup>16</sup>Ministry of labour and employment DGE – Ludhiana

<sup>17</sup>RTI act of 2005

Finally, the above information are from a report of RTI act of 2005 Director of labour and employment from different states of India under the control of Government of India.

#### 4) WHETHER THE EWS CHALLENGE CASE LAW AND RELEVANT LEGAL PROVISIONS

The case which have been filed against the EWS 10% reservation is *JANHITABHIYAN vs UNION OF INDIA*<sup>18</sup> [ with 32 connected matters ]. The EWS 10% reservation system allows even the private institutions to implement the act, but the case of *P.A.INAMDAR vs STATE OF MAHARASHTRA* 2005<sup>19</sup> AIR which was held *in the Supreme court says that Reservations cannot be enforced on private educational institutions* which do not receive government funding. But the 93<sup>rd</sup> Amendment act of 2005<sup>20</sup> Inserted by The Article 15(5)<sup>21</sup> clearly states that nothing in this Article or in sub-clause (g) of clause (1) of article 19 shall prevent the state from making provisions by law for the Educationally Backward Classes, the Scheduled castes and Scheduled Tribes. *Through EWS 10% reservation 50% capped in the case named MR BALAJI vs STATE OF MYSORE AIR 1963*<sup>22</sup>. It encourages the Mandal Case at 9 judge bench Judgement in the case named *INDIRA SAWHNEY & OTHERS vs UNION OF INDIA* AIR 1993<sup>23</sup>.

**The case highlights the judgements the constitutions recognized social and educational backwardness, but not economic backwardness.** Similarly in another case *S.V.BALARAM vs STATE OF ANDHRA PRADESH AIR 1972 SC 1375*<sup>24</sup> of the *supreme court said that particular decision regarding the determination of social and educational backward classes on the basis of caste and the quantum of reservation of backward classes.* *DAYARAM KHEMKARAN vs STATE OF GUJARAT*<sup>25</sup> in this case High court held that **not open for the State to made reservation section for citizen unreserved category.**

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<sup>18</sup>JANHIT ABHIYAN vs UNION OF INDIA 55\2019

<sup>19</sup>P.A.INAMDAR vs STATE OF MAHARASHTRA 2005

<sup>20</sup>93<sup>rd</sup> Amendment act of 2005

<sup>21</sup>Article 15(5) OF INDIAN CONSTITUTION - MP JAIN

<sup>22</sup>MR BALAJI vs STATE OF MYSORE AIR 1963

<sup>23</sup>INDIRA SAWHNEY & OTHERS vs UNION OF INDIA AIR 1993.

<sup>24</sup>S.V.BALARAM vs STATE OF ANDHRA PRADESH AIR 1972 SC 1375

<sup>25</sup>DAYARAM KHEMKARAN vs STATE OF GUJARAT

PRATHVI RAJ CHAUHAN vs. UNION OF INDIA AND ORS (2020) 4 SCS 727<sup>26</sup> to highlight the place and role of fraternity in the scheme of polity and society. *Further he has stated that such exclusion of SC's, ST's and OBC's was primarily based on caste because it is indeed undisputed that a large chunk of population so excluded are also economically backward along with being socially and educationally backward.* EWS 10% challenges another case named B.K.PAVITHRA AND ORS vs UNION OF INDIA (2019) 16 SCC 129<sup>27</sup>. The learned *counsel submitted that the purpose of reservation was to enable the backward class to have a level of playing field with the forward class so ,that they can participate in public life with them on a equal basis.* Also this court has held that no one criterion such as caste could be the sole basis for grant of reservation. In the amendment in question the economic criteria is the sole basis for grant of reservation without considering the concept of representation and this prescription is not only against *the judicial pronouncements* but also against the preambular vision of casteless society hitting the basic structure of the constitution.

*P.Rajendran v. state of Madras*<sup>28</sup> it was held that though caste cannot be the sole criteria it should not be forgotten that sole, if the caste as a whole is socially and educationally backward ,reservation can be made in favour of such caste. The judgement for the case which was against the EWS 10% reservation system was an 5 Constitution bench Judgement of the Supreme Court<sup>29</sup> in which the judgement came up like 3:2 statement where three judges supported the statement and 2 judges dissented the statement. There was a Chief Justice of India in the group of judge who dissented the argument. The judges who accepted the statement say that treating the EWS as separate would be a reasonable classification. And *State of Andhra Pradesh v. P.Sagar*<sup>30</sup> ,a list of backward class based solely on caste without any material showing that the entire as violative of *art -15 [4]*. The dissented judges state that majority of poor belong to SC, ST, OBC categories. The Chief Justice Of India also notes that the idea with which this amendment is introduced, I think, is that because there is already a protective umbrella given to backward classes, giving them some kind of protection... that is why they are excluded. The judge S.R BHAT J says that the first point I wish to make is that the entire list of the reserved category of citizens in our country is based on caste. We don't look at caste for any other purpose except for purpose of constitutional support. In the

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<sup>26</sup>PRATHVI RAJ CHAUHAN vs. UNION OF INDIA AND ORS (2020) 4 SCS 727

<sup>27</sup>B.K.PAVITHRA AND ORS vs UNION OF INDIA (2019) 16 SCC 129

<sup>28</sup>P.Rajendran v. state of Madras 1968. AIR \SCC

<sup>29</sup> 5 Constitution bench Judgement of the Supreme Court

<sup>30</sup>State of Andhra Pradesh v. P.Sagar AIR 1966

list of Mandal Commission every protected class is based on caste. Economical weaker section exists in all the communities but the EWS 10% supports only one single community why? This is against the law of equality principle and shows discrimination.

### 5) WHAT ARE THE IMPACT OF EWSRESERVATIONS?

- ❖ *EWS 10% Reservation system is taken out of 50.5% of general category because our country is a welfare state but in the matter of reservation “ One law for the lion and ox is oppression”.*
- ❖ In the case of *INDIRA SAWHNEY vs UNION OF INDIA*<sup>31</sup>, a nine-judge constitutional bench has specifically ruled that reservation should not go *beyond 50% ceiling so it overrides that and can five judge bench overrule the decision of three judge ( Reversing a historic judgement can bring a threat to the society).*
- ❖ Especially in this *EWS 10%* reservation case of the supreme court the judgement given by the three judges said that there is nothing wrong with it that it can be exceeded by 50% and it can be changed according to time.
- ❖ *As a result of judgement perhaps all state government will henceforth accept the quota of more than 50% reservation will this supreme court accept it.*
- ❖ This creates huge inequality and favours social injustice in the society and makes out a huge discrimination.
- ❖ This system carry forwards the seats allotment, especially in many states very slow population and many seats are left vacant in educational institutions and in *public employment during reservation.*

### SUGGESTIONS AND SOLUTIONS

- ❖ I personally recommend that implementing the same concepts of EWS to all the caste in the society
- ❖ To add to my suggestions re-evaluate the society’s people into a new form of caste system considering the economic condition of the people is also one of my ideas.

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<sup>31</sup>INDIRA SAWHNEY vs UNION OF INDIA, AIR 1976

- ❖ I make into note that focusing on the system makes a burden to government as it depends on Income Tax reports and I direct the government to form departments to look after the reservation system.
- ❖ The reservation system needs a change in the method of providing seats for the economically weaker sections of the society.
- ❖ Drastically changes must be made in the education system at the basic level for the weaker sections of all the society.
- ❖ The Reservation system process must be made in an fair way ,so that we can find out the true economically weaker persons and offer them with opportunities and bring them to justice .

### ***CONCLUSION:-***

The concept of reservation came into existence for the reason of bringing equality to the society, there are people who are historically discriminated against the society, and the main reason for existence of law is to bring equality in society. So the concept of reservation is came into existence to provide justice equally rather than law equally itself. The reservation is allotted in both social and educational matters. The EWS 10% is given to forward class people, we acknowledge that this reservation given to FC but we strongly suggest this reservation be given to other caste like OBC, SC, ST which has more economically backward people in these classes as stated above. The discrimination is strongly based on caste rather than the economic discrimination, this continues till date. The Indian society is divided into the hierarchy of high class and low class , rather than rich and poor which may have a high chance to bring equality in society rather than caste system. The Mandal report which was implemented in November 16, 1992 helped the society to improve in its pace, now that the EWS 10% is implemented it barricades the still undeveloped or unrepresented people's growth in society. I conclude my topic by personally recommending that implementing the same concepts of EWS to all the castes in the society and reevaluating the society's people into a new form of caste system considering the economic condition and welfare of the people. People must be given fair opportunities which helps in growth of the society.