103RD CONSTITUTIONAL (AMENDMENT) ACT, 2019: SURVIVAL THROUGH JUDICIAL SCRUTINY

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INTRODUCTION

The Constitution of India reflects the system of the reservation to be an "Affirmative action" or a "Positive discrimination". The system aims at providing recognition to the historically backward or weaker sections of the society in various fields such as education and employment opportunities, as well as politics. In order to attain this objective, the Government of India regulates "reserved quotas or seats" for the aforementioned sections of the society. Accordingly, the 103rd Constitutional (Amendment) Act, 2019 was introduced and enforced in the Union of India. The Act amends two of the Fundamental Rights falling under Article 15 and Article 16 of the Indian Constitution. The two articles form the substructure of the reservation system in fields concerning education and employment opportunities in the public sector. The amendments in the two articles "empower the state to provide for a maximum of 10% reservation to the economically weaker sections (EWS)[1] of the society."[2] This has shot up the total reservation to 59.90% besides the existing scheme.

103rd CONSTITUTIONAL (AMENDMENT) ACT, 2019 PROVISIONS

The amendments made to "economic reservation" in the country led to the introduction of clause (6) in the existing Article 15 and Article 16 of the Indian Constitution.

Amendments to Article 15 –

The clause allows the State to frame special provisions for the upliftment of the EWS of society, taking into account "reservation in educational institutions".

[1] EWS refers to the sub-section of general category with an "annual family income" of less than Rs 8 lakhs. This sub-category does not fall under any of the following i.e. SC/ST/OBC.

[2] Constitution (124th Amendment) Bill, 2019. The bill provides for a maximum of 10% reservation in areas of employment and educational institutions to the economically backward or weaker sections of the society. (General Category)

- The amendment comprises reservations in all educational institutes (including private institutes) irrespective of whether the institution is funded or non-funded. However, the clause does not take into account "Minority institutions covered under Article 30(1) of the Indian Constitution."[3]
- The clause affixes the "upper limit of reservation as 10%" in addition to the existing scheme of reservation.

Amendments to Article 16 –

The State is empowered to frame policies for quotas in appointments or posts in favor of the EWS of society besides those covered under clause (4).[4]

JUDICIAL SCRUTINY OF THE 103rd CONSTITUTIONAL (AMENDMENT) ACT, 2019

The debates concerning reservation policies have been ongoing for over six decades now. The primary aim to introduce such policies was the upliftment of the weaker sections of society. The Apex Court of India has constantly been of the view that in order for the reservation policies to be rational and not violate the equality principle, the entire reservation in the State shall not exceed 50%. The principle of equality is guaranteed under the Basic Structure of the Indian Constitution and cannot be amended. The 50% limit was regulated in order to maintain a balance between formal and substantive forms of equality. The regulation sets forth that reservations cannot surpass the limit of 50% of the total reservation opportunities available. However, the recent amendments brought about in the legislation clearly violate the said rule. Such affairs relating to reservations have been in the knowledge of Constitution makers since the very beginning and, have been discussed and debated in the Constituent Assembly several times. Dr. B.R. Ambedkar was of the view that stability must necessarily be maintained between "the needs of minorities and formal equality".

The current 103rd Amendment Act was previously led by a "Statement of Object and Reasons" which propounded reservations based solely on the criterion of "economic backwardness" was

[3] The Constitution of India, Article 30(1). "Minority Institutions" refers to the institutes established and administered by the minority communities.
[4] The Constitution of India, Article 16(4). "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

an extension to the "mandate of Article 46"[5]. The amendment specifically debars the SC/ST/OBCs from enjoying the advantages of the aforementioned amendment, and therefore, resulting into a disagreement among the Clause and Object. This further results into an increase in the "width of power" bestowed on the Parliament.

INDIA'S RESERVATION SYSTEM AND ITS CONTINUED EXISTENCE

JURISPRUDENCE OF RESERVATION IN THE INDIAN CONTEXT

The theory of reservation was evolved due to the country's history of oppression. The backward classes of India have suffered caste-based discrimination and several other atrocities since the beginning of times. And even as the country progressed, these people continued to be oppressed by the upper classes. Finally, after independence it was decided that something needs to be done to put an end to such communities' sufferings. Thus, reservation was proposed as a way to increase their social, educational and economic presence. With time, the number of communities placed under the umbrella of "reserved communities" kept on increasing. It also became next to impossible for any government to place a check on the reservation percentages as the reserved communities constituted of a major chunk of vote share. Thus, what was designed as a policy of upliftment, soon became a political tool. Until 1976, the Supreme Court, at multiple instances, had held that the guarantee of equality as inferred by the constitution before the law referred to "formal equality" of just guaranteeing that all over, the law did not discriminate between sections of individuals. Article 16(4) of the Constitution permits the state to make reservations for the backward community in public employment. It was viewed as a "special case" to the general "rule" of formal equality. In this manner, it was not completely interpreted.

In the case of State of Kerala v/s NM Thomas[6], nonetheless, the Supreme Court changed this comprehension of fairness. It held that the Constitution was focused on the thought of meaningful balance, i.e., it needed to consider the real conditions of individuals while figuring out what comprised "equal treatment". In this situation, by all accounts, "neutral" policies would completely violate the principle of equality, if people in different situations were treated in the same manner. Following this principle, the Supreme Court proceeded to hold that Article

[5] The Constitution of India, Article 46. "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."
[6] State of Kerala v. NM Thomas, 1976 AIR 490

16(4) was not, at this point a "special case" to the overall principle of equality, however a "facet", or "emphatic restatement" of it.

The principled justification for this position was that group of individuals who face institutional and structural hindrances towards having the option to contend on "equal terms" with others in the society for historical reasons which are still prevalent to date, must be treated in a way that nullifies the conditions of inequality that still persists till date.

Under this understanding, reservations were a way to achieve genuine equality, and not a bunch of advantages or endowments. In this manner, with the help of certain government policies regarding minorities measures to pull up those that society had kept oppressed for a long time. Also, it would unavoidably follow from that, that once target or beneficiary groups were recognized, they were provided with a right over such measures. Consequently, despite the fact that there probably won't be an independent right to a quota, there would unquestionably be a commitment upon governments to gather information on the subject of their representation and the inequality that exists, so that something could be done about it. The Supreme Court had tried to weigh down its hammer on the policies which were violating the sole purpose of reservations but to no avail. Legal history has been a witness to the evolution of the reservation policies in the country. It has been seen that since 1951, whenever an adverse ruling on any certain aspect of reservation in public employment or education is ruled out by the Supreme Court, the Parliament responds by making some amendments in the constitution in order to reverse or overcome the inconvenient judicial judgement. This is mainly due to the fact that the government do not want to lose its vote share and stability as any major decision against reservation would lead to a huge uproar by the communities being benefacted by it. In recent times, the 103rd Amendment was the latest step directed to overcome that. It aimed two of the major Supreme Court rulings that stated that: “(1) economic backwardness cannot be the sole criterion for reservation and (2) the total reservations should not be greater than 50 percent.”

CONTEMPORARY DEMANDS FOR RESERVATION

The middle class has always been the key sufferers of the reservation policies. But lately, several dominant caste groups and communities have started demanding protection for themselves in the form of reservations. For instance, in Haryana, the Jats who are an agrarian middle class have been demanding for reservation since several decades. They have been fighting for the other backward class (OBC) status since the late 1990s. In the year 2016, the

Jat agitation took a violent turn and turned hostile. Several people were harmed during it and many vehicles/public commodities were damaged. During their protests, they also blocked the capital city, Delhi, as it is surrounded by Haryana on three sides.

In Gujarat however, the protests did not start with a particular community demanding reservation. Rather, the protests started as anti-quota agitation which was directed against reservations, in the 1980s. The Patels, which is considered to be a dominant caste in Gujarat, were leading this agitation. Their main demand included that the quotas for SCs/STs must be scrapped. They argued that these quotas were anti-merit and unfair. Since the year 2015, the Patidars or Patels have been on the streets. Unlike earlier, now they demand to be classified as OBCs. There have been several instances where the movement has turned violent resulting in loss of life and property damage.

The Marathas are a historically predominant caste in Maharashtra. They own land and are considered politically and economically affluent. Yet, they have been demanding to be a part of the OBC category since the early 1990s. However, they still enjoy a sizeable representation in several state-run educational institutions.

CONCLUSION

The Indian system of reservation is not solely based on grounds of "casteism" and therefore, segregates the society resulting in discrimination and several other disputes between a distinct groups of people. It is contrary to what is known as communal living. Therefore, the country demands reforms in the existing reservations. This system has more often than not led to varying thoughts and perspectives between the ones who are recognized by the society and the oppressed as well. Though reservation is one of the requisites for the country, nonetheless, a system that embraces affirmative action is the need of the hour.

The 103rd Constitutional (Amendment) Act, 2019 clearly violates the "Equality principle" and takes away the true essence identity of the constitutional articles enshrined under the equality code. Apart from this, the Parliament of India used its legislative powers over and above what was needed. Along with this, the said amendment breaches the fifty percent rule which forms a part of the basic structure of the Constitution of India. It is also disruptive of the concept of "Substantive Equality" by permitting the ones who are well-off yet belong to one of the backward classes.

The current amendment has the potential of enhancing recognition of the ones who are already well-off and in power as compared to the economically backward sections of the society. Therefore, the amendments keeping the potential of challenging the 'basic structure' of the Constitution of India must be struck down by the Apex Court to ensure the true essence of the Constitution is preserved.