EWS Quota Law

Why in news?

The Supreme Court has referred to a five-judge Constitution Bench a batch of petitions challenging the Economically Backward Section (EWS) quota law.

What is the law?

- The 103rd Constitution Amendment of 2019 provides for 10% reservation in government jobs and educational institutions for EWS.
- This reservation is provided by amending Articles 15 and 16 of the Constitution that deal with the fundamental right to equality.
- [Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 16 guarantees equal opportunity in matters of public employment.]
- The amendment adds an additional clause to both the provisions.
- This clause gives Parliament the power to make special laws for EWS like it does for Scheduled Castes, Scheduled Tribes and OBCs.
- The states are to notify who constitute EWS to be eligible for reservation.

What does the reference mean?

- A reference to a larger Bench means that the legal challenge is an important one.
- **Article 145(3)** - The minimum number of Judges who are to sit for deciding any case involving a question of law as to the interpretation of this Constitution shall be five.
- **The SC rules of 2013** - A bench of two judges will generally hear writ petitions that allege a violation of fundamental rights, unless it raises substantial questions of law.
- In that case, a five-judge bench would hear the case.
- Laws made by Parliament are presumed to be constitutional until proven otherwise in court.
- The SC had refused to stay the 103rd Amendment.
- A reference will make no difference to the operation of the EWS quota.

What are the grounds of challenge?

- The law was challenged on the ground that it **violates the Basic Structure**

of the Constitution, which says that.
- The special protections guaranteed to socially disadvantaged groups are part of the Basic Structure.
- The argument is that the amendment departs from this Basic Structure by promising special protections on the sole basis of economic status.
- Although there is no exhaustive list of what forms the Basic Structure, any law that violates it is understood to be unconstitutional.
- The petitioners have also challenged the amendment because it **violates the SC's 1992 ruling** in Indra Sawhney case.
- This ruling upheld the Mandal Report and capped reservations at 50%.
- In the ruling, the court held that economic backwardness cannot be the sole criterion for identifying backward class.
- Another challenge has been made on behalf of private, unaided **educational institutions**.
- They have argued that their fundamental right to practise a trade/profession is violated when the state compels them to implement its reservation policy.

What are the government's arguments?

- The Ministry of Social Justice and Empowerment filed counter-affidavits to defend the amendment.
- When a law is challenged, the burden of proving it unconstitutional lies on the petitioners.
- The government argued that under **Article 46** of the Constitution, it has a duty to protect the interests of EWSs.
- [Article 46 - It is a part of Directive Principles of State Policy.
- It states that the State shall promote with special care the educational and economic interests of the weaker sections of the people.
- It also says that special care should be given, in particular, to the Scheduled Castes and the Scheduled Tribes.]
- **Countering Basic Structure argument** - The government argued that to sustain a challenge against a constitutional amendment, it must be shown that the very identity of the Constitution has been altered.
- **Countering Indra Sawhney argument** - For this, the government relied on a 2008 ruling in Ashok Kumar Thakur v Union of India case.
- In this 2008 ruling, the SC upheld the 27% quota for OBCs.
- The argument is that the court accepted that the definition of OBCs was not made on the sole criterion of caste but a mix of caste and economic factors.
- It made this argument to prove that there need not be a sole criterion for according reservation.
- For the **unaided institutions**, it argued that the Constitution allows the Parliament to place reasonable restrictions on the right to carry on trade.

What are the terms of reference framed by the court?

- The SC agreed that the case involved at least three substantial questions of law, whether:
    1. The economic criteria alone cannot be the basis to determine backwardness;
    2. The EWS quota exceeds the ceiling cap of 50% set by the court;
    3. The rights of unaided private educational institutions.
- Although Chief Justice of India S A Bobde heads the Bench that made the reference, the case could wait to be heard by a larger Bench.
- The timing depends on the court's resources, as it would have to spare five judges and allocate time to the larger Bench hearing.

Source: The Indian Express

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