Reservation for Economically Weaker Sections (EWS) - Part 1

Why in news?

The Supreme Court is all set for its decision on the constitutional validity of the 103rd amendment to the Constitution, which introduced a 10% EWS reservation in admissions to educational institutions and government jobs.

How did the quota for the EWS evolve?

- **V P Singh** - In 1990, V P Singh offered to bring a Constitutional amendment to enable provision of 5% or 10% reservation for individuals who are economically poor, without reference to caste.
- However, the offer received scant attention from the Opposition.
- **P V Narasimha Rao** - The P V Narasimha Rao government provided reservation of 10% in the government civil posts and services for economically backward sections who are not covered by any of the existing reservation schemes.
- The Supreme Court struck down the provision in Mandal case judgment on the ground that the Constitution does not provide for reservation for any individual on economic or poverty basis alone.

What is the current 103rd Constitution Amendment about?

- The 103rd Constitution Amendment of 2019 provides for 10% reservation to EWS other than backward classes, SCs, and STs in higher educational institutions and government jobs.
- This reservation is provided by amending **Articles 15(6) and 16(6)** of the Constitution that deal with the fundamental right to equality.

- The amendment could empower state governments to provide reservations on the basis of economic backwardness – determined by criteria such as land size owned, annual income, etc.
- The EWS reservation was granted based on the recommendations of a commission headed by Major General (retd) S R Sinho.

What are the issues for the consideration of the Bench?

- Whether the 103rd Constitution Amendment can be said to breach the basic structure of the Constitution

    - by permitting the state to make special provisions, including reservation, based on economic criteria
    - by permitting the state to make special provisions in relation to admission to private unaided institutions
    - by excluding the SEBCs (Socially and Educationally Backward Classes)/ OBCs (Other Backward Classes)/ SCs (Scheduled Castes)/ STs (Scheduled Tribes) from the scope of EWS reservation

Why is EWS reservation under challenge?

- **Equality of opportunity** - The petitioners called the amendment an attack on the constitutional vision of social justice and contended that, the amendment if upheld will be the end of equality of opportunity.
- **Basic structure** - It was also argued that it violates the basic structure of the Constitution and breaches the 50% ceiling for reservation fixed by the Supreme Court ruling in the Mandal Commission case.

> *In Indra Sawhney case, the Supreme Court held that economic backwardness cannot be the sole criterion for identifying backward class.*

- **Right to practice a profession** - Private, unaided educational institutions have argued that their fundamental right to practice a trade/profession is violated when the state compels them to implement its reservation policy.

> *Article 19 (1) (g) of Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens.*

What has the government argued?

- **Equality of opportunity** - The government has said that EWS quota would not erode the rights of the Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs).
- The government contends that the SCs and STs have already been loaded with benefits by way of affirmative actions.
- **Basic structure** - The government said that to sustain a challenge against a constitutional amendment, it must be shown that the very identity of the Constitution has been altered.
- **Right to practice a profession** - The Constitution allows the Parliament to place reasonable restrictions on the right to carry on trade.
- **Article 46** - The Ministry of Social Justice and Empowerment argued that under Article 46 of the Constitution, the state can take measures to protect the interests of economically weaker sections.

> *Article 46 states that "The state shall promote with special care the educational and*

economic interests of the weaker sections of the people, in particular, of the SCs and the STs, and shall protect them from social injustice and all forms of exploitation".

What lies ahead for the poor among the socially advanced castes?

- The problem faced by children and young people of Socially Advanced Castes who are genuinely poor is that they are not able to afford education to the fuller level for want of financial capacity.
- This problem can be resolved by having a comprehensive scheme of scholarships and educational loans, so that no person of any caste has to drop out of education on account of financial incapacity.
- At the same time, this should not be at the cost of the SCs, STs and Socially and Educationally Backward Castes (SEdBCs).
- The decision of the Supreme Court in deciding the constitutional validity of the 103rd amendment to the Constitution is much awaited in this regard.

To know about Supreme Court Ruling on EWS Quota – Part 2, click here

Related links - EWS Quota in NEET Admissions, Sequence of Implementation of EWS Quota, Rs 8 Lakh Income Cap for EWS

References

1. The Indian Express | Issues before the Supreme Court in EWS quota case
2. The Indian Express | EWS reservation up for Supreme Court review

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