Reservation for the ‘Poor Forward’

Why in news?

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The Union Cabinet has cleared a Bill seeking to provide 10% reservation to the economically backward among the ‘general category’.

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What does the Bill propose?

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- It seeks to provide 10% reservation in government higher education institutions and government jobs to the **economically weaker sections among the upper castes**.
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- This refers to non-Dalits, non-Other Backward Classes (OBCs) and non-tribals - essentially, the upper castes or so-called ‘forwards’.
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- It will apply for general category individuals -
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i. whose family together earn less than **Rs.8 lakh per annum**
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ii. who have less than **5 acres** of agricultural land
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- It also excludes those individuals whose families own or possess -
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i. a residential flat of area 1,000 sq ft or larger
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ii. a residential plot of area 100 yards or more in notified municipalities

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iii. a residential plot of area 200 yards or more in areas other than notified municipalities.
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- The proposals in the Bill, to become a reality, will need an amendment of -
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i. **Articles 15** (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) of the Constitution
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ii. **Article 16** (equality of opportunity in matters of public employment) of the Constitution
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- The amendment will have to be ratified in both Lok Sabha and Rajya Sabha, by at least two thirds of members present and voting.
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- It also has to be passed by the legislatures of not less than half the states.
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How does the Bill stand in conflict with current provisions?

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- **Purpose of reservation** - Articles 330-342 under Part 16 of the Constitution outline special provisions for certain classes.
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- The Constitution identifies only four such classes - SCs, STs, Backward Classes and Anglo Indians.
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- The Constitutional promise is explicitly for 'social exclusion and discrimination'.
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- Notably, the “socially and educationally backward classes” was the target group in quotas for OBCs.
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- So the quota for the poor among the upper castes has been seen essentially

as a poverty alleviation move dressed up as reservation.
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- **Sacrifice of Merit** - The SC has held that in general conditions the special provision should be less than 50% (M R Balaji And Others vs State Of Mysore (1962)).
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- It has reiterated this in its Mandal judgment (Indra Sawhney, Etc vs Union Of India And Others (1992)) and on several other occasions.
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- There is at present 49.5% quota - 15% for SCs, 7.5% for STs and 27% for 'Socially and Educationally Backward' Classes, including widows and orphans of any caste.
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- So the 10% quota above this would make it a total 59% (49%+10%) quota.
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- This would leave other candidates with just 41% government jobs or seats, amounting to “sacrifice of merit” and violation of Article 14.
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- **Definition of backward class** - A backward class cannot be determined only and exclusively with reference to economic criterion.
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- It may be a consideration or basis along with, and in addition to, social backwardness, but it can never be the sole criterion.
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- This was clearly stated by a nine-judge Constitution Bench of the Supreme Court in the Indira Sawhney case of 1992.
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- **Basic Structure** - If the government proposes to bring a constitutional amendment to include the 10% quota, Kesavananda Bharati judgment may stand in the way, as it violates Article 14.
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- The judgment held that constitutional amendments which offended the basic structure of the Constitution would be ultra vires.
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- **Precedence** - This proposed Bill finds an echo in an ordinance promulgated in Gujarat in 2016, which provided 10% quota to upper castes there.
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- But the Gujarat High Court in the Dayaram Khemkaran Verma Vs State of Gujarat quashed the ordinance in August 2016.
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- **Poverty Criteria** - There have been disagreements as to the proportion of

population living in poverty in the country.
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- The Arjun Sengupta Committee (April 2009) estimated that 77% of India’s population were surviving on less than Rs 20 per day.
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- In November 2009, Suresh Tendulkar Committee estimated India’s combined rural-urban poverty headcount ratio in 2004-05 at 37.2%
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- Given this, the Rs 8 lakh per annum limit in the Bill clashes with the poverty line concepts and seems arbitrarily set up to cover a wider proportion.
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What were the earlier committee recommendations?

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- The first Backward Classes Commission was appointed under Article 340(1) in 1953 under the Chairmanship of Kaka Saheb Kalelkar.
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- It was to determine the criteria to identify people as socially and educationally Backward Classes.
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- It was also tasked to recommend steps to ameliorate their condition.
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- The Commission interpreted 'socially and educationally backward classes' as relating primarily to social hierarchy based on caste.
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- The second Backward Classes Commission was appointed in 1978 under B P Mandal to review the state of the Backward Classes.
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- It submitted its report in 1980, but no measure was taken on it until the V P Singh government in 1990.
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- It recommended 27.5% reservations in government jobs for OBCs.
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What are the other state proposals?

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- In 2008, Kerala decided to make reservations for economically backward among the forwards.

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- It proposed to reserve 10% seats in graduation and PG courses in government colleges and 7.5% seats in universities.
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- An appeal is pending in the Supreme Court in this regard.
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- In 2011, UP CM wrote to the central government asking for reservation for upper-caste poor.
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- In 2008 and 2015, the Rajasthan Assembly passed Bills to provide a 14% quota to the economically backward classes (EBCs) among the forward castes.
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Source: The Hindu, The Indian Express

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