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**THE USE OF ECONOMIC CRITERIA AS THE BASIS  
FOR RESERVATION IS CONSTITUTIONALLY SOUND  
AND DOES NOT GO AGAINST THE SUPREME  
COURT'S LONG-STANDING JURISPRUDENCE**- Tanvi Suri<sup>1</sup>**INTRODUCTION**

**Justice Bela M Trivedi** states, “Treating economically weaker sections as a separate class would be a reasonable classification, merely because the SCs/STs/OBCs are excluded”, while upholding the validity of the 103rd Constitutional amendment in 2019.

Reservation is an *essential component* of the Indian Constitution. It seeks to safeguard *socioeconomic equity for the oppressed and disadvantaged* segments of society and their general integration into the societal structure. Prevailing Indian social conditions under which the idea of reservation came into existence, such status was granted to change the treatment of these downtrodden from the ruins of poverty.<sup>2</sup>A “preferential treatment” system was established for a proportion of the society's disadvantaged groups, amongst many other steps, to counter the impacts of inherent inequalities and intergenerational disparity. However, there is a significant debate regarding whether the reservation system is effective and should be based on economic factors rather than caste or religion. By providing individuals who might otherwise be excluded due to financial reasons access to education, work, and other opportunities, this program aims to promote social and economic equality. Even though *critics* said that *EWS reservation goes against the idea of reservation*, I *argue* that it would *uplift the poorer sections* under Article 46 of Part IV of the Constitution of India and *does not breach upon the basic structure of the Constitution*, hence shall prevail.

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<sup>2</sup> Rana, Mulchand Savajibhai. Reservations in India: Myths and Realities. India, Concept Publishing Company, 2008.

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## 1. CREAMY LAYER - JUDICIALLY DEvised CRITERIA

In *Jarnail Singh versus Lachhmi Narain Gupta*<sup>3</sup>, 2018 case, it was decided that those from lower social classes who held positions in higher government agencies like the IAS and IPS had achieved a *greater level of social development and economic standing* and were not to be categorized as lower social classes. Such persons would be treated as “*creamy layers*” without further inquiry.<sup>4</sup> In the same way, individuals with adequate wealth who can support others through employment should be regarded as having attained a higher social standing and treated as “outside the Backward Class.”<sup>5</sup> The article asserts that the “creamy layer” is a judicially devised assessment established through judicial hypotheses, and its emphasis will continue analyzing the “economic component” already defined by the Government to establish EWS reservation.<sup>6</sup>

The paper is divided into three sections. The *first section* deals with my *take and perspective on reservation based on economic criteria* alongside its *historical context*. This section also *examines the legal interpretation of the history of reservations* to reaffirm that the *Constituent Assembly evaluated and rejected economic deprivation* as a rationale for reservations in the past. As well as exposes the biases behind these arguments and their inadequate empirical and theoretical foundation.

There *must be an economic incentive based on affirmative action*. Even today, a significant portion of our population lives below the poverty threshold and struggles to eat three basic meals daily. Theoretically, these people can attend government schools and get employment, but their predicament is no better than that of other disadvantaged people. So, what is wrong if they don't fit into a single, homogeneous group per se?

## 2. HISTORICAL STANDARDS FOR RESERVATION

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<sup>3</sup> (2018) 10 SCC 396

<sup>4</sup> Singh, S. J. (n.d.). *The creamy layer and reservation*. Imphal Free Press. Retrieved March 5, 2023, from <https://www.ifp.co.in/opinion/the-creamy-layer-and-reservation>

<sup>5</sup> Singh, S. J. (n.d.). *The creamy layer and reservation*. Imphal Free Press. Retrieved March 5, 2023, from <https://www.ifp.co.in/opinion/the-creamy-layer-and-reservation>

<sup>6</sup> THORAT, SUKHADEO, et al. “Prejudice against Reservation Policies: How and Why?” *Economic and Political Weekly*, vol. 51, no. 8, 2016, pp. 61–69. *JSTOR*, <http://www.jstor.org/stable/44004417>. Accessed 27 Feb. 2023.

Since 1951, the Supreme Court has delivered several judgments that have sought to determine the standards for granting reservations to members of the underprivileged backward classes. Champakam Dorairajan and others v. State of Madras, the Supreme Court addressed the topic of reservation for the first time. In light of the ruling of the Supreme Court in this case, the Parliament *modified Article 15* and added Clause (4).<sup>7</sup> The present government *implemented a new reservation policy in January 2019* that allocates 10% of seats in government jobs and educational establishments to *individuals of the economically weaker sections (EWS)*. The amendment has been contested in front of the Honourable Supreme Court in *Janhit Abhiyan v. Union of India*<sup>8</sup> and, through a 3:2 majority, upheld the constitutionality of the 103rd Amendment.<sup>9</sup>

Individuals who do not belong to the Scheduled Castes, Scheduled Tribes, and Other Backward Classes allocation program would fall under the category of EWS. Hence it further *broadens the ambit of reservation benefits to the downtrodden*, and such benefits can be availed by a more significant chunk of individuals now. The inclusion of Articles 15(6) and 16(6) by the 103rd Constitutional Amendment facilitated this process.<sup>10</sup> In the words of Union minister Thaalwarchand Gehlot, who introduced the Bill in the Parliament, *economically disadvantaged groups of citizens are currently primarily excluded from enrolling in higher education institutions and working for the government because they lack the financial means to compete with those who are more privileged economically*.<sup>11</sup>

The *second section* of this paper deals with *merit-based reservation, preferential treatment, and its fallacies* while shedding light upon the common stereotypes pertaining to “actually” backward people availing the benefits of these favorable reservation policies.

### 3. FALLACIES OF PREFERENTIAL TREATMENT

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<sup>7</sup> Mahishi, A. (2019, March 20). *Economic reservations: A constitutional challenge - constitutional & administrative law - india*. Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India. Retrieved March 5, 2023, from <https://www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge>

<sup>8</sup> WP (C) 55/2019

<sup>9</sup> Arpita Sarkar, *Reservation on an Economic Basis: Some Issues and Challenges*, 15 NALSAR Stud. L. REV. 146 (2021).

<sup>10</sup> Conundrum on Economically Weaker Section - Having Reservations about Reservation, 2022 SCC OnLine Blog OpEd 41

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The modern state and society have recognized *preferential treatment* as a tool for improving the most disadvantaged groups' living standards. *Positive discrimination in India* has a long tradition of *favoring underprivileged socioeconomic and educational groups*.<sup>12</sup>To provide equality in the purest sense, the court must consider all the economically disadvantaged groups in society, including those struggling and requiring government assistance to overcome economic constraints and impairments.

Firstly, the most common argument is about *sacrificing merit for reservation*. One of the main criticisms against caste-based reservation policy is that it should not be caste-based; it should be 'meritorious' based or based on 'economic status'.<sup>13</sup> Quotas were considered discriminatory because they curtailed a person's access to equal opportunity in state employment.<sup>14</sup>When we talk of 'socio-economic differences,' what comes to mind? Quantitative parameters such as race and gender and 'class' factors like salary, job, education, literacy, and overall standard of life.<sup>15</sup>The resources, meaning *the privilege to access these 'class' indicators, is what creates an artificial distinction and hence gives an upper hand to specific groups to obtain merit*, i.e., if your parents have the right connections and designated amount of fees, you fall into a privileged class of society possessing an upper hand hence calling out the irony in merit.

Secondly, numerous court rulings have emphasized the lack of "truly backward" individuals among the recognized backward classes in reservation programs in recent years. *Economic backwardness is crucial* in determining what kinds of people should receive reservations. The constitutional amendment 2019 further reduces the importance of social backwardness as an indicator for backward classes.<sup>16</sup>Contrary to Dr. Ambedkar's hopes, it has been observed that *reservations have instead served as a tool for a few influential members of the public who have been granted the privilege of reservations generation after generation, depriving the*

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<sup>12</sup>ALI, MANJUR. "Indian Muslim OBCs: Backwardness and Demand for Reservation." *Economic and Political Weekly*, vol. 47, no. 36, 2012, pp. 74–79. *JSTOR*, <http://www.jstor.org/stable/41720114>. Accessed 19 June 2023.

<sup>13</sup> ISSN PRINT 2319 1775 Online 2320 7876

<sup>14</sup>ALI, MANJUR. "Indian Muslim OBCs: Backwardness and Demand for Reservation." *Economic and Political Weekly*, vol. 47, no. 36, 2012, pp. 74–79. *JSTOR*, <http://www.jstor.org/stable/41720114>. Accessed 27 Feb. 2023.

<sup>15</sup>Kevin Deane, Joyce Wamoyi, Samwel Mgunga, John Chagalucha. (2022) *HIV testing attitudes and practices amongst 'wealthy men': qualitative evidence from Tanzania*. *Culture, Health & Sexuality* 24:9, pages 1215-1229.

<sup>16</sup>Sarkar, Arpita. "Reservation on an Economic Basis Some Issues and Challenges." *RESERVATION ON AN ECONOMIC BASIS: SOME ISSUES AND CHALLENGES*, 2021, [nslr.in/wp-content/uploads/2021/09/Vol-XV-Pgs.-146-170.pdf](https://nslr.in/wp-content/uploads/2021/09/Vol-XV-Pgs.-146-170.pdf).

*community* of the opportunities of the legislation. Additionally, it has been exposed that unscrupulous, corrupt, and deceitful politicians of reserved castes have capitalized on reservations to further their political agendas at the cost of the rest of their less fortunate caste brethren.

Thirdly, it is said that *reservations introduce common stereotypes holding that certain groups are unable to succeed without compensatory treatment*. People who fall under the reservation quota are brought up thinking they need this good quota and cannot do without it.<sup>17</sup> *'Discrimination in Reverse'* is another name for the reservation. The Constitution guarantees a piece of the cake for individuals who would not otherwise be able to receive one while reaffirming the fundamental oath to treat all people equally.<sup>18</sup> Marc Galanter states, "Compensatory discrimination may be encouraged not as a means of ensuring fairness to individuals but as a way to create desired social customs, such as lowering group disparities, providing representation, encouraging the development of social skills, and so on."<sup>19</sup>

#### 4. SIGNIFICANT DEVELOPMENTS IN RESERVATION LAWS

The *third section* summarises my arguments as well as brings out a discussion regarding significant developments in reservation laws since 2018.

There have been two significant developments in reservation jurisprudence in India since 2018. Initially, the Supreme Court officially ruled in *Jarnail Singh v. Lachhmi Narain Gupta* also known as the 'Reservation in Promotion Case' that not all members of the SC/ST community but some members who fall within the category of the "creamy layer" test may be excluded. Furthermore, the 102<sup>nd</sup> constitutional amendment was contrary to *Indra Sawhney v. Union of India (UOI)* 's judgment, adding reservation for economically disadvantaged social strata other than SCs, STs, and Other Backward Classes (OBCs). Nonetheless, one may conclude from the judgment in *Jarnail Singh*<sup>20</sup> that there has since been a change in the judiciary's concept of reservation, which now views reservation as a solely economically determined, individual-oriented right. A community's identification through an economic lens

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<sup>17</sup> Some Reflections on Indian Experience with Policy of Reservation, 25 JILI (1983) 46

<sup>18</sup> Rana, Mulchand Savajibhai. Reservations in India: Myths and Realities. India, Concept Publishing Company, 2008.

<sup>19</sup> Galanter, Marc. "The 'Compensatory Discrimination' Theme In The Indian Commitment To Human Rights." *India International Centre Quarterly*, vol. 13, no. 3/4, 1986, pp. 77-94. JSTOR, <http://www.jstor.org/stable/23001438>. Accessed 19 June 2023.

<sup>20</sup> (2018) 10 SCC 396

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and individual-focused entitlements oppose the objectives of the Indian Constitution's framers.

Until the *Golaknath v. State of Punjab* case, the Supreme Court had ruled that the Fundamental Rights found in *Part III of the Constitution* would not be subject to the power of modification granted by *Article 368*. In the case of *Kesavananda Bharati v. State of Kerala*,<sup>21</sup> a full bench was established, in which the pivotal "basic structure doctrine" was established by the Hon. Supreme Court of India, which overturned the decision of *Golaknath*.<sup>22</sup> The Directive Principles of State Policy, which require the State to advance the educational and economic interests of the weaker segments of the population as stipulated by *Article 46 of the Constitution*, have been invoked by the government to seek protection.<sup>23</sup> Thus, Articles **15(6) and 16(6)** were created to eradicate discrimination based on economic status, provide an opportunity to the people who lack adequate representation in workplaces or educational institutions, and work towards equality without undermining the fundamental framework.<sup>24</sup>

## CONCLUSION

The current Reservation system is oppressive and unscientific as it only divides the society, leading to discrimination and conflicts among the organization's stakeholders (Sumedha Upadhyay; 1996). Hence, the EWS quota in India is essential to alleviating economic inequality and enabling economically disadvantaged groups of society fair chances in government jobs and educational institutions.

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<sup>21</sup> 1973 4 SCC 225; AIR 1973 SC 1461

<sup>22</sup> Mahishi, Aparna. "Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India." *Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India*, 20 Mar. 2019, [www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge](http://www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge).

<sup>23</sup> Mahishi, Aparna. "Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India." *Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India*, 20 Mar. 2019, [www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge](http://www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge).

<sup>24</sup> Mahishi, Aparna. "Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India." *Economic Reservations: A Constitutional Challenge - Constitutional & Administrative Law - India*, 20 Mar. 2019, [www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge](http://www.mondaq.com/india/constitutional--administrative-law/791818/economic-reservations-a-constitutional-challenge).