

LEGALFOXES LAW TIMES

Critical Analysis of the 103rd Constitutional Amendment

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INTRODUCTION

The concept of reservation has been in Indian constitutional law since independence, as at the time of it was realized that there are some sections which are considered backward than the other sections and therefore they need some help to maintain that level in the society and therefore the concept of reservations was introduced. The reservations are provided to sections of society like Scheduled caste, Scheduled tribes and other backward Classes.

103rd amendment act also known as Constitution Act, 2019 also focused on the reservation system in India and introduced some changes. The bill was proposed by Thawar Chand Gehlot, Minister of Social Justice and Empowerment on 8th, 2019 of January in Lok Sabha. On 9th January, 2019 the bill was passed by Lok Sabha receiving overwhelming majority. The bill was passed by the Rajya Sabha also on 10th of January and then was sent to the president for the assent. The bill received assent on 12th January and was published on the same in the Gazette of India and came into effect on 14th of January.¹

“The Constitution (103rd amendment) Act, 2019” brought changes in article 15 and article 16 of Indian constitution. These two articles are considered the bedrock off reservation in areas of providing jobs and education. By adding two clauses in the articles the state can now provide a maximum of 10% reservation to “economically weaker section of citizen”². The limitation was the citizens who are already getting reservation like the SC, ST and OBC will not be entitled to these reservations.

But within few hours of the bill passed a NGO filed a PIL against the bill (Youth of India vs. Union of India). The main issue raised by the NGO was that if this reservation is implied then the limitation of reservation which was set by Supreme Court in the case of *Indra Sawhney v. Union of India*³ i.e. 50% will exceed to 59.5%. The other controversies that this bill has faced is that this is violation of article 14 i.e. right to equality.

¹ Gautam Bhatia, *Is the 103rd Amendment Unconstitutional*, Indian Constitutional Law and Philosophy.

² INDIA CONST. art.15 and 16, amended by THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019

³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

Despite of the controversy faced by this bill the Supreme Court has restrained the order of stay on the bill and therefore 103rd amendment is still in effect.

RESEARCH OBJECTIVE –

The objective of the study is to have an in depth knowledge about 103rd amendment act. As the amendment was passed on what grounds were the act was challenged and to challenge the constitutional validity of 103rd amendment. It is necessary to check whether the amendment was necessary or not. And what are consequences of the act passed.

RESEARCH METHODOLOGY-

DOCTRINAL LEGAL RESEARCH –

This is the most used method of legal research. In this, concepts and abstracts are collected from different sites, and methodically combined. In this study various articles, journals, newspaper reports etc. are collected studied and analyzed.

ANALYTICAL LEGAL RESEARCH-

This type of research includes the analysis of various elements, sources and information and how they relate each other. It includes locating the Law/Source of the law, identifying the status of the law in the hierarchy of Laws (International Law, Constitutional Law, Ordinary Law, Precedents, Customs, etc.) and finding the meaning of law.



RESEARCH QUESTION-

- What is 103rd Constitutional Amendment Act, 2019?
- Is this amendment constitutionally valid?
- Does this amendment violate basic human rights and right to equality?
- Whether 10% reservation exceeds the limitation of 50% reservation?

LITERATURE REVIEW-

There are number of journals, articles, newspaper reports available for the concerned topic. The primary source of information is “THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019” –The official amendment act passed by the government. The official

amendment passed helps us to understand the changes that are made in reservation related articles after the amendment

The secondary sources are articles and news reports like “Constitutional Validity of 103rd Constitutional Amendment Act, 2019” by Shubhangi Agarwal and “Can the ten per cent quota for economically weaker sections survive judicial scrutiny – The Hindu Centre for Politics and Public Policy” by K. Ashok Vardhan Shetty.” Newspaper reports like “Should 10% quota matter be referred to Constitution Bench?” published by Indian Express. There are many more articles, blogs and newspaper reports which have helped in the study of this project. Such as-

“Amendment”- An article posted by the website Encyclopedia Britannica is used for the basic understanding of what are amendments and what is the context of amendments in India.

“Constitutional Amendments — A Legal Analysis”- An article posted ebc.com also provides with basic understanding of amendments in India.

“Procedure of Amendment of the Constitution: Method of Amendment”-An article posted on Yourlibrary.com gives us the information about the procedure of Amendments followed in India

“Reservation in India”- article posted on the blog- Dristhi gives us insight about the history of reservation and importance of reservation with introduction of 103rd amendment.

“Reservation to the Economically Backward Class — Indian Constitutional Perspective- By Shreya Mishra and Vipin sharma” posted on the SCC online blog provides us with vast information about the history of amendment, what is 103rd amendment and positive as well as critical analysis of the act.

“Fewer poor among SC, ST, and OBC-By Somesh Jha” provides with statistics of data which shows Improvement of the status of SC, ST, OBC in the past few years.

“In the 103rd Amendment Unconstitutional By- Gautam Bhatia”. An article posted on the blog Indian Constitutional Law and Philosophy wordpress provides us with analysis of the act.

CHAPTERISATION-

Ch-1. Constitutional Amendments

- What are constitutional amendments?
- How to Amend ?

Ch-2. History of Reservation and its existence.

Ch-3 What is 103rd Amendment?

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- Purpose

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Ch-4 Challenge to the constitutional validity.

- Amendment violates quota of 50%
- Violation of equality rights
- Provides representation to well represented class
- Arbitrariness

Ch-5 Recommendation

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LIST OF CASES-

1. Youth of India v. Union of India, 11 January 2019
2. Kesavananda Bharati v. State of Kerala
(1973 SC 1461)
3. Indra Sawhney v. Union of India,
(AIR 1993 SC 477)
4. Jarnail Singh v. Lachhmi Narayan, , 26 September 2018
5. M. R Bajali v State of Mysore, 1963 Suppl. 1 S.C.R. 439
6. M. Nagaraj v. Union of India, 19 October, 2006

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CHAPTER-1

Constitutional Amendments

➤ What are constitutional Amendments?

Amendment basically means any change or addition or alteration made to a constitution, statute or legislative bills. Amendments can be done to existing constitutions, statutes, legislative bills etc. Amendments are made through bills. As in order to make an amendment a bill has to be passed regarding the same. Constitution is the spirit of any country. Therefore amendments in the constitution can change the political status of the country or governing institutions, such amendments are usually submitted to exactly prescribed procedure.⁴

The Indian constitution is rigid as well as flexible regarding the amendments. As mentioned earlier, constitution is the spirit of any country and therefore it can change the political status of the country. Therefore the makers of Indian constitution accepted this fact and tried to draft our constitution such as it is acceptable to amendments but also it is rigid regarding the amendments. It was said by Nehru that “While we want this Constitution to be as solid as we can make it there is no permanence in Constitutions, there should be certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of living, vital, organic people. In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow.”⁵

➤ How to amend?

The procedure of amendment has been mentioned in Article 368 of Indian Constitution under part 20. The Amendment procedure has been adapted from South Africa. The first amendment of Indian History was passed in 1951 on 18th June.

There are three following ways to amend a constitution-

⁴ The Editors of Encyclopedia Britannica, *Amendment*, Encyclopedia Britannica
Publisher: Encyclopedia Britannica, inc.
Date Published: February 06, 2020
URL: <https://www.britannica.com/topic/amendment>

⁵ Raja Ram Agarwal, *Constitutional Amendments — A Legal Analysis*, ebc-india.com, <https://www.ebc-india.com/lawyer/articles/76v3a1.htm>

1. Simple Majority-

Simple majority basically means more than 50% i.e. 50%+1. When there is majority more than 50% of the members present and voting. For a bill to be passed by this method the majority can be by 50% + 1 vote of all the members who are present in the house and are voting. This is also known as working majority. Most parts of the Constitution (with exception of some specific provisions) can be amended by this method. Under this method, the Constitution can be amended by the Union Parliament alone. For this purpose an amendment bill can be passed by each of the two Houses of Union Parliament by a majority of its total membership (i.e. absolute majority) and by a two-third majority of members present and voting in each House. It is a rigid method in so far as it prescribes a special majority for amending the constitution but it is considered to be a flexible method because under it the Union Parliament alone can pass any amendment.

1. Special Majority- As per article 368 Special majority requires a majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house. The amendment in this kind of majority is passed only when the 2/3rd members present and voting are equal to or greater than the absolute majority. For example if total strength is 120 members and 90 are present and voting then the bill will be amended when 2/3rd of 90 i.e. 60 people vote in favor and 50% of 120 +1 will be greater than 60. But here in this case the absolute majority is greater than 60 and not the other one so the bill will not be amended. This majority is used to pass the constitutional amendment bill that are related to fundamental rights provided the basic intent could not be amended, removal of judges, etc.
2. Special Majority with Ratification by State Legislative- this is combination of the second method along with the votes by 50% of the State Legislative assembly. Here to pass the bill there is need of ratification by the states. i.e. 2/3rd votes of members present and voting should be greater than absolute majority along with approval from 50% of the state legislatures. This type of special majority is required when a constitutional amendment bill try to change the federal structure. This is mostly used when there is amendment to be made in the provisions of amendment as per art. 368 or when the position of a state is affected by any of the amendment made so for approval of that amendment this kind of amendment is used.⁶

⁶Make footnote 6

Article name- Procedure of Amendment of the Constitution: Method of Amendment

Website- Your article library, The next generation library

URL: <http://www.yourarticlelibrary.com/constitution/procedure-of-amendment-of-the-constitution-method-of-amendment/40333>



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CHAPTER-2

History of Reservation and its existence

India is one of the most populated countries in the world with people of different cultures, backgrounds, beliefs and religions. When the constitution of India was being made all these things were kept in consideration and therefore equality is the spirit of constitution. The aim of the makers of constitution was to provide social, economic and political justice and equal opportunities to every citizen of this country.⁸

⁸ Artilece- *Reservation in India* ,29 july,2019(It should be footnote number 7, numbering of footnotes has gone wrong, kindly edit the same.)

Website- drishti

The roots of reservation emerge from the old-age caste system of India. Reservations are provided to those sections of society which has faced injustice in the past or present. Reservation basically means providing some government seats in parties, educational institutions and government jobs for some backward class people who were not able to enjoy the same privileges as the upper class of the society. The lowest form of discrimination was “untouchability”. The problem of untouchability was mainly faced by Dalits. As the Hindus were divided into four castes “Brahmans, Kshtriya, vaishyas and the shudras” among these cast people from some casts were considered superior than the other casts and the lower casts were treated wrongfully.

Jyothi Rao Phule and William Hunter originally convinced the idea of caste- based reservation in the year 1882.⁹

Pre-Independence-

The reservation system that is followed today is 1933 when British Prime-Minister Ramsay Macdonald presented the ‘Communal Award’.¹⁰ This communal award made the change that there will be separate electorates for Muslim, Hindus, Sikhs Indian Christians, Anglo-Indians, Europeans and the Dalits.

The main problem faced pre independence was the untouchability system which was mainly faced by the Dalits. This issue was broadly addressed by Mahatma Gandhi and Dr. B.R Ambedkar who fought for equal rights of the Dalits.

“The round table conference of 1932 was a significant landmark in the reservation history. Mahatma Gandhi and B.R Ambedkar had their differences about on the reservation. They both arrived at a solution which came to be known as the Poona Pact.”¹¹

The Poona Pact decided that there will be no separate electorate systems but only one with reservations for different section of the society.

Post-Independence-

Post-independence saw a major change in the reservation system. Scheduled castes (SC) and Scheduled Tribes (ST) were introduced in the reservation system. The government took several steps and made different policies reserving seats in different institutions and government jobs for the SC and ST.

⁹ Shubhangi agrwal , *Constitutional Validity of 103rd constitutional amendment act 2019*, (December 17,2019), blog ipleaders , <https://blog.ipleaders.in/constitutional-validity-103rd-constitutional-amendment-act-2019/>

¹⁰ Raja Ram Agarwal, *Constitutional Amendments — A Legal Analysis*, ebc-india.com, <https://www.ebc-india.com/lawyer/articles/76v3a1.htm>

¹¹ Shreya Mishra and Vipin Sharma, *Reservation to the Economically Backward Class — Indian Constitutional Perspective*(june 16,2019), SCC online blog, <https://www.sconline.com/blog/post/2019/06/16/reservation-to-the-economically-backward-class-indian-constitutional-perspective/>

“The reservation quota in educational institutes and government job is 7.5% for the ST and 15% for the SC. The total reservation for both SC and ST stand 22.5%”¹²

Reservation cannot be discussed without the mention of Mandal commission. The Mandal commission was made which was headed by B.P Mandal to determine the people who come under the purview of backward classes. The Mandal commission proposed that there are 52% of the population who come under the other backward classes (OBCs) category and it was recommended to provide reservation to OBCs of 27%. The V.P Singh government agreed to that recommendation and therefore in 1992 the reservation for OBCs were introduced.

Laws regarding Reservation-

The XVI of the constitution deals with reservation system. Some of the laws which deals with the reservation are-

- a. “Article 15(1) and 15(2) deals with the concept of no discrimination on the basis of caste religion etc.. Whereas Article 15(4) deals with the power of state to make provisions regarding the welfare of SCs and STs
- b. Article 16(1) and 16(2) deals with equal job opportunities for people whereas 16(4) deal with power of state to make laws for the backward classes.
- c. Article 17 deals with problem of untouchability. This article abolished untouchability. Article 46 asks the state to promote the educational and economic interest of weaker section of society.”¹³
- d. “Article 330 and 332 provides for specific representation through reservation of seats for SCs and STs in the Parliament and in the State Legislative Assemblies respectively.
- e. Article 243D provides reservation of seats for SCs and STs in every Panchayat.
- f. Article 233T provides reservation of seats for SCs and STs in every Municipality.
- g. Article 335 of the constitution says that the claims of STs and STs shall be taken into consideration constitutently with the maintenance of efficacy of the administration.”¹⁴

¹² *Id* at 11

¹³ Shreya Mishra and Vipin Sharma, *Reservation to the Economically Backward Class — Indian Constitutional Perspective* (June 16, 2019), SCC online blog, <https://www.scconline.com/blog/post/2019/06/16/reservation-to-the-economically-backward-class-indian-constitutional-perspective/>

¹⁴ *Artilce- Reservation in India*, 29 July, 2019

Website- drishti

URL: <https://www.drishtiiias.com/to-the-points/Paper2/reservation-in-india>

CHAPTER-3

What is 103rd Amendment?

➤ INTRODUCTION –

SCs, STs and OBCs constitute 70% of the population and are entitled to reservation in almost every platform. According to the data according released by Planning Commission between 2004-2005 and 2011-2012, more people among the deprived social classes — SCs, STs and OBCs — were brought above the poverty line, compared to other segments of society.¹⁵

Now the government had to take steps in favor of the economically weaker “the general category”. So in the light of the same the legislature passed Constitution (103rd Amendment) Act, 2019 providing 10% reservation of jobs and educational institutions to economically backward section in the general category. The amendment is premised on Article 46 in the Directive Principles of State Policy which places an obligation on the State to “promote with special care the educational and economic interests of the weaker sections of the people”.¹⁶This act amends Article 15 and Article 16.

The following are the amendments made in Article 15 and Article 16-

“In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

‘(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,— (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of

¹⁵ Somesh Jha, *Fewer poor among SC,ST,OBC*(March 14, 2014 02:02), Business standard, https://www.business-standard.com/article/economy-policy/fewer-poor-among-sc-st-obc-114031301232_1.html

¹⁶ INDIA CONST. art.46

article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category. Explanation.—For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. Of the posts in each category.”¹⁷

The bill was proposed by Thawar Chand Gehlot, Minister of Social Justice and Empowerment on 8th, 2019 of January in Lok Sabha. On 9th January, 2019 the bill was passed by Lok Sabha receiving overwhelming majority. The bill was passed by the Rajya Sabha also on 10th of January and then was sent to the president for the assent. The bill received assent on 12th January and was published on the same in the Gazette of India and came into effect on 14th of January.¹⁸

➤ PURPOSE-

The purpose of the introduction of this bill was that after the Mandal commission report there has been reservation for the SCs, STs and OBCs in almost every field but the general category has been ignored as there were no such privileges enjoyed by the general category. There were sections of citizens in this category which were economically not strong and therefore it was difficult for them to have a proper livelihood. To address this problem this bill was introduced. Another purpose which can be that as expect the general class others were getting reservations it was difficult for this class of people to compete in every field like educational institutes etc. Due to this there was a large outrage in people as it was against their right to equality. Therefore to address this problem the government introduced this act.

The 103rd Amendment act was through the 124th Bill. The Bill mentions the purpose of the introduction of Act-

1. “At present, the economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of article 15 and clause (4) of article 16 are generally unavailable to them unless they meet the specific criteria of social and educational backwardness.

¹⁷ INDIA CONST. art.15 and 16, amended by THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019

¹⁸ Gautam Bhatia, *Is the 103rd Amendment Unconstitutional*, Indian Constitutional Law and Philosophy

2. The directive principles of State policy contained in article 46 of the Constitution enjoins that 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.
3. *Vide* the Constitution (Ninety-third Amendment) Act, 2005, clause (5) was inserted in article 15 of the Constitution which enables the State to make special provision for the advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, clause (4) of article 16 of the Constitution enables the State to make special 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.
4. However, economically weaker sections of citizens were not eligible for the benefit of reservation. With a view to fulfill the mandate of article 46, and to ensure that economically weaker sections of citizens to get a fair chance of receiving higher education and participation in employment in the services of the State, it has been decided to amend the Constitution of India.
5. Accordingly, the Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019 provides for reservation for the economically weaker sections of society in higher educational institutions, including private institutions whether aided or unaided by the State other than the minority educational institutions referred to in article 30 of the constitution and also provides for reservation for them in posts in initial appointment in services under the State.

The Bill seeks to achieve the above objects.”¹⁹



POSITIVE ASPECTS (IMPORTANCE)-

This act has faced positive as well as negative and critical views. Majority of the population is criticizing this act. But if we look into it this act positive aspects also such as –

1. As already discussed the general category was facing difficulties because the reservation for the backward classes. Many students from the general category are not able to get higher education and employment due to the reservation system as well due to financial problems. This act will address this issue of inequality of income and opportunities.
2. There are many upper class people who live in poverty and hunger. This act is just a step to try to provide them with opportunities and livelihood.

¹⁹ K. ashok vardhan shetty, Can the Ten per cent Quota for Economically Weaker Sections Survive Judicial Scrutiny?, The Hindu Centre , 6 March, 2019

3. This act may eliminate the stigma associated with reservation as the upper caste look down on those who came through reservation.²⁰
4. This act will try to provide general category poor citizens similar to OBCs in order to get equal opportunities and income.

CHAPTER-3

Challenge to the constitutional validity

The constitutional challenge faced by this amendment is mainly the challenge to the basic structure of the constitution.

Doctrine of Basic structure is Certain structural principles form the core or the essence of the Constitution and give it a particular 'Identity' such as democratic form of government, republican form of government, federalism, equality, freedom, secularism, independence of the judiciary, power of judicial review and so on. Thus the basic structure cannot be amended as it would be threat to the constitutional identity.²¹

The Supreme Court held in the case of *Kesavananda Bharati v. State of Kerala*,²² that a constitutional amendment can be struck down if it is against the "basic structure" of the constitution and that the power of the parliament of amendment under article 368 is not absolute.

Amendment exceeds the quota limit of 50% -

A similar policy of reservation of "other economically backward sections" was introduced by P.V Narshima Rao which was denied in the case of *Indra Sawhney v. Union of India*,²³ explaining the reason that the reservation quota limit is 50% in total and this type of reservation will exceed the limit. Similarly in the amendment introduced in 2019 the quota limit will exceed and therefore this

²⁰ Artilce- *Reservation in India* ,29 july,2019

Website- drishti

URL: <https://www.drishtias.com/to-the-points/Paper2/reservation-in-india>

²¹ Shubhangi Aggrwal , *Constitutional Validity of 103rd constitutional amendment act 2019*, (December 17,2019), blog ipleaders , <https://blog.ipleaders.in/constitutional-validity-103rd-constitutional-amendment-act-2019/>

²² *Kesavananda Bharati v. State of Kerala*, 1973 SC 1461

²³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

amendment cannot be constitutionally valid. Some important judgment in the Indra Sawhney case is –

- It supported the 27% reservation for OBCs.
- The 10% reservation policy for economically backward classes was held invalid in the judgment and it was held that economic criteria cannot be criteria for reservation policy.
- It held that reservation cannot be more than 50%.
- It held that reservations can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate.²⁴

Citing the above mentioned case, a NGO – Youth of India filed a petition against the 103rd amendment act, and stated that the limit set will be exceeded to 59.5% from 50%. As B.R Ambedkar said when reservations were introduced reservations are for those “communities which have not had so far representation in the State”. But if we look the upper caste group has always got more representation and opportunities in comparison to the other backward classes. In the case of *Jarnail Singh v. Lachhmi Narayan*²⁵ backward classes has been understood to mean Scheduled Castes, Scheduled Tribes, and Other Backward Classes.

Another case which addressed the issue of 50% of reservation is *M.Nagaraj v. Union of India*,²⁶ and noted that –

“The ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.”

The support of the 50% reservation policy can only be seen in the speech given by B.R Ambedkar in the Constituent Assembly Debates in 1948 where he mentioned “structure of equality of opportunity”.²⁷

The Supreme Court in the case of *M.R Balaji v. State of Mysore*²⁸ rejected the 68 % reservation in the state of Mysore under article 15(4) in the medical college as it was exceeding the quota limit of 50%. The reason given in this case is that exception cannot override the rule.²⁹

²⁴Shubhangi agrwal , *Constitutional Validity of 103rd constitutional amendment act 2019*, (December 17,2019), blog ipleaders , <https://blog.ipleaders.in/constitutional-validity-103rd-constitutional-amendment-act-2019>

²⁵ Jarnail Singh v. Lachhmi Narayan, 26 September 2018

²⁶ M. Nagaraj v Union of India, 19 October, 2006

²⁷ *Ibid.*

²⁸ M. R Bajali v State of Mysore, 1963 Suppl. 1 S.C.R. 439

²⁹ M. R Bajali v State of Mysore, 1963 Suppl. 1 S.C.R. 439

Through all these cases it can be concluded that the 50% limit of reservation is considered in the basic structure of the constitution and therefore this amendment is invalid.

Violation of equality of Rights-

The principle of equality has been enshrined in article 13,15,16,17 and 18 of the Constitution of India. "Any alteration of this 'Equality Code' must stand the widely accepted tests of 'Identity' and 'Width' as laid out in the M. Nagaraj case. The identity test laid down by this case states that if any alteration the identity of the principles constituting the Basic Structure is to abrogate the Basic Structure itself. Thus, any alteration in the existing structure of the Equality Code would be violating the Basic Structure itself."³⁰

The policy's main purpose was to create equality among the upper classes and backward classes but in India all of the states have not adopted this act and therefore this leads to violation of equality of rights of citizens of different states as citizens of some states are entitled to this reservation while some are not.

Provides Representation to Well represented class-

This amendment has granted reservation to the well represented class of the society. The upper class that doesn't need the reservation as well doesn't have the grounds to claim the reservation will be benefitted from this. Moreover, if we provide reservation to the upper class then what will be the point of reservation for the backward classes? And when the protected group in the future will compete in the unreserved category they will not be able to get the access of the seats because there will some reservation for the upper class which will prevail.



Arbitrariness –

Reservation is about social and institutional barriers not the remedy to the problem of poverty. Family income criteria have no relation with the goal of reservation. This makes mandating reservation on economic disadvantage arbitrary ³¹

³⁰ Shubhangi aggrwal , *Constitutional Validity o f 103rd constitutional amendment act 2019*,(December 17,2019), blog ipleaders , <https://blog.ipleaders.in/constitutional-validity-103rd-constitutional-amendment-act-2019/>

³¹ Shubham Borkar and Neha Rani, *103rd Constitutional Amendment Act, 2018 "Economic Reservation In India" Highlights And Analysis* (January 17, 2019), mondaq, <https://www.mondaq.com/india/Government-Public->



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CHAPTER-4

Recommendation

As we have discussed what is 103rd amendment, its positive aspects, critical analysis, cases etc. we have a clear view about the topic. At present after the 103rd amendment only 40.5% of seats are reserved in educational institutions and jobs based on the candidate's merit.

After looking into the topic in deep here are some recommendations to make the condition better-

1. Rather than increasing the reservation furthermore, there should be a fixed time of reservation. At the time when reservation was introduced it was need by the backward classes because they were facing problems. But at the present time situations have changed and there is no such need of reservation, so instead of extending it a fix time reservation should be fixed.
2. Economic situation is not a perfect criteria for reservation, Family income is should also be considered as one of the criteria.
3. If the 10% reservation policy has to continued it should be tried to keep within the limit of 50% quota limit and exceeding that. This will promote fair and equal opportunities and the criticism will decrease to some extent
4. The 27% reservation for the OBCs should also consider the merit and marks of the student rather than just their caste because due to this those people who do really deserve the sat are not able to take the benefit of it.
5. It should be recommended to all the states to communicate and work on the same pace, rather than some states accepting the policy while some are not this creates the problem of equality between states.



CHAPTER-5

Conclusion

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The hour of the need of this country is the reformation in the reservation system of the country. From the past times we have seen that reservation has always created a rift between the upper and backward class people. There is no doubt in the fact the reservation is very good step in the development of the country but at the same time it is somewhat affecting the country as well due to some defaults in the system. When reservation was introduced it was very necessary and the need of the hour but in the present world if we look things has changed and therefore the old reservation policy is effecting people. So there is a need of change.

If we look in the present issue – 103rd amendment there have been many strong legal and constitutional discussions on this topic. The purpose of this amendment was positive and fro the benefit of the people but there were some flaws which made it controversial. This amendment violates the principle of equality code enshrined in the basic structure of the constitution. This amendment is violative of the constitutional identity of our constitution as it is against the

principles of equality. The parliament has used its legislative powers to make this act. Moreover this act violates the 50% limit of reservation.

As mentioned earlier there are some changes needed in the reservation policy of India and if we look into the present act it represents the population which already has over representation in society in the past all well in the present time also. This again violates the concept of equality. An act can be declared unconstitutional and void when it is against the constitution as in when it violates any fundamental right. From the above discussion it can be seen that this act is violative of the fundamental rights and therefore should be declared void.

Recommendations

1. You can also elaborate whether Reservation should be considered as a Fundamental Right.
2. You can incorporate a suggestion as to separation of political ideologies from the social democracy, how political parties resort to practices in reservation thus destroying the social democracy, the fabric of the Constitution.
3. You can also elaborate on whether reservations to be provided in research or Professional courses or not, keeping in consideration the Art 340 of the Constitution of India which deals with efficiency of administration.
4. Edit the footnotes as number of footnotes have been disturbed.
5. Follow a uniform mode of citation mainly Bluebook 20th edition.



REFERENCES

ARTICLES-

1. "Can the Ten per cent Quota for Economically Weaker Sections Survive Judicial Scrutiny?
By- Ashok Vardhan Shetty"

<https://www.thehinducentre.com/the-arena/article26436402.ece#twentytwo>

2. <https://www.drishtiiias.com/to-the-points/Paper2/reservation-in-india>
Reservation in India, Drishti
3. "Is the 103rd Amendment Unconstitutional By- Gautam Bhatia"

<https://indconlawphil.wordpress.com/2019/01/13/is-the-103rd-amendment-unconstitutional>

4. “Fewer poor among SC,ST,OBC By- Somesh Jha”

https://www.business-standard.com/article/economy-policy/fewer-poor-among-sc-st-obc-114031301232_1.html

5. Procedure of Amendment of the Constitution: Method of Amendment

Website- Your article library, The next generation library

URL:<http://www.yourarticlelibrary.com/constitution/procedure-of-amendment-of-the-constitution-method-of-amendment/40333>

6. The Editors of Encyclopedia Britannica ,”Amendment” Encyclopedia Britannica
Publisher: Encyclopedia Britannica, inc.

URL: <https://www.britannica.com/topic/amendment>

7. “Constitutional Amendments — A Legal Analysis by – Raja Ram Agarwal ”, ebc-india.com

<https://www.ebc-india.com/lawyer/articles/76v3a1.htm>

8. “103rd Constitutional Amendment Act, 2018 Economic Reservation In India Highlights And Analysis by Shubham Borkar and Neha Rani”

<https://www.mondaq.com/india/Government-Public-Sector/773144/103rd-Constitutional-Amendment-Act-2018-Economic-Reservation-In-India-Highlights-And-Analysis>

BLOGS-

1. ipleadersblog,-

” Constitutional Validity of 103rd constitutional amendment act 2019 by- Shubhangi Aggrwal”

<https://blog.ipleaders.in/constitutional-validity-103rd-constitutional-amendment-act-2019/>

2. SCC online blog-

Shreya Mishra and Vipin Sharma,

“ Reservation to the Economically Backward Class — Indian Constitutional Perspective”

<https://www.sconline.com/blog/post/2019/06/16/reservation-to-the-economically-backward-class-indian-constitutional-perspective/>