

Press Release

The Human Rights Forum (HRF) opposes the Constitution (103rd Amendment) Act, 2019, allowing for 10 per cent reservation to 'economically weaker sections', because it fundamentally undermines the normative basis of the reservation policy as set out in the Constitution. This amendment is extremely dangerous and can have a long-term devastating impact on disadvantaged communities that have historically faced, and continue to face, social disabilities and humiliating caste prejudice and exclusion. It can and will be used in the future to manipulate and mobilise caste hierarchy and bigotry against the very notion of social justice and equality enshrined in our Constitution.

In a country where an individual's worth is determined by her/his caste, the BJP led government wants to recast the existing narrative of social justice by replacing caste with economic backwardness as a criterion for determination of backwardness. Reservation, intended for the SCs, STs and OBCs, was meant to counter forced exclusion. In BR Ambedkar's view, the essential purpose of reservation, he called it adequate representation, is not poverty redressal but a remedy for systemic caste discrimination that was legitimised for centuries by law and custom. To now extend it to socially advanced sections, will turn the reservation policy into a farce. The amendment defeats the very idea of social justice.

The principle of caste-based reservations has always been opposed and stridently resisted by dominant economic and social forces. This is because caste-based reservations, relying on social and educational backwardness have to some extent dented the historical heritage of caste-monopoly by the few. Constantly turning the focus on 'economic criteria' is one manifestation of being caste-blind, of not acknowledging the fact of caste and the horrific and insidious role it has played in our country. An unwillingness to confront the ugly reality of continuing caste discrimination, oppression and exclusion. It is also a way of resisting any threat to caste-based privileges. Disregarding the central criteria – historically imposed social disabilities - as the basis of reservation and instead focusing and relying upon a material or economic standard to carve out a quota is unacceptable. Non SC, ST and OBC communities are lacking in opportunities not because of cruel, social disabilities but because of debilitating policies by successive governments that only favour a tiny crunch.

It is instructive to recall that post 2014 Mohan Bhagwat, RSS sarsanghchalak and MM Vaidya, RSS joint general secretary have issued statements seeking review

of the reservation policy, only to grudgingly retract them later. The BJP-RSS has never been comfortable with the core values that the Indian Constitution stands for and their antipathy towards reservations is well known. Their world view denies the very validity of affirmative action and is in direct conflict with the egalitarian premise of the Indian Constitution. HRF believes that it is the specificity of caste discrimination that reservation has been designed to address and, therefore, economic criterion cannot be taken into account. Seeking reservations for the economically weaker sections is a mere ploy to do away with the salutary notion of equality of opportunity, one of the seminal features of our Constitution, in the long run.

We believe this amendment to be nothing short of a venal subversion of the Indian Constitution. It amounts to the dilution and neutralization of the 'equal protection clause' of Article 14. The amendment has disturbed the entire scheme of Articles related to Right to Equality in the Constitution. It is a severe blow to the basic structure of the Constitution. The framers of the Constitution were aware of the fact that in India the primary concern for the right to equality was the caste system and Articles 15 to 17 of the Constitution of India were designed accordingly. Starting with the Balaji case (1963) to Ashok Kumar Thakur case (2008), the Supreme Court judges accepted caste as a social reality and considered it as one of the criteria for determination of backwardness. Insertion of 10 per cent reservation for 'the economically weaker sections' under Art 15(6) and 16(6) does not fit into the scheme of Articles 15 and 16 which strike at all forms of discrimination. Social prejudices that are deeply entrenched in society are dealt by Articles 15 and 16. Affirmative action is necessary to curb this kind of structural oppression. The silent replacement of the word 'economically backward classes' with 'economically weaker sections' (EWS) is a clever and premeditated move intended to erase the collective memory of the debate that reverberated around 'caste' and 'class' in the corridors of justice.

The government did not even deem it necessary to conduct a study before carrying out this amendment. Poverty is a crime against humanity. But the amendment fails to come up with an intelligible differentia to categorize someone as 'economically weaker sections'. This category will not withstand the test of 'reasonable classification' or that of 'arbitrariness' that were laid down by our Supreme Court in Dalmia (1958) and Maneka Gandhi (1978) cases.

Another worrying aspect is that the 10 per cent reservation for the EWS gained a constitutional status by finding place in Articles 15 (6) and 16 (6) while the Constitutional provisions are silent about the percentage of reservations for the SCs, STs and OBCs. If the courts insist that reservations should not exceed 50% there is a possibility and real danger that the EWS reservation having a Constitutional status will fare a better chance over the reservations earmarked for SCs, STs and OBCs.

The Statement of Objects and Reasons of the Amendment Act fails to explain the historical context, the nature of discrimination it seeks to address, or whether the form of discrimination falls within the purview of Articles 15 and 16. We believe that the historical context was deliberately unstated since doing so would amount to a candid admission of the systemic failure of the government in not living up to the expectations and objectives of Article 39 of the Directive Principles of State policy. Seventy two years have not been enough to reduce the gap between the rich and the poor. Material resources were meant to be distributed equally, but what we have today is an obscene concentration of wealth. Successive governments ensured that land reforms were non-starters and implemented policies that replaced planning with a free-wheeling market economy. These new economic policies have ravaged the lives of our people and facilitated pillage by local and international capital. The economy is on the brink of collapse, there is staggering unemployment and instead of addressing that meaningfully, the BJP has bulldozed this amendment through which it has perpetuated a signal fraud on the Constitution.

BJP ministers and leaders gave a spin to the whole debate revolving around criteria by stating that the upper limit for EWS would be an annual income of less than Rs 8 lakh; more than 5 acres of agricultural land or 1000 square feet plot in a notified municipal area or 2000 square feet plot in a non-notified municipal area. This is nothing but a cruel joke on the poor.

The objective of affirmative action including reservation is not to eliminate poverty but to bring in social parity. If the government was really keen on improving living conditions of the economically disadvantaged, they ought to implement land reforms, generate employment, provide social security, improve the public health system, implement the much neglected Directives Principles of State Policy and be a Welfare State in the true sense.

Expectedly, the amendment has not evoked objection or protest from the savarna votaries screaming 'death of merit'. There is only deafening silence, not the usual frenzied rage one witnesses at the mention of reservation. This is because what

they are opposed to is only caste-based reservations, not a ‘quota’ underwritten by a bizarre economic benchmark that seeks to favour them.

What is also extremely distressing is the manner in which this amendment was brought about. In a participatory democracy, seeking public opinion on legislative bills is a pre-requisite and good administrative practice. This is a Constitutional Amendment, not an ordinary piece of legislation. Hiding it from public gaze, going about it in a secretive manner and passing it so swiftly amounts to undermining the legislative process and trivializing of the Constitution.

The ruling party at the Centre may well have calculated a favourable electoral windfall from this exercise and a compelling poll context might be the reason why those who in the normal course would have opposed this retrograde move, have not done so. Also disquieting is the absence of any real opposition by even those political parties that are ideologically opposed to the ruling dispensation. In fact, they have backed the amendment. However, to see this move only as a ‘jumla’ or ‘lollipop’ by the BJP on election-eve is to miss the point. It has to be emphasized that the RSS-BJP are in basic opposition to the representation principle contained in the Constitution that seeks to help historically excluded and discriminated castes. Which is why, time and again they have resorted to the ‘economic criteria’ argument. This is yet another instance. We urge all democratic forces in the country to oppose this affront to the Constitution.

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