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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CONSTITUTIONAL VALIDITY OF 124TH **AMENDMENT BILL, 2019**

AUTHORED BY: RADHIKA GARG

INTRODUCTION

The long term debate by the general category people about the assassination of equality in the name of reservation has been brought to an end with the introduction of 124th Amendment Bill of 2019¹ in the Rajya Sabha. This bill after going through many discussions and after approximately 10 hour long debate in the House was passed and was converted into an act which became the 103rd Amendment Act, 2019² of the Indian Constitution. The 124th Amendment Bill of 2019 was introduced in Lok Sabha by Mr. Thaawar Chand Ghelot who is the present Social Justice and Empowerment Minister of India. The aim of this bill is to work towards the progress of economically weak people belonging to the upper caste by providing them reservation. The bill seeks to provide 10 percent reservation to the economically backward people of the upper caste for admissions in educational institutions disregarding the fact whether private or government and for government jobs. During the motion of the bill in Rajya Sabha except for seven members all other members favoured the bill. Also, it was clearly mentioned by the government that sole reason for introduction of this bill is to seek addressal to the ones who are deprived of it. Moreover, the proposal of reservation in the respective bill was passed while making sure that this does not interfere with the existing reservation of SCs, STs and OBCs³.

With the introduction of 124th Amendment Bill⁴, other factors came up which might have ended up raising the question on constitutional validity of the respective proposed bill. So, when the bill was passed it was decided that there is a need to make certain amendments in some articles of the Indian Constitution. Hence, Article 15 and Article 16⁵ of the constitution were amended

¹ 124th Amendment Bill, 2019: For giving ten percent reservation to the economically backward classes.

² 103rd Amendment Act, 2019: after the 124th Amendment Bill was passed in both the houses it became 103rd Amendment Act of 2019.

³ SCs: Scheduled Castes, STs: Scheduled Tribes and OBCs: Other Backward Classes.

⁴ Supra 1.

⁵ Article 15 and Article 16 of the Indian Constitution, 1950.

to satisfy the needs for legal validity of an Act. Article 15⁶ of the Indian Constitution prohibits discrimination against any citizen on the grounds of race, religion, caste, sex, or place of birth. However, the government may make special provisions for the advancement of socially and educationally backward classes, or for Scheduled Castes and Scheduled Tribes. The Bill seeks to amend Article 15⁷ to additionally permit the government to provide for the advancement of “economically weaker sections” belonging to upper caste. Article 16⁸ of the Indian Constitution prohibits discrimination in employment in any government office. However, the government can allow reservation for any “backward class of citizens”, if they are not adequately represented in the services under the state. The Bill seeks to amend Article 16 to permit the government to reserve up to 10% of all posts for the “economically weaker sections” belonging to upper caste. The government also notified that whether a person belongs to economically weaker section or not will be decided while taking into consideration certain factors like family income and other economic conditions. Hence, it can be said that this amendment also makes a note of the Article 46⁹ of the Indian Constitution, which asks the government to promote the educational and economic interests of the weaker sections of the society.

RESEARCH OBJECTIVE

This paper particularly focuses on the study to know the validity of 124th Amendment Bill of 2019¹⁰, various amendments that were made in the constitution after the respective bill was passed, validity of the respective amendments introduced, benefits given to economically backward people as per this bill, the power of the government to introduce such a bill and various arguments raised by the opposition. Also, other social and legal aspects that are touched by 124th Amendment Bill¹¹ of 2019 will be dealt in this paper.

RESEARCH QUESTION

- Whether this amendment bill is violative of basic structure doctrine of the Indian Constitution?
- Whether this amendment means the reworking of the existing reservation system?
- Whether this amendment bill indicates the excessive use of power by the government?

⁶ Article 15 of the Indian Constitution, 1950.

⁷ Id.

⁸ Article 16 of the Indian Constitution, 1950.

⁹ Article 46 of the Indian Constitution, 1950.

¹⁰ Supra 1.

¹¹ Supra 1.

- Whether this bill overpowers the previous judgements of the Supreme Court regarding 50 percent reservation?
- Whether the allegations raised by different people on introduction of this bill were substantial?
- Whether the proposed bill is actually of benefit for the economically backward people or not?

CRITICAL ANALYSIS OF 124th AMENDMENT BILL

The major section which will be benefitted by the laws proposed in the bill are Brahmins, Marathas, Jats and other trading class people. Actually all the affected beneficiaries as per this amendment bill belong to upper caste or can be said to the general category in India. Since, earlier all the prevailing laws for reservation focuses only on the lower caste people as during the time of Indian independence their conditions not good and to provide them for the equal platform of opportunities like other people this reservation system was started. But with the introduction of 124th Amendment Bill¹² for the first time the Indian Constitution seems to have raised from the caste based reservation and concentrated on the economically backward people of the general category or upper class. Though, this reservation system for economically backward people does not overthrow the already existing reservation system.

The amendment

The 124th amendment bill¹³ has majorly led to the amendment of article 15 and article 16¹⁴ of the Indian Constitution. Insertion and amendment of the respective articles are stated hereunder:

"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

¹² Supra 1.

¹³ Supra 1.

¹⁴ Article 15 and Article 16 of the Indian Constitution, 1950.

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 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 favour 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."¹⁵

In simple words the sixth clause of Article 15¹⁶ can be understood as an initiative made by the government to improve the deteriorating conditions of the economically backward citizens of the nation. This clause basically aims at providing reservations to these by people by facilitating them with the reservation in educational institutions immaterial of the fact that whether the institution is run by some private authority or government. While on the other hand the amendment made in Article 16¹⁷ of the Indian Constitution deals with providing employment to the people of economically weaker sections in public organisations. The terms "economically backward section" has also been precisely described in the respective amendment as an interpretation of such nature which keeps on changing and the beneficiaries are to be decided on the basis of total income of family, property or land under the name of family and certain other factors are also taken into consideration. Other highlighted point of this bill is that the reservation should not exceed the set limit of ten percent and it was also made sure that the people who are already benefitted with the existing system of reservation should not be given benefits of this new provision of ten percent reservation.

Arguments and debates raised for this amendment bill

This amendment was challenged by a writ petition in Supreme Court of India by some non-governmental organisation on the basis that this is violative of the basic structure doctrine of

¹⁵ Aparna Mahishi, Economic Reservations: A Constitutional Challenge, Mar 20, 2019.

¹⁶ Article 15(6) of the Indian Constitution, 1950.

¹⁷ Article 16(6) of the Indian Constitution, 1950.

the Indian Constitution and it also exceed the limit of fifty percent reservation fixed by several previous judicial orders and constitutional provisions. Some alleged that the economically weaker sections is quiet vague as the terms used to explain this term is open to interpretation as per one's own convenience.

Several other arguments were also raised by the opposition regarding the intention of the government in power that they have decided to introduce the bill in hurry and to increase their vote-bank for the next elections. This is not the only argument raised; it was also called a publicity stunt by many politicians of the opposition party and they also had doubts about the applicability of the existing reservation system and how much reservation should be provided to economically backward people. In reply to all the arguments and doubts raised Mr. Thaawar Chand Ghelot said the existing reservation system will not in any way be affected by this new introduction as the reservation provided to the economically backward people is ten percent of the total number of seats. Mr. Ghelot also seek to diminish the doubts about the providence of legislation by saying that he has confidence in the judiciary of India and if this amendment is challenged by anyone in the court, the decision will be in their favour. He also answered questions about the intention of government for passing the bill by saying that they have a good intention behind this proposal and have a motive of public good only. He also tried to defend this decision by referring to one of the previous instances when the apex court rejected the proposal of government of Narsimah Rao to give reservation to economically backward classes because it was not facilitated with appropriate constitutional requirements. Late Arun Jaitley the then Finance Minister of the Government also turned down the criticism revolving around the proposal of ten percent reservation to the upper caste people in educational institutions and in job opportunities. He also brings to an end the allegations for breach of the Supreme Court order of fifty percent reservation for the socially backward classes.

Previous judgements of the courts regarding basic structure and reservation

The Mandal Commission Report of 1980 has followed the Judgement of Supreme Court given in case of *Indira Sawhney v. Union of India*¹⁸, in which it was stated that there must not be more than fifty percent of reservation whether in matters of education or employment and here the targeted beneficiaries are majorly the Scheduled Castes, Scheduled Tribes and Other Backward Classes in India. Therefore, it has somehow lead to the deviation of government

¹⁸ *Indira Sawhney v. Union of India*, AIR 1993 SC 477.

from introducing the policies for the upliftment of economically backward classes of the people belonging to general category or any category other than the previously mentioned reserved categories.

Allegations were raised that this bill is violative of the basic structure doctrine of the Indian Constitution. To have a better understanding of the term basic structure doctrine we can refer to the case of *Sajjan Singh v. State of Rajasthan*¹⁹, as this term was discussed for the first time in this case only. Justice J.R. Mudholkar held that any constitutional provision can be amended but the basic foundation of the constitution cannot be altered or amended. In all the cases decided before *I.C. Golaknath v. State of Punjab*²⁰, it has been held in all the cases that all the provisions of the Indian Constitution can be amended whether it is a fundamental right or any other right. But in *Golaknath* case all these judgements were overruled and the Judge in this case held that fundamental rights cannot be amended and it forms a part of basic structure. In case of *Kesavananda Bharti v. State of Kerala*²¹, Justice Sikri overruled the *Golaknath* judgement while stating that as per the need fundamental rights can be amended and specifically mentioned about the basic structure of the Indian Constitution and what all things comprise it.

Here, while studying about 124th amendment bill²² it is important to discuss about the basic structure doctrine as it has led to the amendment in Article 15 and Article 16²³ of the Indian Constitution which are included in the fundamental rights. When it comes to the amendment of any fundamental right the principle structure doctrine will definitely come into picture.

Effects on the prevailing reservation system

The introduction of 124th amendment bill²⁴ in any way does not mean or contribute to the reworking of the existing reservation system. Hence, we can say that the new reservation does not have any effect on the existing system of reservation for socially backward sections. To substantiate the decision of this new amendment the Prime Minister said that the government has been consistently working towards providing more benefits to the backward class people

¹⁹ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

²⁰ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

²¹ *Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225.

²² *Supra* 1.

²³ Article 15 and Article 16 of the Indian Constitution, 1950.

²⁴ *Supra* 1.

whether socially or economically. Also, they are not ignoring any of the social backward classes as they have also introduced an amendment in the year of 2013 which gives National Commission on Backward Classes more authority to take better decisions in favour of socially backward sections.

Jurisdiction as to exercising power by the government

Already a good number of cases have been discussed for a better understanding of the basic structure doctrine and it can be interpreted that at the end of all the amendments or introduction of new provisions equality to any person should not be denied in any way. The concept of equal representation and equality should not be harmed in any way. As article 46 of the Indian Constitution talks about providing educational facilities and promotes economic opportunities for those who are unable to do it due to their economic conditions. So, this article has been used by the government to protect themselves from allegations raised as to excessive use of power by the government. Thus, formulation of Article 15 Clause 6 and Article 16 Clause 6²⁵ can be directly connected with an aim to remove and nullify the cases of discrimination due to the existing difference in economic condition of a person. This amendment is to give an equal opportunity to all the people who have been deprived of equal representation due to reasons of economic incompatibility. Hence, this step of government in any way cannot be perceived as a challenge to the basic structure doctrine of the Indian Constitution instead this a step towards achieving equality.

Legal impact due to this amendment bill

There is no dearth of judicial decisions since the mid twentieth century where the courts have tried to critically analyze the situation the adoption of an appropriate criterion to provide reservation for the underprivileged backward classes. In *State of Madras v. Champakam Dorairajan and Another*²⁶, the Supreme Court of India dealt with the issue related to reservation for the first time and in pursuance to the judgement of this case Article 15²⁷ of the constitution was amended to add Clause in it.

In case of *M.R. Balaji v. Sate of Mysore*²⁸, the Apex Court has prescribed a set limit to give

²⁵ Article 15(6) and Article 16(6) of the Indian Constitution, 1950.

²⁶ *State of Madras v. Champakam Dorairajan and Another*, AIR 1951 SC 226.

²⁷ Article 15 of the Indian Constitution, 1950.

²⁸ *M.R. Balaji v. Sate of Mysore*, AIR 1963 SC 649.

reservation and in the same judgement it was held that the fixed limit of fifty percent should not be exceeded in any case for the purpose of reservation. In this case, caste was considered to be not the single criteria for examining the social backwardness of a particular class or strata of citizens, instead they considered economic conditions as the furnishing factor for determining the backwardness in a society.

*Indira Sawhney v. Union of India*²⁹ is one of the landmark judgements for dealing with the issue of reservation. In this the criteria of reservation on the basis of economic backwardness was overruled while stating that reservation provided by only taking into consideration the economic status of a person is not justified as per the principles of Indian Constitution. In this judgement it was also made clear that reservations in any case should not exceed the set limit of fifty percent.

Social impact due to this amendment bill

Before indulging into debates and arguments about who should get reservation and who should not get reservation we understand the fact that ability, skill and knowledge are not restrained to the domain of one particular group. Instead these educational aspects are meant to be spread evenly that they reach each and every member of the society. Moreover, this cannot be denied that the prevailing system is not efficient enough to facilitate every member with equal opportunities and hence very selective section of people in society is able to avail the actual facilities. This eventually affects the society in an abysmal way and also disturbs the overall development of the nation. So, reservation only on the basis of caste and social competency seems to be a little separated from the true democratic spirit. Hence, this 124th amendment bill³⁰ has paved a way to overcome the existing atrocities which are barricading the development of nation in various aspects. Definitely, this amendment bill has come up as a positive step towards a better and developed nation.

Government's use of power in introducing these provisions due to new amendment bill is excessive or not

To prove the validity of this amendment bill and to justify the fact that the government in any way has not used its power in excess we can refer to the example of Tamil Nadu. This also

²⁹ *Indira Sawhney v. Union of India*, AIR 1993 SC 477.

³⁰ *Supra* 1.

substantially justifies that government has not overpowered any of the previous judicial orders in any sense. At present, in Tamil Nadu there is sixty nine percent quota for reservation system. It has been observed that in the State of Tamil Nadu the reservation is prevailing from even before independence. Towards the end of the twentieth century the reservations recorded in the state already reached a high limit of sixty eight percent. In order to keep their own policy after passing of Indira Sawhney judgement³¹ the then state government in power did not hesitate to amend the ninth schedule of the Indian Constitution by bringing into action the Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes Act of 1993³². Also, the state government of Tamil Nadu keeps on amending this act from time to time in order to make changes as per the demand.

Hence, this usage of power by the state government definitely cools down the arguments, allegations and question raised on the central government regarding the excess use of power and position. Moreover, while taking into consideration all the available facts and situations it can be said that the government's use of power in introducing this bill is not excessive.

CONCLUSION

The Indian Constitution was framed by the framers while keeping in mind the prevailing menace in state activities which had an adversely negative impact on equality among the citizens of the country which is one of the essential principles of democracy. There were numerous cases of discrimination on the basis of caste and the actual sufferers were the people belonging to that under-privileged section of society. People belonging to the lower caste were stigmatised due to their caste and were denied equal representation. Thus, at that time there was a dire need to have policies of reservation to provide these people an equal platform as others. These reservation policies were introduced with the principle of positive discrimination in mind which is permissible in Constitution. But with the change in time the needs and conditions have changed, hence, caste is no longer exist as the sole criteria for determining the social backwardness or any kind of backwardness as due to the prevailing reservation system some have already achieved the desired social and economic status in the society. However, in the present scenario poverty seems to stand as a barrier in the path of attaining the desired goal of equality and also a glaring number of instances can be addressed where discrimination is

³¹ Indira Sawhney v. Union of India, AIR 1993 SC 477.

³² Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes (Reservation of seats in educational institutions and appointments or posts in service under the state) Act of 1993.

prevailing due to huge gap in economic status. Thus, the step taken by the Indian Government through the means of providing reservation to the economically backward classes will definitely perpetuate the seed of equality and will help in eradicating discrimination in any way from its roots. This step of government has the ability to provide the means for attaining the desired equality for every citizen of the nation.

SUGGESTIONS

- A considerable research should be done to have better provisions for the betterment of all in future
- All the parties should focus more on the well-being of society rather than focusing on their vote bank
- The government must make sure the proper implementations of the provisions it introduces
- Government should focus more on improving the country's economy and social structure
- People and Government together should work to have better reforms in the society

BIBLIOGRAPHY

Books

- Indian Constitutional Law by M.P. Jain, 7th Edition.
- Constitutional Law of India by Dr. J.N. Pandey, 53rd Edition.

Bare Act

- Constitutional Law of India, 1950.

Online Databases

- SCC Online
- Jstor

Articles

- V. Nivedita, The 124th Amendment: A look at the facts, The Hindu Businessline, Jan 14, 2019.

- E.T. Online, Lok Sabha clears 124th Constitution Amendment Bill to give quota for general category, The Economic Times, Jan 9, 2019.
- Shreya Mishra and Vipin Sharma, Reservation to Economically Backward Class- Indian Constitutional Perspective, SCC Online, Jun 16, 2019.
- Aparna Mahishi, Economic Reservations: A Constitutional Challenge, Mar20,2019.

