

**LOK SABHA
YOUTH PARLIAMENT 2020**



LOK SABHA

**RESERVATION FOR ECONOMICALLY WEAKER
SECTIONS**

LETTER FROM THE EXECUTIVE BOARD

Welcome to the simulation of Lok Sabha at SBS Youth Parliament 2020! The topic for our discussion at the conference is the 'Reservation for Economically Weaker Sections (EWS)'. We will explore this topic by discussing the 124th Constitutional Amendment Bill. A bill is a proposed legislation that is considered by the legislature (in our case the Lok Sabha). After discussion and deliberation, a bill needs to be passed by both houses of the Parliament- the Lok Sabha as well as the Rajya Sabha and get the assent from the President of India for it to become a law.

The 124th Constitutional Amendment Bill deals with the proposed policy of reservation for the economically weaker sections of society, the details of which are entailed in this guide. Our conference will be focused on the discussions of the 124th Constitutional Amendment Bill at the Lok Sabha, where we will try to understand and discuss the nuances of the proposed bill.

This guide will merely serve as a scaffold for your research. You are expected to be well versed with the basic facts and arguments mentioned in this guide as well as to conduct substantial individual research on the same for fruitful debate in committee. While shaping your own thoughts and perspective on this topic, it is also imperative to keep the stance of your allotted portfolio as well as the political scenario with respect to this agenda in mind. Please refer to the document on rules of procedure and the glossary of parliamentary terms; it will make you aware of the parliamentary procedure we will be following during the course of the conference.

Above all, all members are to display diplomatic conduct during all committee proceedings. We hope this experience will be an enriching learning opportunity for all of you.

We will try our level best to guide you throughout the process. Please feel free to reach out to us with any queries or clarifications at any of the following email IDs.

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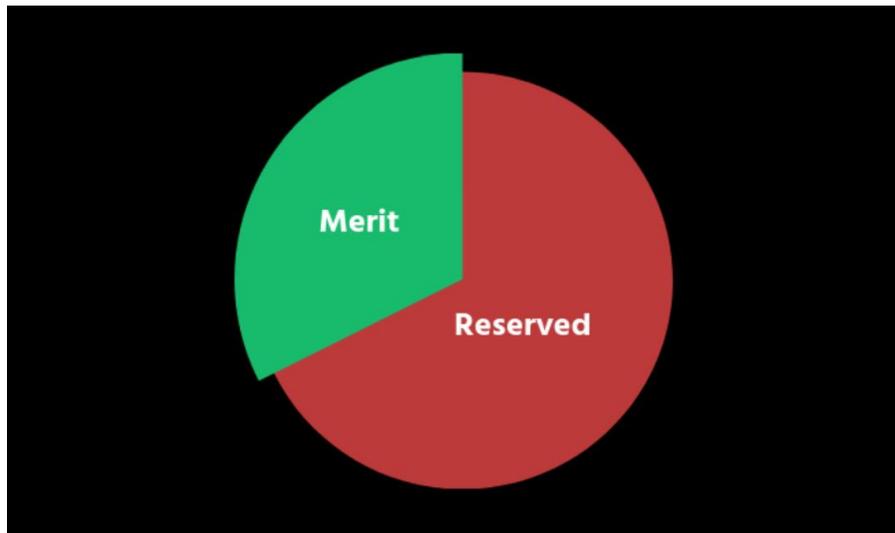
suridubaijain@gmail.com

Looking forward to seeing you all in committee.

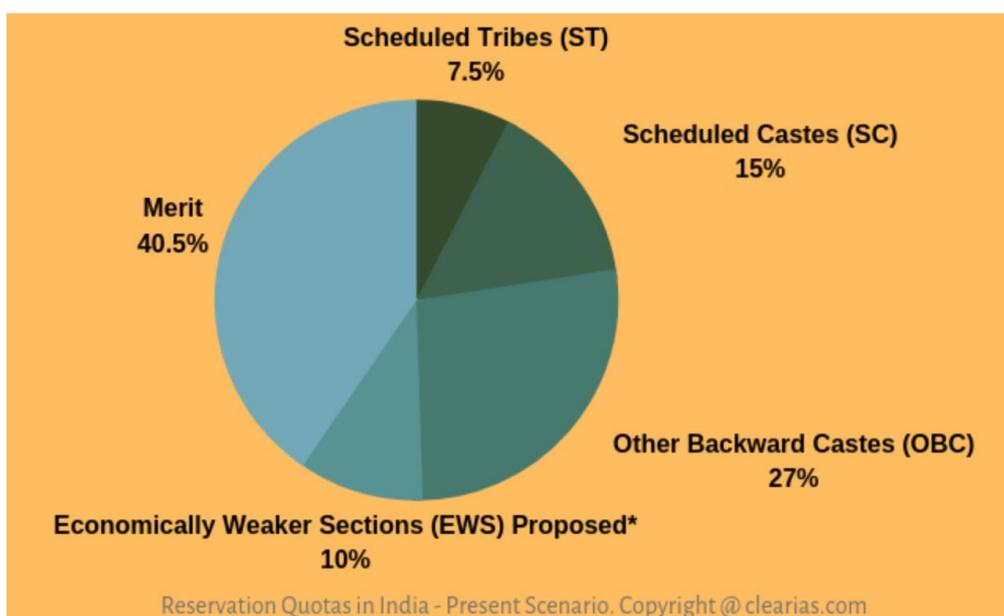
Best of Luck,
Executive Board
Lok Sabha

WHAT IS RESERVATION?

Reservation in India is a government policy (backed by the Indian Constitution) that reserves access to seats in government jobs, educational institutions and the legislature for certain sections of society.



Until 2019, the reservation was provided to socially backward sections of society that included Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC). After the 103rd Amendment of the Constitution was passed in 2019, the reservation policy extended to economically backward classes. The chart below shows the percentage of reservation provided to each section of society post the 103rd constitutional amendment.



THE PURPOSE OF RESERVATION

- **Upliftment** of historically backward classes
- **Safeguard against social oppression** and injustice against certain classes
- **Providing a level playing field** for backward section as they cannot compete with those who have had the access of resources and means for centuries
- **Ensuring adequate representation** of certain backward classes in the Legislature

THE HISTORY OF RESERVATION IN INDIA

1902: Shahu, the Maharaja of the princely state of Kolhapur, introduces reservation in favour of non-Brahmin and backward classes in education.

1921: Mysore initiates reservation for backward castes after a decade long social justice movement against the repression of non-Brahmin castes.

1932: Communal Award by British government grants separate electorates in India for Muslims, Buddhists, Sikhs, Christians, Anglo-Indians, Europeans and Depressed Classes (then untouchables). Later, Poona Pact between M K Gandhi and B R Ambedkar reserves seats for depressed castes within Hindu electorates

1942: Viceroy's Executive Council recommends 8.5 per cent reservation for Scheduled Castes in civil services. B R Ambedkar was a member of the council

1950: Indian Constitution commits to reservations for Scheduled Castes and Tribes. A Government Order excluded converts (except four Sikh Dalit castes) but by 1990s, Sikh and Buddhist castes were included, but Christian and Muslim Dalits remain excluded.

1951: First amendment in Constitution to legalise caste-based reservation in face of court cases against quota.

1990: Mandal Commission report recommending 27 per cent reservation to OBCs is implemented by Prime Minister V P Singh.

1992: Supreme Court orders 50 per cent cap on caste-based reservation. Also strikes down Narasimha Rao government's move to reserve 10% government jobs for poor among Upper Castes. "Economic condition not a criteria for reservation."

2019: Parliament passes Article 15 amendment bill allowing 10 per cent quota for poor in higher education and jobs. Bill challenged in Supreme Court.

2020: Reservation in legislature was only till 1960 but it has been extended every 10 years. Latest extension was made in 2010 and is valid up to 26 January 2020. There was never a deadline for reservation in education and jobs.

RESERVATION IN THE INDIAN CONSTITUTION

The reservation system in India is backed by the Indian Constitution. As per the constitutional articles, reservation is provided in:

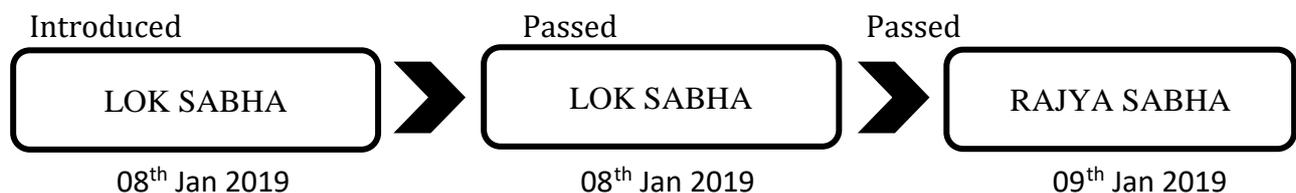
- Government Educational Institution- As per Article 15- (4), (5), (6)
- Government Jobs- as per Article 16- (4) and (6)
- Legislatures- as per Article 334

- Article 15(4) empowers the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of society such as SC and STs.
- Article 15(5) is an extension to the aforementioned article and empowers the government to make reservation in admission into educational institutions both privately run and aided by the government.
- Article 16(4) allows the state to make provisions for the reservation in favour of any backward classes that the state finds inadequately represented in the services. The Supreme Court has interpreted the term 'backward classes' as, 'socially and educationally backward'.

EWS RESERVATION

The Central Government of India introduced the 124th Constitution Amendment Bill in the Parliament to provide reservation for Economically Weaker Sections (EWS) among the general category candidates. The move is to provide 10% reservation in higher education and government employment.

This is the first time that reservations have been suggested for a section of society based only on economic criteria.



Highlights of the Act

- The Constitutional (103rd Amendment) Act was passed in Lok Sabha by 323 members voting in favour and 3 members against the bill. It was subsequently passed by Rajya Sabha with 165 members in the favour and only 7 members against the bill.
- It provides reservation of jobs in central government jobs as well as government educational institutions. It is also applicable on admissions to private higher educational institutions.
- It applies to citizens belonging to the economically weaker sections from the upper castes.
- This reservation is "in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category".
- The bill states that it is drafted with a will to mandate Article 46 of the Constitution of India, a Directive Principle that urges the government to protect the educational and economic interests of the weaker sections of society. While socially disadvantaged sections have enjoyed participation in the employment in the services of the state, no such benefit was provided to the economically weaker sections.

Amended articles after introduction of EWS Reservation

- Article 15 (6) is added to provide reservations to economically weaker sections for 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. The amendment aims to provide reservation to those who do not fall in 15 (5) and 15(4) (effectively, SCs, STs and OBCs).
- Article 16 (6) is added to provide reservations to people from economically weaker sections in government posts.
- An *explanation* states that "economic weakness" shall be decided on the basis "family income" and other "indicators of economic disadvantage."

Challenges before EWS Reservation

- EWS Reservation can be legally contested as it exceeds the 50 percent cap on reservations put by the Supreme Court. In fact, a petition has already been filed against the 124th Constitutional Amendment Act.
- Reservation cannot be provided solely on economic criterion as stated by the Supreme Court as hence this policy could face judicial scrutiny.
- Determining economic backwardness remains a challenge.
- Enforcement of this policy is challenge as states do not have enough finances to even enforce previously mandated reservations.
- The reservation policy was to be reviewed after 10 years when it was first made. Instead of restricting this policy of positive discrimination, the government is encouraging reservation.
- Eligibility criteria is flawed.
- Lack of level playing field- only the upper ladder of the reserved category is mostly benefitted, and the benefits do not reached the marginalized.
- This could just be another populist initiative for the benefit of the vote bank.

The reasons for the introduction of EWS Reservation and Government Rationale

Indian republic was formed in 1950 with a fourfold objective of securing to its citizen justice, liberty, equality and fraternity. Further, the citizens were guaranteed so many fundamental rights, through the Constitution, for a better standard of life. But without basic amenities to a decent life, the fundamental rights cannot be enjoyed in themselves. Land is still concentrated in the few hands, only 5% of India's farmers control 32% land. Industry too is concentrated in the hands of the top business houses. Social and economic power is still monopolised by small proportion of the people. Thus, in order to bring the economically weaker section of the society in the front, it is necessary to bring them under the garb of some economic policy. According to UNDP Report 2018 between 2005/2006 to 2015/2016 India has reduced multidimensional poverty from 54.7% to 27.5% of total people.

In 1980, the Mandal Commission Report, followed the Supreme Court judgment in *Indra Sawhney v. Union of India*, allowed not more than 50 per cent of seats in the educational and service matter for the ST (Scheduled Tribes), SC (Scheduled Castes) and OBC (Other Backward Classes) who constituted around 70 per cent of the total population of India. This led to a considerable progress in their status; according to the data 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. Therefore, it became an imperative for the legislature to frame policies for the upliftment of the economically weaker sections of the people who belonged to “other category” or “general category”. Keeping this in mind the legislature passed the Constitution (103rd Amendment) Act, 2019 (hereinafter referred as “Act”) to provide for 10 per cent reservation in the jobs and educational institutions to economically backward section in the general category.

Reacting to the passage of the bill in Lok Sabha, Prime Minister Narendra Modi said, it is a landmark moment in the nation’s history. Corroborating the PM’s view, Finance Minister (FM) Arun Jaitley added that this bill would bring economic justice to all Indians. The FM further contended that the 50% cap on reservations imposed by the Supreme Court was only for caste-based reservations, and the Economically Weaker Section (EWS) reservation won’t be impacted by it.

This affirmative action taken to uplift a certain group of people has not only been done in India but also in other countries in several other forms. For instance, racial wage inequality and discrimination have pervaded South African society for centuries. Apartheid legislation cemented these disparities by institutionalizing white job reservation and many other unfair practices. While racial wage gaps started to decline towards the end of apartheid, they increased (against all expectations) in the immediate post-transition period. Affirmative action legislation was enacted with a lag, first targeting employment equity and skills development in 1998 and then more extensive ‘black economic empowerment’ in 2003.

“Reservations in India have become ingrained in our political and social structure. Caste discrimination is a reality and has been practised for generations. Yet, a significant question has risen time and time again. Are reservations still needed after 70 years of independence? Is caste stigmatization prevalent even today to an extent that it requires the help of reservations? When will the nation be able to give equal opportunities to all its citizen?”

IMPACT OF EWS RESERVATION ON DIFFERENT STAKEHOLDERS

The 103rd Amendment Act proposes a new 10% quota in civil posts, services and public educational institutions for Economically Weaker Sections (EWS). This quota is applicable to all those who

- are not covered in existing quotas, i.e., do not belong to STs, SCs or OBCs
- and have a family income below ₹8 lakh a year or agricultural land below 5 acres.

Those who have a house above 1,000 square feet or a 100-yard plot or above in a notified municipal area or a 200-yard plot or above in a non-notified municipal area are not eligible.

The impact of the proposed bill on different stakeholders is explained below –

Impact on EWS Members

Some consider this bill to be a major step forward towards the social upliftment of the economically weaker sections of the upper castes who are not covered under existing reservation schemes.

Due to this new reservation, they will not only have 10% of all seats in public institutions and jobs in civil services reserved for them, but they will also remain eligible to apply for the general 'merit' category, which effectively leaves their net accessible share in public jobs/seats (the number of jobs or seats they can actually apply for), unchanged at 50.5%.

However, at the same time, many argue that this bill would not actually benefit its targeted group, due to its lax eligibility criteria. Income tax return data from 2017-18 indicates that only 50 lakh people (1.23% of the country's population) have a declared annual income higher than Rs 9.5 lakh. One could claim that the precise number of people earning less than Rs 8 lakh is unknown, as the slab declared in income tax data is Rs 5 lakh to 9.5 lakh. However, even if we distribute people symmetrically across this range, the percentage with more than Rs 8 lakh in income does not cross 2% of India's population.

In other words, nearly 98% of Indians earning and filing IT returns qualify as EWS, according to this law.

Hence, while some consider this bill as necessary for empowering the poorer sections within the country, one must carefully consider whether this bill will actually help them or not.

Impact on SCs, STs and OBCs

Despite the government's assurances that the proposed amendment would not undercut the educational and job prospects of the SCs, STs and OBCs, this bill does significantly affect

these communities. Although it does not tamper directly with their reservation quotas, it does significantly affect the seat/job share accessible to them.

Under the reservation scheme, The general category or unreserved seats are not reserved for the forward castes but are open to all. Even the reserved castes have a right to compete for seats and posts under the unreserved category, whose share is currently at 50.5%.

However, because of the new EWS reservation, the share of the general or 'merit' category has reduced to 40.5%. This in turn reduces the total share of seats/jobs accessible to SCs, STs and OBCs by 10%.

For instance, SCs could previously apply for 65.5% of all seats/jobs in the public sector (15% under SC reservation + 50.5% under the general category). However, the proposed reservation would bring this down to 50.5% (15% SC reservation + 40.5% general category) . Similarly, the shares of the STs have come down to 48% from 58% and the OBC share has shrunk from 77.5% to 65.5%.

Thus, while the bill might not directly affect reservation in other communities, it does significantly hamper their educational and job opportunities in the public sector.

Impact on the General Category

Those who do not fall under any of the reservation schemes will be directly affected by the proposed bill. Their net seat/job share in public institutions will decrease from 50.5% to 40.5%, which would be the first time in Indian history that this figure has fallen below 50%. What this effectively means is that the general public will not be allowed to compete for more than half of the available public jobs/seats.

Moreover, this would be in direct contradiction of the landmark Indra Sawhney vs Union of India, 1992 judgement which set the limit on all reservations at 50% (the sum of all existing reservation shares could not cross 50%).

Furthermore, since the seats/jobs under the general category are open to all, including the reserved classes, the bill would increase competition within the general category, making it even more difficult for an 'unreserved' person to secure a job or an educational seat in the public sector.

Thus, this bill further increases the unfairness of the system against the 'unreserved' general public by reducing the number of jobs/seats they can actually compete for.

Category	Reservation Quota	Merit Quota after 10% EWS Reservation	Reservation + Merit Quota Accessible after 10% EWS reservation	Seats Excluded from each category after 10% EWS reservation
ST	7.50%	40.50%	48%	52%
SC	15%	40.50%	55.50%	44.50%
OBC	27%	40.50%	67.50%	32.50%
General EWS	10%*	40.50%	50.50%	49.50%
General Merit	0%	40.50%	40.50%	59.50%

Category	Seats Accessible before 10% EWS reservation	Seats Excluded from each category before 10% EWS reservation	Seats Accessible after 10% EWS reservation	Seats Excluded from each category after 10% EWS reservation
ST	58%	42%	48%	52%
SC	65.50%	34.50%	55.50%	44.50%
OBC	77.50%	22.50%	67.50%	32.50%
General EWS	50.50%	49.50%	50.50%	49.50%
General Merit	50.50%	49.50%	40.50%	59.50%

General Impact

According to the Union Human Resource Development Ministry's calculations, seats in all institutions will need to be increased by 25 per cent to facilitate the EWS quota so as not to disturb the existing SC/ST/OBC reservations. This would require creating more infrastructure, hiring more professors as well as several other logistical issues which would make the implementation of the bill problematic.

For instance, Delhi University, with about 55,000 undergraduate seats, will have to add about 14,000 to fulfil the quota stipulation which would mean constructing more classes, adding more professors – which would be an extremely expensive process.

Additionally, since the competition within the general category will increase due to the proposed bill, cut-offs for public universities will also increase tremendously, making it more difficult for students to get selected to such colleges.

Similarly, jobs in the public sector will have to be increased to accommodate the new quota and competition for existing jobs in the general category will significantly increase as well.

QUESTIONS TO CONSIDER

1. What should be the basis for reservation in India?
2. Should reservations for communities be allowed to cross the 50% mark?
3. Is the eligibility criteria for EWS justified?
4. Should reservation shares of communities be revised?
5. Should this reservation be extended to the private sector as well?
6. Should equality of opportunity for all be allowed to compromise equal opportunities for all?
7. Will Supreme Court consider the 103rd Amendment to the Constitution valid?
8. Can reservation be used as a poverty alleviation scheme?
9. Is reservation the best method for social and economic upliftment? If not, then what are the alternatives the government could employ?
10. How have other countries dealt with affirmative action?

BIBLIOGRAPHY AND LINKS FOR FURTHER RESEARCH

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For further offline reading:

Economic and Political Weekly:

Volume 54 (13)- 30 March 2019

Volume 54 (23)- 8 June 2019

EPW is available in the School Library.

Two articles are sent to you along with this guide, please refer to them for a deeper insight into this agenda.