

## CONSTITUTIONAL VALIDITY OF 10 PERCENT ECONOMIC BASED RESERVATION

*Piyush Singh\**

### Abstract

A new challenge has confronted the principle of 50% rule laid down in *M.R. Balaji v. the State of Mysore* with the passing of the new amendment to the constitution and declaring an extra reservation to the economically weaker class. Some people termed it as election tactics and some recognized it as a milestone to eradicate the caste-based reservation and established a new system of economic-based reservation. However, whatever it is, the most basic challenge has been thrown to the Constitution of India. The amendment has to pass the *agnipariksha* set out by the constitution to prove its sanctity or else has to be struck down and be treated like ashes. In the present work, the author has tried to understand the importance and origin of reservation and further tried to critically analyse the present amendment. In the present work, the author has tried to look to both sides of the amendment.

- I. Introduction**
- II. Reservation Meaning**
- III. Reservation in past**
- IV. Purpose of Reservation**
- V. Mandal Commission Report**
- VI. The 103<sup>rd</sup> Amendment Act**
- VII. Purpose of Introducing the New Amendment**
- VIII. The 50% Ceiling Barrier**
- IX. Conclusion**

### I. Introduction

ON JANUARY 12, 2019, the Parliament of India passed 103<sup>rd</sup> Amendment Act, officially known as the Constitution (One Hundred and Third Amendment Act, 2019). Under the new Act, projection of reservation has been done in a new format and *i.e.*, Reservation on the basis of economic background of the person, it is also known as economic reservation. According to the Act, special measures and reservations have been added for the upliftment of the economically marginalized section in society.

---

\* Student, National University of Study and Research in Law, Ranchi, Jharkhand.

According to the Act, the states have the power to bring amendments in the provisions for the economically marginalized section as a result of article 16(6) with respect to the state services. However, under article 15(6), the state has the power to add special provisions to the economically marginalized category of society, with respect to higher education.

The existing structure of the reservation follows the idea of giving remedy to the individuals but instantly, we are in a society where an individual has its identity through his group. Pertinently in regard to reservation. However, it is not a newly discovered exercise, as while flipping the pages of history, we can find that India before the independence and people such as Sahuji Maharaj has endeavored too in order to eradicate the mal-practice of untouchability by the measure of reservation.

In the instant work, the author will be analyzing the survival of the concerned amendment against the issues including the issue against basic structure. Furthermore, taking the author's opinion into account, the amendment is not violative of the constitution. It stands on the parameters of the constitution. The author will also attempt to provide measures against any glitches or intricacies, if any.

## II. Reservation - Meaning

Literally, reservation means “*The act or fact of a grantor’s reserving some newly created thing out of the thing granted*”.<sup>1</sup> Black’s law Dictionary defines Reservation as “*the establishment of limiting conditions or qualifications*”.<sup>2</sup> An eminent philosopher F.A. Hayek, said, as a statement of conformity to the facts, it is practically not admirable to assume all men equal. Taking his views into account, the sacrosanct principle of equality which sees every man licitly equal is nothing but just a myth. However, since the situation asks us to stick to the sacrosanct principle of equality, it is *de rigueur* for us to comprehend to ourselves that equality is just a myth.<sup>3</sup> However, his side was that there should be ‘*Equality before the Law*’ for throwing a welfare state.

## III. Reservation in past

---

<sup>1</sup>Merriam-Webster dictionary, available at: <https://www.merriam-webster.com/dictionary/reservation> (last visited on Jan. 31, 2020).

<sup>2</sup>Black’s Law Dictionary, 9<sup>th</sup> edn. 2009.

<sup>3</sup>Ronald Hamowy (ed.), *The Constitution of Liberty* 87 (Routledge, Abingdon, 2011).

The concept of reservation found its footprints back in the early colonial period. But that concept was used as a spur to spread discrimination throughout the society rather than bringing any ideal difference in social condition and moreover, divided on the economic basis.<sup>4</sup> The earliest and a significant strike on discrimination faced by the weaker section can be witnessed in the year of 1856, when the British-India government provided job reservation. It can be considered as a pedagogic movement.

### **Pre-constitutional steps**

Various notable instances took place in the British-Indian history, among them, several acts and conferences came into action such as:

### **The Government of India Act 1919**

It was witnessed for the first time in Indian history that the fourteen non-official members whom the governor general nominated to the central legislative assembly belong to the depressed class. In the wake of the Act of 1919, the notion regarding people belonging to the depressed class, schedule caste was recognized as “political entity” relating to further constitutional reforms.<sup>5</sup> The Act was consisting of a statutory provision i.e. after an expiration of 10 years a statutory commission would be responsible for the formation of a concerned government. Furthermore, this resulted in the formation of the Simon Commission.

### **Simon commission**

Adhering to the provisions enshrined under the Act of 1919, the commission was constituted. However, remarking the apropos of the observation that even after a huge protest against the composition of the commission the commission was solely consisting of white members only *i.e.*, no member from India was seen there. However, ironically the final report prepared by the commission recommended for amelioration. Taking the commission’s opinion into account, the amelioration of the deprived class is not only curbed up to social justice moreover, it is pertinent subject-matter of several political out-turns. The commission concretely stood on the point that the

---

<sup>4</sup>Julius Stone, *Human Law and Human Justice* 37 (Stanford University Press, California, 1965).

<sup>5</sup> P. Jagadeesan, *Marriage and Social Legislation in Tamil Nadu* 97-98 (Elatchiappen Publications, Madras, 1<sup>st</sup>edn. 1990).

upliftment is not an independent concept. It relies on the ingredients of swaying the politics in their favor or putting differently “*representation in the legislature.*” As per the report there are four categories of backward class:

- a. Depressed Classes
- b. Aboriginal Depressed Classes
- c. Aboriginals Hills and Tribes, and
- d. Other Backward Classes.

### **Aftermaths of the Simon Commission**

Six months afterwards the report submitted by the Simon Commission in 1931, round-table conference was conducted to discuss the recommendations as recommended by the Commission and regarding the new Indian constitution on the basis of the recommendation of the commission.

#### **First round-table conference**

Apart from Ambedkar and ram bahadur Srinivasan who rooted out the difficulties faced by the deprived classes and none from the Indian National Congress, sought itself of being the sole organization representing Indian’s participation. Ambedkar in the assembly showed his affirmation for having two different classes: (a) depressed class and (b) oppressed class. These classes were formed for the duration of 10 years. His opinion directs that the stipulated short duration would be debilitating the indifference between the two classes. However, failure came in the hands of the conference. Eventually, the Lothian committee was formed with a view under which every class will be availed with the opportunity to represent itself in the legislature.

#### **Second round-table conference**

Mahatma Gandhi with Ambedkar was first-ever seen in this conference. Gandhi was of the opinion that a change is required in the society as per the willing of the standard, however, Ambedkar was unwilling to confront any misrepresentation. His inclination was more towards availing them with

the opportunity to sufficiently represent to combat the prolonged throes of reverting politics. During the conference, Gandhi strenuously defied against the tantrums for ‘*separate electorate*’<sup>6</sup>

### **Third round-table conference**

Communal award, wherein the community is allowed to elect the competitors by following the voting method in petitioned conjoined electorates, was awarded to the Sikhs, Muslims, depressed class and the oppressed class was made published, in this conference only.

### **The Poona Pact**

Gandhi belabored the award by his fast unto death<sup>7</sup>. However, after a brawling session, an agreement was reached upon. As per the agreement, the depressed class were allotted 147 seats in provincial council as an alternative of 71 granted by Ramsay MacDonald’s award.<sup>8</sup> According to the agreement the depressed class could claim 18% seats in the central council also.

### **The Government of India Act, 1935**

The endorsement took into consideration the vistas viewed by the Poona Pact and round-table conferences. The term ‘depressed class’ was omitted and instead of that ‘Scheduled Castes’<sup>9</sup> was included in this endorsement. According to the Act, *Scheduled Castes means* “castes, race, or tribes or groups within the caste, race & tribe which may appear to His-majesty in council to correspond the person formerly known as the depressed class as his majesty in council may notify.”

Independent India after having its constitution enshrined progressive discrimination by providing job opportunity in public sector as well as proving a chance to try the hands in politics.

## **IV. Purpose of Reservation**

---

<sup>6</sup> Thomas Mathew, *Caste and Class Dynamics- Radical Ambedkarite Praxis* 12 (Rawat Publications, New Delhi, 1992).

<sup>7</sup> Stanley Wolpert, *A New History of India* 319-320 (Oxford University Press, New York, 2000).

<sup>8</sup> Mohammed Ayoob” The Turning Point in 1932: on Dalit Representation” *The Hindu*, available at: <https://www.thehindu.com/opinion/op-ed/the-turning-point-in-1932/article23752117.ece> (last visited on Jan. 31, 2020).

<sup>9</sup> Gazette of India Part I, F 14/17-B 33 (July 7, 1934).

An aphorism by John Rawls “*In order to strengthen a chain, we should start with strengthening its weakest link...*”<sup>10</sup>. The Indian constitution shows the gist of the apothegm of John Rawls. In order to carry out the development in its entirety, the most sunken category i.e. depressed class must be elevated. From the wide perspective of people like Jyotibaphule, Ambedkar, Shahu Maharaj, and many others, elevating depressed or oppressed class is not the only motive behind the reservation, rather, it may be regarded as a segment direct and wider strike on the practice of exploitation.<sup>11</sup>

Taking Pandit Hriday Nath Kunzru ‘s views into account ‘*representation in the legislature is far more pertinent than the representation in the services.*’ According to him, an elected member of a community can raise the voice for the demands on behalf of their community in the legislature.

Furthermore, any injustice against the community can be rectified by the representative of the community. The main essence behind the act of reservation will be otiose without the representation of depressed class in the legislature.<sup>12</sup>

Therefore, considering the Constituent Assembly Debates, it can be outrightly derived that the main purpose behind the reservation is to directly strike the system of exploitation.

## V. Mandal Commission Report

Under the aegis of the then Indira Gandhi government, a commission was set up in 1978 under the chairmanship of B.P. Mandal popularly known as Mandal Commission. Some of the notable works of the commission are:

- 3743 communities were recognized as other backward class communities (OBCs) by the community.

---

<sup>10</sup> Anthony de Crespigny and Kenneth (eds.), *Contemporary Political Philosophers*, (Dodd, Mead and Company, New York, 1975).

<sup>11</sup> The Hindu, The Purpose of Reservation I, available at <https://www.thehindu.com/thehindu/2000/03/24/stories/05242524.htm> (last visited on Jan. 30 2020).

<sup>12</sup> VII, *Constituent Assembly Debates*, 680 (1948).

- Community consists of 52% of the total population of the country.
- The commission had recommended only 27% of the reservation.<sup>13</sup>

## VI. The 103<sup>rd</sup> Amendment Act

By inserting the clauses to article 15<sup>14</sup> and article 16,<sup>15</sup> a new amendment i.e. reservation to the economically weaker section to the constitution created its recognition. The all new change to the article to Article 15 *i.e.*, insertion of a new clause 6 authorizes the state to carry out some special provisions in respect to the economically marginalized section of the society.<sup>16</sup> Taking the wider view, the clause also authorizes the state to bestow reservation in order to bring developments in the educational standard of the nation. However, this rule carries an exception *i.e.*, institutions covered under clause 1 to the article 30<sup>17</sup> of the Constitution of India.

Article 16(6) provides that the state has power to make provisions regarding public employment. However, it is important to take note that the existing rule of reservation will not get hampered in any way because of the insertion of this new rule of reservation i.e. the new rule of reservation will be functioning parallelly or in addition to the existing reservation.<sup>18</sup>

According to the explanation supplied under the Amendment Act, “economic weakness” must be evaluated after taking “family income” and “other indicators of economic disadvantages” into account.

## VII. Purpose of Introducing the New Amendment

After poring over the objects of the enactment, it is observable that the newly amended act or reservation policy has been enacted with an objective of elevation of the economically weaker section of the citizens. According to article 46 of the Constitution of India which provides that the state shall endeavor to elevate the educational and economic interest of the weaker sections of the

---

<sup>13</sup>B.P. Mandal Commission, “Report of the Commission on Backward Class Commission” 66 (Dec. 30, 1980).

<sup>14</sup>The Constitution of India, 1950, Art. 15.

<sup>15</sup>*Id.*, art. 16.

<sup>16</sup>The Constitution (One hundred and third Amendment) Act, art. 2.

<sup>17</sup>*Supra*, note 15, art. 30(1).

<sup>18</sup>*Supra*, note 15, art. 3.

people<sup>19</sup> with special attention. Adhering to the motto of making it a welfare state and achieving the goal provided in the Preamble<sup>20</sup> and to fulfill the requisite of article 46 the enactment has brought to its inception.

### Challenges to the amendment

The amendment has been challenged before the Supreme Court before at its premature age only. It has been a focal point of debate for the last few months. There are various grounds of challenges. However, the grounds which are more pertinent to discuss and understand are:

### The basic structure

The idea behind the concept of reservation is to make sure that the concept of “right to equality” doesn’t appear to be a mythical concept for the category which has always been made to feel inferior, including caste, race and other factors of social structure. Clause 4 to article 16 is viewed as a compelling imposition of restatement of article 16 (1)’s principle of equality of opportunity.<sup>21</sup>

In advance of the amendment, reservation scheme incorporated under the article 15(4)(5) and 16(4) seems to be elevating its beneficiaries *i.e.*, enabling the children from their parent’s generation and furthermore, repeating the same in respect of the later coming generations in order to get unreserved seats. However, this premise is a myth or we can say it is only restricted to black and white, the reality comes out to be different.<sup>22</sup>

The youth in the upcoming generations who would have been the contenders for the unreserved seats might be atrophied by the effects under article 15(6) and article 16(6). It is noteworthy that the newly included sub-article will visit the already upper class of the people. In order to carry out this enactment, the state government ought to define the term “*Economic Disadvantage*”<sup>23</sup> And

---

<sup>19</sup> *Supra*, note 15, art. 46.

<sup>20</sup> The Constitution of India, 1950, Preamble (Justice, Social, Economic and Political).

<sup>21</sup> *State of Kerala v. N.M. Thomas*, AIR 1976 SC 490.

<sup>22</sup> Malavika Prasad, *The Case against 10% quota*, available at: <https://medium.com/@malawdy/the-case-against-the-10-quota-in-the-103rd-amendment-538004fd539d> (last visited on Jan. 31, 2020).

<sup>23</sup> *Supra*, note 15, art. 2 (6).

after that have to provide for the indicators for the same. There must be an assurance from the state with respect to the people who have affirmed the 10% reservation shall not be associated with the pre-categorized category of any class or group of people under article 15(4)(5) and 16(4).<sup>24</sup> Therefore, in furtherance of 10%, the parity of education can be claimed by the people under this scheme. Similarly, in furtherance of 10%, the claim by the well-regarded group might be seen with respect to the reservation in government services under article 16(6). Therefore, the recent brought amendment will certainly enhance the claims made by the upper-caste person, sufficiently educated and moreover, well-represented group, exclusively taking the grounds of individual incapability. Framing the words in other ways, excluding the coming generation exclusively on the account of 10% for someone belonging to the upper-caste is amounting to the violation of Basic structure doctrine.<sup>25</sup>

Hence, the purpose behind the reservation which was highlighted by Pandit Hirday Natha Kunzru in the constituent assembly<sup>26</sup> will get defeated. And thus, violative of the basic structure doctrine.

### **Individual v. Group representation**

Reservation, particularly, is disparate from other special provisions. This concept of reservation was meant and perhaps only useful for the people who were made belonging to an inferior class, race, caste and other social structure which discriminated between human beings without any intelligible differentia. Reservation was objectified on enhancing the representation of the deficient representatives. This deficiency is the outcome of independent factors which are uncontrollable by a human being, like birth. Like in case if a person is born in SC/STs on which they have no control and thus taking birth in that caste or class is not their fault, he has to confront the issues of discrimination for his whole life. A society with such social structure is the reason why such act is seen as discrimination. However, discrimination in society leads to economic drawbacks in no way.

---

<sup>24</sup> *Supra*, note 22.

<sup>25</sup> *Ibid*.

<sup>26</sup> *Supra*, note 13.

Marc Galanter in his work observed that the framer of the 1<sup>st</sup> constitutional amendment had the idea of the essence of economic disadvantage. As he quoted, “*Despite the Prime Minister’s reluctance consider the caste as a ground of any form of discrimination, it was clear what was intended to eradicate was not inequalities only but specifically the social structure.*”<sup>27</sup>

According to Galanter, Nehru was not on the side of enduring any variance on the part of KT Shah, who raised the demand for an amendment to remedy only “economic backwardness” of individuals, as against the backwardness faced in the social and educational field.<sup>28</sup> Since economic backwardness doesn’t take place due to the discrimination in the society.

### *Undemocratic*

The concept of basic structure is generally thrown to the question as to *what* constitutes a representative democracy?<sup>29</sup>(as a free and fair election) and *how* a representative democracy can achieve (one person one vote)<sup>30</sup> or Secret Ballot”.<sup>31</sup> In all these cases the Supreme Court upheld the segment of democracy and thus amounting to be a part of the basic structure. However, it is pertinent to realize that unless the citizens are socially free and undiscriminated against to each other the aforesaid mechanisms cannot function efficiently.

It is worth to understand that, if the democratic government forms within the ambit of the basic structure then the end of democracy also takes place within it *i.e.*, the equal moral and the membership of the citizens of the society. Act of fastening the feet of the well represented, the sole of the constitution again will be pulled-down by the over-generation.<sup>32</sup>

## **VIII. The 50% Ceiling Barrier**

---

<sup>27</sup> Marc Galanter, *Competing Inequalities: Law and Backward classes in India* 625 (Oxford University Press, New Delhi, 1984).

<sup>28</sup> ABC Live, Know the Genesis of 103<sup>rd</sup> Constitutional Amendment, *available at*: <http://abclive.in/103rd-constitutional-amendment/> (last visited on Feb. 2, 2020).

<sup>29</sup> *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299.

<sup>30</sup> *R.C. Poduval v. Union of India*, AIR 1993 SC 1804.

<sup>31</sup> *Kuldip Nayar v. Union of India*, AIR 2006 SC 3127.

<sup>32</sup> Malavika Prasad, “Perverting the Constitution: case against 10% reservation” *The Wire*, *available at*: <https://thewire.in/law/economic-quota-bill-case-against-reservation> (last visited on Feb. 5, 2020).

The clarification regarding the proportion of the reservation for the very 1<sup>st</sup> time soared in *M.R. Balaji v. the State of Mysore*<sup>33</sup> in which the court said that the reservation above 50% would devour the sacrosanct rule under the article 16(1). The similar question was again dealt by the Supreme court in *Indra Sawhney v. Union of India*.<sup>34</sup>

In Ambedkar's view “*the purpose of Article 16(1) and 16(4) is to balance the two-contradictory principle of Equality and Compensatory*”.<sup>35</sup> However, the 50% challenge can be held the strongest in comparison to other challenges.

### **Arguments in favour of 10% reservation criteria**

It is noteworthy that amendment regarding 10% has the capability to outlast against the challenges which are mentioned above:

#### **Basic structure**

In dealing the case of *Kesavananda Bharati*,<sup>36</sup> the court restricted itself to mention “modify”, “tinker”, or “change”, the court only stated that any amendment brought to the constitution must not be contravening the basic structure. Moreover, in *Nagraj*<sup>37</sup> the court widened the scope and provided a “width and identity” test, under which it must be established that the contortion of the constitution has been done due to the amendment to the Constitution.

Interestingly, many of the cases got the opportunity to take a stand on the topic of Basic structure. For instance, in *Nagraj*<sup>38</sup> case, the Supreme Court granted the redesigning of article 16 after that ceiling of 50% would probably be broken. Even though putting basic structure into application, the Supreme Court has settled down upon the bayonet instead of a bastinado, as in *Raj Narain*<sup>39</sup> and *Minerva Mills*<sup>40</sup> the two cases that begrimed the white pages of the Supreme Court's history,

---

<sup>33</sup> *M.R Balaji v. State of Mysore*, AIR 1963 SC 649.

<sup>34</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

<sup>35</sup> *Supra*, note 12, speech by B.R. Ambedkar, 701 (2009).

<sup>36</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>37</sup> *M. Nagraj v. Union of India* (2006) 8 SCC 212.

<sup>38</sup> *Ibid*.

<sup>39</sup> *Supra* note 29.

<sup>40</sup> *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

interestingly both during the reign of Indira Gandhi government. Ultimately, the amendment brought 10% reservation, which is not prohibited by the current legislation under article 15 and 16. Consequently, an objection on the ground of violation of basic structure to amendment cannot even be sought at this juncture of time as it can be sought after some action or enactment done to some laws by the parliament for the implementation of the amendment.<sup>41</sup>

### **The ceiling of 50%**

In the wake of *Balaji* case, it has been a matter of faith that the reservation cannot exceed the cap of 50%. In the aforesaid case, the apex court stated, “Article 16(4) is not an exception to 16(1) instead of a facet of it”.<sup>42</sup> The same was found out in the case of *Indira Sawhney*.<sup>43</sup> Although, none is disquiet towards the challenge against the basic structure doctrine, rather, they are associated with the law and subordinate legislation, respectively.

Now the most pertinent question referred here is that *if the landmark case’s tag with respect to the concerned issue is given to the two cases, and are not owing to the basic structure then whether the 50% rule is a portion of the basic structure*. The apex court while dealing with the case of *Nagraj* was on the view that the ceiling of 50%, the notion about the creamy layer, and the reasons such as backwardness, inadequacy all plays a crucial role in the constitution and without these factors, the sole motive behind article 16 *i.e.*, equal opportunity to everyone can’t reach its goal.<sup>44</sup> Although the presented argument stands only on the plinth of the speech of Ambedkar that article 16 is objectified on maintaining between the contending- principle of equality and principle of compensation.

Therefore, a cessation can be drawn that the 50% rule came into existence within the purview of article 16. Thus, the claim of contravention of the basic structure doctrine by the amendment which allegedly brings a change in the functioning of the particular article, is not justified. There are two grounds on which the above premises are being supported. In the guise of first ground, the basic

---

<sup>41</sup> *Infra*, note 44.

<sup>42</sup> *Supra*, note at 33.

<sup>43</sup> *Supra*, note at 35.

<sup>44</sup> Piyush, *Constitutional validity of 10% economic based reservation*, submitted to West Bengal National University of Juridical Science at 3<sup>rd</sup> D.D. Basu National essay writing competition (Feb. 2019).

structure doctrine being an imminent component of a particular provision under the constitution can't be truncated to a palpable articulation of values.<sup>45</sup> It is on the discretion of the parliament whether to stand by or to get departed while having its constitutional power from the constitutional settlement encrypted by the constituent assembly under article 16.<sup>46</sup>

Getting on the 2<sup>nd</sup> ground, the concept of “balancing” is not the only prudent elucidation available today. Considering the majority of opinions in *N.M. Thomas*, article 16(4) can't be excluded from the ambit of article 16(1), but a facet of it, and thus it is unambiguous that the rule *per se* has no base to stand on as that was denied on 16(4) assuming to be an exception to 16(1).<sup>47</sup>

### **Individuals v. Groups**

The recently brought amendment enhances the fundamental of reservation which is primarily motivated towards the individual, which contravenes the principles enshrined under articles 14, 15 and 16. The principles under these articles show their concern towards the group representation for institutional and structural disadvantage. In the guise of previous discussion, the Indian constitutional jurisprudence is concerned with the issue of having one's access to the resources and one being availed with opportunity and social mobility is adjudged by one's group recognition and it is noteworthy that the identity finds itself around the caste.<sup>48</sup>

However, in the instant case, the basic structure has no role in making parliament stick to the concepts of equality and social justice.<sup>49</sup> It doesn't even provide any mandate for clean, cogent and unequivocal drafting of the legislation. The only thing in this case to be focused on that equality is getting destroyed or hampered in no way. In the instant case, it can be said that this amendment does not violate the basic structure from any point of reference.

### **Arbitrariness**

---

<sup>45</sup> *Id.* at 45.

<sup>46</sup> Gautam Bhatia, *Is the 103<sup>rd</sup> Constitutional amendment unconstitutional*, available at <https://indconlawphil.wordpress.com/2019/01/13/is-the-103rd-amendment-unconstitutional/> (last visited on Feb. 13, 2019).

<sup>47</sup> *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.

<sup>48</sup> *Supra*, note 45.

<sup>49</sup> *Ibid.*

Lastly, the reservation amendment is claimed as an act of arbitrariness. Oppositions sought against relating the family income criteria with the purpose of the reservation. Many people are of the opinion that reservation in no way aims to exterminate poverty. It is all about eradicating or removing the social and institutional impediment through sufficient reservation. However, while dealing with the case of *R. Chitrlekha v. the State of Mysore*,<sup>50</sup> the Supreme Court of India had in very clearly said that discrimination by social institution is possible after carrying poverty into action and thus in order to provide the social justice the reservation on the basis of economic backwardness is justified.

Though the law will survive the challenge, the implementation is a big challenge to the government. The method of implementation of such laws can be struck while raising the issue of arbitrariness.

### IX. Conclusion

Every legal subject matter consists of two facets *i.e.*, the strong and the weak. For some reservation on the basis of economic backwardness is an outstanding move, on the other hand many stand against it having the bayonet of basic structure in their hand. The pertinent complexity with the basic structure doctrine is that it is the judge's prerogative; it has non-concrete and unspecified terms. Basic structure solely urges the present amendment to adhere to the principle of equality. Drawing a conclusion that the economic reservation is deviating from the principle of equality and social justice as interpreted in India nowadays.

Within the argument that reservation is not a mechanism to eradicate poverty. As it was clearly stated by the Supreme Court in the case of *Chitrlekha*<sup>51</sup> that the economic backwardness can be reason of discrimination in the society and for ensuring the social justice reservation can be provided. Which was further ascertained in *K.S. Jayasree v. the State of Kerela*.<sup>52</sup>

---

<sup>50</sup>*R. Chitrlekha v. State of Mysore* (1964) 6 S.C.R. 368.

<sup>51</sup>*Ibid.*

<sup>52</sup> (1976) 1 S.C.R 194.

Ultimately, Ambedkar threw a question that “*what is backward*”? replying to this pertinent question, he said: “*A Backward Community is a community which is backward in the opinion of the government*”<sup>53</sup>.

Thus, taking the author's opinion into account, the new amendment is capable of confronting the challenges but most importantly the state should take note of its implementation. The course of action for implementation may stand against it and be brought to its invalidity. Grounds for being the amendment contravening to the basic structure can be taken for any glitch in the implementation process. Otherwise in order to protect social and economic justice, amendment is a pioneer.<sup>54</sup>

---

<sup>53</sup>CONSTITUENT ASSEMBLY DEBATES, Nov. 30, 1948 *speech by B.R. AMBEDKAR, available at* [https://cadindia.clpr.org.in/constitution\\_assembly\\_debates/volume/7/1948-11-30#7.63.88](https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-30#7.63.88) (last visited on Feb. 10, 2020).

<sup>54</sup> *Supra*, note at 45.