BLOGS

The Constitution (One Hundred and Third Amendment) Act, 2019: CLAT Explainer

ANNA PRIYA · 31 Mar 2022

INTRODUCTION

This recent Amendment [i], that made way for reservation for “economically weaker sections” (EWS), has been a subject of great debate—and now, has also come under judicial scrutiny. The Constitution (One Hundred and Third Amendment) Act, 2019 has been made to benefit **the EWS only**, *other than* the socially and educationally backward sections that have been the beneficiaries of reservations, ever since the beginning of our Constitutional history.

AMENDMENTS AND ADDITIONS

- The Amendment amended the Articles 15 and 16 of the Constitution, and inserted clauses 15(6) and 16(6) in the respective provisions.
- The Amendment permitted the State to enact laws for the “advancement of any economically weaker sections of citizens other than the classes mentioned (in the previous clauses)”.
- While Article 15(6)(a) talks about permitting the enactment of special provisions of any kind, Article 15(6)(b) refers specifically to “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”.
- Article 16(6) calls for EWS reservation in cases of “appointments or posts”.
- The upper limit for this reservation is listed at 10% by the Act.

JUDICIAL RESPONSE

- A number of petitions have challenged the constitutional validity of this Amendment Act. The main grounds of this challenge include:

1. Reservation cannot be allowed on solely economic criteria.
2. Exclusion of SCs/STs and OBCs from reservation isn’t permissible.

3. Breach of the 50% limit of reservation cannot be allowed.
4. Imposing reservations on unaided institutions is manifestly arbitrary.
5. The Amending Act violates the equality code of the Constitution.

- The apex Court briefly heard the matter in 2019 [March-July, order made in August].
- The Court considered whether the matter constituted/involved substantial questions of law, and after preliminary perusal observed, "It is clear from the language of Article 145(3) of the Constitution and Order XXXVIII Rule 1(1) of the Supreme Court Rules, 2013, the matters which involve substantial questions of law as to interpretation of constitutional provisions they are required to be heard a Bench of five Judges."[ii] Concluding that such a situation existed, it identified the following issues, and referred to matter to a Bench of 5 judges.

1. Whether the amending Act violated the "basic structure" of the Constitution?
2. Whether reservation to EWS constituted an exception to the 50% reservation limit?

- The matter is currently pending.

ADDITIONAL SUGGESTED READINGS

For a better understanding of the legal questions that remain disputed, the following readings are crucial:

1. R. Balaji v. State of Mysore[iii]
2. Indira Sawhney Union of India[iv]

Click here to read more on current legal developments for CLAT.

[i] Full text, *available at* https://egazette.nic.in/WriteReadData/2019/195175.pdf (last accessed 04.12.2021)

[ii] *Janhit Abhiyan* v. *Union of India*, Writ Petition (C) NO.55 of 2019, decided on 05.08.2021 (Supreme Court)

[iii] (1963) Supp. 1 SCR 439

[iv] 1992 Supp. (3) SCC 217