Charity, Not Parity

Upholding the EWS reservations exposes the Supreme Court's limited understanding of social justice and equality.

Alok Prasanna Kumar writes:

Reservations, Justice Chinnappa Reddy famously said in *K C Vasanth Kumar and Another v State of Karnataka* (1985), were intended for parity, not charity. The rest of his judgment is a lucid and evocative summation of the social justice goals of the scheme of reservations in India. It remains a signpost that the judiciary, long resistant to such ideas of social justice, had come to accept what politicians and wider Indian society understood about the need for vertical reservations in jobs and education to create a truly equal India.

The Supreme Court's judgment in *Janhit Abhiyan v Union of India* (2022) upholding the 103rd amendment to the Constitution in the context of reservations for economically weaker section (EWS) is a reversal of the social justice goals of vertical reservations in India. By upholding the validity of the 103rd amendment, the Court has effectively endorsed the idea that such reservations are intended for charity and not for parity. The three judges in the majority, each delivered their own judgments, agreeing that the 103rd amendment was not in any way against the basic structure of the Constitution. Two of them, Justices Bela Trivedi and Burjor Pardiwala, chose to add in their distaste for the whole scheme of reservations, declaring their hope that it will all end soon and magically result in a casteless society.

The three judges in the majority agree that economic criteria can be used to provide vertical reservations in jobs and educational seats (whether in government or private educational institutions), that there is nothing objectionable about excluding the Scheduled Caste (SC)/Scheduled Tribe (ST)/Other Backward Classes (OBC) and that the 50% ceiling on vertical reservations is not a basic feature of the Constitution. While the last finding is unobjectionable, one cannot help but wonder if the same generosity will be shown by the Court towards reservations for SC/ST/OBC communities that go beyond 50%.

The dissenting judgment, authored by Justice Ravindra Bhat (on behalf of himself and Chief Justice of India U U Lalit), also does not per se deny the possibility that reservations based on economic criteria are constitutionally valid. However, they do go on to hold the 103rd amendment unconstitutional for having excluded the SC/ST/OBC communities from the ambit of EWS reservation. This finding is based on a much more nuanced reading of the Constitution's equality code—Articles 14 to 17—and the positive mandate they contain to ensure substantive equality in society. The exclusion of SC/ST/OBC communities from EWS reservations, according to the dissenting opinion, is contrary to this equality code inasmuch as it draws an artificial boundary between similarly placed deprived persons only on the basis of caste. To the extent that it arrives at this finding, one can say that the minority judgment is on more sound constitutional footing than the three majority judgments.

Yet, for all their differences, the majority and the minority judgments all seem to approach the issue of EWS reservations from the same place of a limited understanding of reservations in ensuring social justice.

Even the dissenting opinion's reading of equality does not fully capture the essential problem with the 103rd amendment. Even if the 103rd amendment had included SCs/STs/OBCs into the ambit of EWS reservations and even if a practical solution was found to harmonise with the existing SC/ST/OBC reservations, it is unlikely that such inclusion would have necessarily resulted in any economically deprived person from the SC/ST/OBC communities being able to avail of the reservations. This is because the EWS candidates from these communities would still be competing with a social disadvantage compared to their so-called "upper caste" peers. Equating the two and saying that both should be equally entitled to reservations for being "economically weaker sections" is the kind of analysis that is devoid of the true lived experience of either poverty or social discrimination.

The unanimous acceptance that economic criteria are a sufficient basis for reservations in jobs and educational seats shows the judges' poor understanding of the purpose of reservations. Reservations are seen as just another poverty alleviation scheme to be handed out to the needy without understanding the deeper structural inequalities that result in such poverty in the first place. Social justice, or the need to create a truly casteless society, hardly figures in any of the judgments. Even the idea of "castelessness," as mentioned in Justice Trivedi's judgment, is a purely "upper caste" conception of what castelessness means—one where the most visible markers of caste are denied or ignored but the deeper advantages and disadvantages continue to persist and get entrenched.

This approach of reservations as charity, not parity, has implications beyond the validity of EWS reservations. The approach has informed recent judgments in the context of reservations in promotions, recruitment of Adivasi teachers in tribal areas, and could also be the basis for creating a problematic precedent in the context of subclassification within reserved categories.

Alok Prasanna Kumar (*alok.prasanna@vidhilegalpolicy.in*) is a senior resident fellow at Vidhi Centre for Legal Policy, and is based in Bengaluru.