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1. The 10% quota for economically weaker sections faces a challenge in the Supreme Court on grounds of violating the ‘basic structure’ of Constitution.

- What is the basic structure of Indian constitution?
- How will the court decide if economic reservation violates basic structure?
- What are Clause 6 to ARTICLE 15 & 16?
- What context does basic structure have in reservation?

GS paper 2 (Welfare Schemes for Vulnerable Sections of the population by the Centre and States and the performance of these schemes)

In this video, you can find detailed answers for all the above questions.

The above article has been retrieved from:

Faizan

Mustafa. (2019, January , 16). An Expert Explains: New quota and basic structure. Indian Express. Retrieved from <https://indianexpress.com/article/explained/10-percent-quota-reservation-economically-weaker-section-supreme-court-5538470/>

What is the context about?

- In the 124th Constitutional Amendment recently passed by both Houses of Parliament, providing for 10% reservation to economically weaker sections, the newly

inserted Clause 6 in Article 16 enables the state to make such a provision.

- ❑ Because of this, the government is confident that the Supreme Court is unlikely to find such reservation unconstitutional and that the amendment will be upheld as consistent with the principle of equality and non-discrimination.

What is the basic structure of Indian constitution?

- ❑ The court did not define this, and only listed a few principles — federalism, secularism, democracy — as being part of basic structure. Since then, the court has been adding new features to the concept of basic structure.
- ❑ In subsequent years, courts extended the doctrine even to ordinary legislation and executive actions.
- ❑ The doctrine of basic structure is not part of the text of the Constitution, and some experts even call it undemocratic as unelected judges can strike down a constitutional amendment.
- ❑ For instance “federalism” is not mentioned in the text but has been consistently included within basic structure. Similarly “secularism” was not in the text until 1976; but in 1973 it had been included within basic structure.

How will the court decide if economic reservation violates basic structure?

To determine this, the Supreme Court has to examine the principles on which affirmative action is based.

This would include examination of four issues —

- (i) quantitative limitations such as violation of the 50% ceiling for all reservations taken together;
- (ii) exclusion of creamy layer or qualitative exclusion;
- (iii) compelling reasons such as backwardness of the economically weaker sections for whom this reservation has been made;
- (iv) that overall administrative efficiency is not obliterated by the new reservation.

What are Clause 6 to ARTICLE 15 & 16?

Clause 6 to ARTICLE 15:

It allows the Government to give reservation for the economically weaker sections of society in higher educational institutions including private ones, whether they are aided or not by the State. Minority educational institutions are exempted.

Clause 6 to ARTICLE 16:

- ✓ It provides quota for economically deprived sections in the initial appointment in Government services.
- ✓ It is amendment to fundamental right coming under Part III of the Constitution and it does not require ratification accordingly.

What context does basic structure have in reservation?

- ❑ The 124th Amendment makes a departure by extending reservation to the economically disadvantaged.
- ❑ Article 15(4), inserted by the First Amendment in 1951, enables the state to make special provisions for socially and educationally backward classes; Article 16(4) permits reservation for any backward class if it is not adequately represented in services under the state.
- ❑ Thus, reservation is not a right but, if granted, it will not be considered a violation of the right to equality.