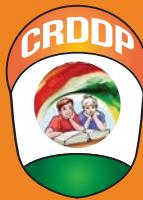




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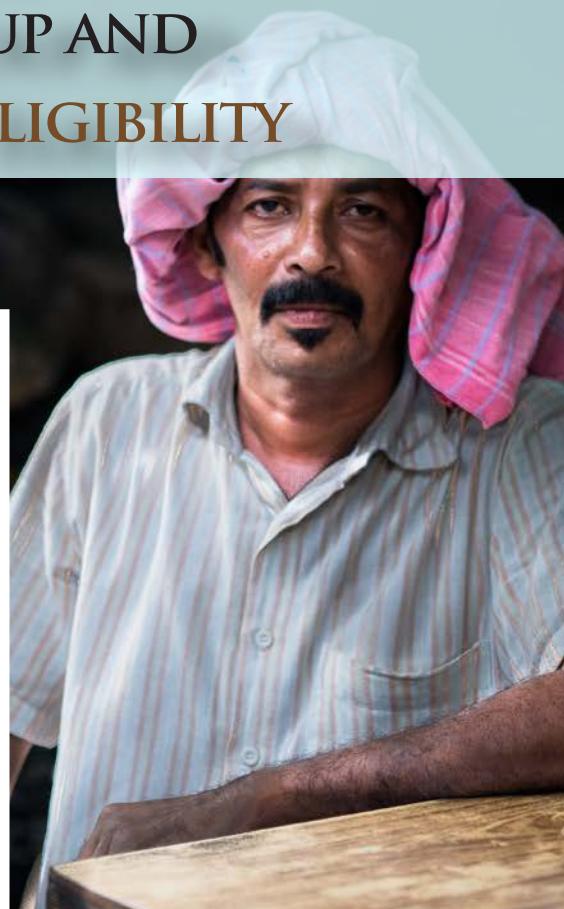
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ECONOMICALLY WEAKER SECTION QUOTA IN INDIA: REALISTIC TARGET GROUP AND OBJECTIVE CRITERIA FOR ELIGIBILITY



Abusaleh Shariff
US-India Policy Institute, Washington DC
ashariff@usindiapolicy.org

&
M. Mohsin Alam Bhat

May 5, 2019



Abusaleh Shariff is Executive Director and Chief Scholar at the US-India Policy Institute, Washington DC (since 2012) and President, Centre for Research and Debates in Development Policy, New Delhi. He Was a Chief Economist at the National Council of Applied Economic Research, New Delhi (1994- 2012). He also worked as Senior Research Fellow at the Food Policy Research Institute, Washington D C 2008 -10. He was advisor (under a committee setting) to the Indian Prime Minister during 2004-6 and the Ministry of Home Affairs, Government of India during 2010-11 in the areas of inter-state relations and inclusive development policy reforms. He was also nominated to the 13th (Indian) Finance Commission by the Finance Ministry, Government of India.

Shariff has served as advisor to the Indian Prime Minister and is the main author of the now well-known Sachar Committee Report, the Home Minister of India, the Planning Commission and similar high-level policy institutions. His research focus includes poverty and inequality, human development, gender, labor markets and demographic dividends, social sector budgetary analysis, micro-impact of economic reforms and review of safety net public programs. Shariff is a trained demographer and econometrician. He has extensive exposure through conducting large scale sample surveys and semi-structured semi-anthropological qualitative studies. He is a development economist with specialization in human development, poverty analysis and social protection. He has worked mostly in India, but also in Africa South of the Sahara, Bangladesh, Pakistan, Maldives, Sudan, Togo, Uganda, South Asia and Central Asia.

Shariff was selected as one of the India Today Magazine 'faces of millennium (Economist)' in January 2000 issue; and one of the 25 identified in the Outlook Magazine's Alternative Power List (23rd April 2007 issue) as a recognition of my ability to influence public policy in India. He has published 8 books and over 50 research articles in refereed journals and seminar proceedings. He is a panellist on various Indian TV channels and has been interviewed and quoted in magazines of high repute such as the Times of India, Hindustan Times, New York Times, The Economist, Financial Times of London, La Monde, Paris, Washington Post, India Today and Outlook.

Shariff has an M. A degree in Economics (1993) from Bangalore University and a Ph. D in Demography and Development from the Australian National University, Canberra (1986). He undertook post-doctoral research in areas of econometrics, household economics, labor markets and demographic dividends at Yale Economic Growth Center, New Haven, USA (1991-92). Shariff's recent book, published by the Oxford University Press is titled 'Institutionalizing Constitutional Rights in India: Post-Sachar Committee Scenario'.

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Economically Weaker Section Quota in India: Realistic Target Group and Objective Criteria for Eligibility

Abusaleh Shariff1 and M. Mohsin Alam Bhat
May 5th 2019

Abstract

The Indian parliament introduced a policy of providing quotas or reservations to 'economically weaker sections' (or EWS) through the Constitution (One Hundred and Twenty-Fourth Amendment) Bill, 2019. The government also announced that the category will be determined on income criteria. This paper critiques the manner of conceptualizing the EWS category. The authors argue that in order to meet the constitutional standards of equality and social justice, the EWS category should be defined so that the "weakness" it seeks to address is of a compelling and trans-generational character. Purely income-based criteria fail to do this because they are neither practicable nor do they accurately reflect the entrenched economic disadvantage. The authors propose an alternative model that can work as an EWS index and recommend the creation of a professional commission to further develop the criteria.

Economically Weaker Section Quota in India: Realistic Target Group and Objective Criteria for Eligibility

Abusaleh Shariff1 and M. Mohsin Alam Bhat

May 5th 2019

Introduction

The passing of the 124th constitutional amendment that permits the state to provide a quota for the Economically Weaker Sections (EWS) category has reignited the debate on the desirability and legality of reservations in India. While EWS reservation appears to be driven by political calculations as much as any previous reservation policy has, it has drawn a fierce critique owing to it being ambiguous and difficult to implement.

It may be sometimes forgotten, but the OBC category or more precisely the “other socially and educationally backward classes” category appeared to suffer from similar ambiguity, in so far as it took four decades for the debate to be settled. In fact, during the early decades of independent India, the central government was inclined to define OBCs in terms of economic backwardness without reference to caste or community.

The Mandal Commission was the most forceful rejection of the purely economic criteria for defining OBCs. The Commission adopted a selection of indicators, with the greatest emphasis on “social backwardness” predominantly signified by caste status, followed by educational and economic backwardness, in that order. The Supreme Court in the Indra Sawhney case endorsed this methodology and in doing so laid down the constitutional standards that all future reservations policies must follow.

Constitutional Standard

The Supreme Court interpreted reservations as an expression of equality within the constitutional mandate of social justice. Reservations were not meant as ordinary welfare measures but for promoting substantive equality of opportunity and providing a share in power to the classes that had been excluded for generations. In the view of the court, caste-based reservations were particularly acceptable because caste reflected a deeply entrenched form of marginalisation and exclusion. It also held that the identification of beneficiaries must be based on “objective criteria” that are based on rigorous empirical inquiry.

If the EWS reservation is to meet the constitutional test, its

Critique of purely income standards

Data on direct income is rare and not public information across India. Using direct income measure is impractical in any public policy because only a fraction of the labour force file income tax (positive) returns with the government. For example, only 27 million from out of 327 million labour force paid a certain amount of income tax in India during

implementation must also be in line with these requirements. The government cannot surpass the selection of empirically well-founded criteria for “economic weakness.” This has to be done by setting up a professional commission on the lines of what has been done consistently with the backward classes.

The economic weakness cannot be merely relative weakness to the other sections, but should be of a compelling character. Reservations for the economically weaker sections is justified if the policy aims to dismantle trans-generational and entrenched forms of economic disadvantage that cannot be adequately addressed by ordinary welfare measures.

2018. This is just 8.3 per cent of the total labour force and most likely belongs to the organized sector employment including government jobs and services.

The rupees 8 lakhs income cut-off announced in the 124th amendment bill appears to be too high. It is not clear whether this amount is meant to be a post or pre-taxed amount. If it is post tax, then individuals earning up to 12

lakhs per annum, that is rupees one lakh per month, will also be within the qualification. This will enable practically all individuals and households to be included in the category. This income prescription standard practically includes the whole country, and hence cannot be a standard to identify “weakness” of a compelling character.

Further, income standard is an inefficient way to identify

trans-generational and entrenched disadvantage that households or individuals face. Purely income standards may indicate income poverty, but do not necessarily indicate factors that maintain low standards of life, barriers in participation or a whole range of other crucial standards that reflect compelling economic weakness.

The Way Forward and Alternatives:

There are two essential issues that deserve utmost urgent attention:

(a) One needs to identify the group of people who will be covered under this quota. Who are they? What caste/class/ religious identities?

(b) What criteria or economic indicators should be chosen that can reflect compelling marginalization. That ordinary welfare measures cannot address and that comes in the way of equal participation and opportunity?

The WHO of the 10 per cent Economically Weaker Section Quota:

To understand the identities of groups of people in terms of caste / class / religion, one needs to look at all types of quotas that have had legal backing so far. The table below brings together data from various sources to comprehensively look at the quota-reservations (QRs) in India. Note that there is no single source of data that can be used to address the structure of QRs in India.

The Constitution provides quotas to SCs and STs irrespective of economic condition, assuming their extreme social backwardness. More recently, this was continued through the 77th and 85th amendments to the Indian constitution, where SCs and STs were granted quotas in promotions. In two cases of *Nagaraj v. Union of India* and *Jarnail Singh v. Lachhmi Gupta*, the Supreme Court of India extended the ‘creamy layer’ doctrine to these categories also, bringing about a change in the regime.

The second level of quota was accorded to the Other Backward Classes (OBCs) where the size of quota was decided to be one-half of their share in population. The Mandal commission identified communities or classes which are about 54 per cent of all population of the country. The OBCs were accorded 27 per cent of the quota.

The 124th constitutional amendment has reserved a quota of 10 per cent for the Economically Weaker Sections (EWSs); and those eligible are the residual population excluding the SCs, STs and the OBCs. Thus, all the high caste Hindus and Sikhs, all Muslims and Christians who are not listed as the STs and the OBCs, non-SC Buddhists and all Zoroastrians and Jains will be eligible under this quota provided they meet a certain ‘economic criteria’.

Let us review the rare data on the distribution of ‘state government’ jobs according to the caste / class and religious identities. These data are hard to come by on a regular basis but the Prime Minister’s High-Level Committee-2006 did collect such data in 2005-6, which are presented in the last two columns in the Statement I.

The state government jobs are in two categories – higher and lower levels. The state governments’ group A and B jobs are considered higher levels, since these are gazette posts involved in decision making, and groups C and D jobs are considered lower level. Employment data with social identities were available from the 63,402 recruitments made during five years previous to the date of data collection.

The total share of SCs/STs in the populations was 25.2 percent, while their total share in the quota is 22.5. Their actual employment in the higher-level jobs was 20.9 and the lower-level jobs were 35.2 per cent.

The share for the OBCs (only Hindu) for groups A, B, C and D was 42.8, 27.0, 22.7 and 29.0 percent respectively. Note that a certain share of Muslims is included in the OBC category, but no separate data about their employment are available.

The residual Hindu category that can be classified as ‘general’, which accounts for all ‘high caste’ Hindus constitutes 12.5 per cent of the Indian population. Their shares in employment are 45.3 per cent in the higher level and 33.9 per cent in the lower level jobs.

If Muslims (irrespective of their OBC status) together are considered, their share in population is 14.2 per cent, but only 3.2 per cent in the higher-level jobs and 1.6 per cent in lower-level jobs. However, the other minorities (Christians, Sikhs, Buddhists and Jains), which cumulatively have a population of about 5.4 per cent, have good representation in the higher-level jobs at 8 per cent.

Given the above type of distribution of the employment shares it appears that most of the 10 per cent of EWS quota should be assigned to Muslims so that they catch up with their participation in the governance and in higher level education

Statement I:National Scenario: Central Government / University Level Quota-Reservations (QRs) (quotas differ amongst states based on state level population)

Caste / Religion & Social Identity	Share in Total All India Population*	Share in Quota Reservation	Legal Status of QRs	**Shares of Employment in State Govts.	
				Higher Level (Group A & B)	Lower Level (Group C & D)
SCs (Hindus)	16.6	15.0	77th and 85th Amendment / all SC community socially deprived and eligible irrespective of economic status	20.9	35.2
STs (Mostly Hindus)	8.6	7.5	77th and 85th Amendment / all ST community socially deprived and eligible irrespective of economic status		
OBCs (Hindus) (Muslims 5.8)	42.8	27.0	Mandal based / Socially deprived Class and creamy layer applied to OBC quota	22.7	29.0
High Caste (Hindus)	12.5	10.0	Those with household income below Rs.800,000 / land owners excluded are Muslims part of this quota / not clear since this quota is meant to high castes and caste exists (as per the law) only amongst the Hindus	45.3	33.9
Muslims	14.2 (8.5 Per cent belong to general category which are intended to be part of new EWS-10 percent quota announced in 2019)	Muslims must at least get 42 per cent share in the 10 per cent EWSs quota based on their share in population and higher incidence of poverty	Practically all Muslims are excluded from the Quota system in India: ----- A small number of trade-based communities included in the OBCs. A small number of Tribal identities are included in the STs quota, but the actual benefices are minuscule. The Muslims are excluded from the SCs categorization and quota.	3.2	1.6
Christians	2.2		Situation for Christians is similar to Muslims stated above		
Sikhs	1.6		??		
Buddhist			--		
Jain	1.4		--		

* Author's estimation using the Census of India 2011 and Multiple NSSO data.

* Government of India 2006 – Social, Economic and Educational Status of the Muslim Community of India; Prime Minister's High-Level Committee, Cabinet Secretariat. Data extracted from Chapter 9 – 'Government Employment and Programs', Page 174.

Qualifying Objective Criteria and Economically Weaker Section Quota-Indicators:

The second issue that confronts the 10 per cent EWS quota is how to identify qualifying individuals/households from the non-SCs/STs and non-OBCs across India. The 124th constitutional amendment prescribes income and asset ownership criteria. However, given the difficulty in assessing personal incomes in India, along with a culture of binami-ownership and of joint ownership of land holding, eligibility based on these criteria will be erroneous in the long term.

In the following, there is a proposition of creating an economic index that can be used as an alternative. Further, other indicators such as social and educational deprivations can also be incorporated into an index of backwardness that

will be akin to Mandal Commission's criteria while incorporating changes in the relative importance of the factors.

In the following statements, two types of indicators / characteristics are listed that can be the objective criteria for assessing the 'EWS' status. All the listed indicators have no relevance to any caste, class or religious identities. The first set of indicators are automatic exclusions which are presented in Statement II. Statement III lists indicators that will help generate a composite index and a ranking will facilitate selection to the EWS quota. This index in conjunction with the rankings of education and skills, and/or a ranking of the written exam will become an unbiased method of selecting candidates for the EWS quota.

Statement II: List of indicators for automatic exclusion from EWS eligibility

Sr. No.	Indicators
1	Households who own 2 or more hectares of unirrigated and 1 or more hectare of irrigated cultivable land
2	Households who own a living quarters of the area above 1000 sq feet in Class I cities and 1500 sq feet in other towns
3	Households who own an Automobile (Car) for self-use
4	Households who own a fire arm.
5	Households who are Income Tax Payers
6	Households which have undertaken a Vacation aboard during last 3 years.
7	Households which have at least one member who has Group A or Group B job with Central, State government or in a PSU

Statement III List of Characteristics / Indicators used for Computing a Composite Index of EWS

Sr. No.	EWS Characteristics that qualify for Indexing	Value
1	Individuals / households located in notified slums in a city / urban outback	1
2	Individuals / households whose primary income source is manual labour and household level artisanship both in rural and urban environment. All those who have signed up NREGA qualify for such eligibility	1
3	Belong to female headed households	1
4	Applicants whose both parents have education less than matriculation	1
5	Applicants who belong to rural areas or to class C and D towns	1
6	Applicants from the states of Uttar Pradesh, Bihar, West Bengal, Orissa, Jharkhand, Madhya Pradesh, Rajasthan, Assam, Jammu and Kashmir, All North- Eastern State	1
7	Applicants belong to migrant households from the states of Uttar Pradesh, Bihar, West Bengal, Orissa, Jharkhand, Madhya Pradesh, Rajasthan, Assam, Jammu and Kashmir, All North- Eastern States.	1

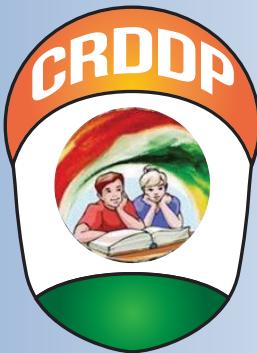
Conclusion:

The 124th Amendment Act allocating 10 per EWS quota is now a reality. However, one needs to establish an academically sound and empirically supported methodology to identify those who qualify for this quota. The authors of this article have tried to develop such a

methodology after careful review of data availability as well as easy to generate indicators should that becomes necessary. The authors take this opportunity to make a case that the national government must form a commission/committee of experts to vet such a methodology that can be used by the governments, institutions and legal bodies in a fair implementation of the quota.

Centre for Research and Debates in Development Policy (CRDDP)

CRDDP is a New Delhi based research organization registered under the Indian Societies Registration Act, XXI of 1860. The CRDDP Registration Number is: District East/Society/116/2012 of 9th May 2012. Dr. Abusaleh Shariff is its founder President and his brief profile can be found on the back cover.



Registered Office:

A-702, Saraswati Gr. Housing Ltd,
Plot 97, I P. Extn, Patparganj,
New Delhi -110092, India
PH: +91 11 2223 2515

Day-Working Office:

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PH: +91 11 27316847
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Dr. Abusaleh Shariff

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Chief Scholar of the US-India Policy Institute, Washington DC. He is the founder president of the CRDDP. He was Senior Fellow/Chief Economist at the National Council of Applied Economic Research, New Delhi for over 15 years, demitted office in 2012. Worked as Senior Research Fellow at the Int. Food Policy Research Institute, Washington DC 2008-10. He was nominated by the Prime Minister of India as member-secretary of High Level Committee during 2004-6 to review inclusive growth policies favoring the minorities. Was also on the Home Minister's Committee on Andhra Pradesh (Telangana). He completed Ph. D from the Australian National University, Canberra and post-doctoral research at Yale Economic Growth Center, New Haven, USA during 1991-02. His research focus includes poverty and inequality, human development, labor markets and demographic dividends, social sector budgetary analysis, micro-impact of economic reforms and review of safety net public programs. He has authored/edited 11 books mostly published by Oxford University Press and published over 50 articles in refereed books mostly published by Oxford University Press and published over 50 articles in refereed journals of international /national repute. He was one of the India Today Magazine 'faces of millennium (Economist)' in January 2000 issue; and one of the 25 in the Outlook Magazine's Alternative Power List (23rd April, 2007 issue).



Syed Zameer Pasha, I.A.S. (Rt)

Executive Director

An accomplished I. A. S officer for 34 years, he served as the Secretary to Government of Karnataka, Department of Minority Welfare, Haj and Wakf. Earlier he served as the Secretary to Govt. Department of Personnel and Administrative Reforms; Managing Director (MD) of Bangalore Metropolitan Transport Corporation (BMTC); Commissioner for Agricultural Marketing; Deputy Commissioner of Kolar district and Chief Executive Officer of Zila Panchayat of Bangalore Rural District.

He is the recipient of 16 awards as the MD, including two international. He was awarded 'Namma Bengaluru' Award (2012) for outstanding contribution to the Indian society. He is credited with setting up the Farmers Bazaars ('Raithara Santhe') ensuring fair price for all in Karnataka. He revolutionized the Agricultural Produce Marketing Committees (APMCs) through computerization and information technology. He is also on record for being instrumental in fostering communal harmony in the district of Kolar when he was the D.C.



B. L. Joshi

Chief Research Officer

He studied M. Sc (Statistics) Punjabi University, Patiala and currently is the Chief Executive Officer of the Centre for Research and Debates in Development Policy. Earlier positions held: a) Senior consultant- Committee for the Consultation on the Situation of Andhra Pradesh (CCSAP), Ministry of home Affairs, Government of India (2010), b) Senior Economist- National Council of Applied Economic Research (NCAER), Parisila Bhawan, 11, I.P. Estate, New Delhi-110002 (1971- 2005), c) Consultant- University of Maryland USA (2006-2008) and d) Chairperson- Knowledge Awareness Research And Management (2005 onwards).

He has over 40 years of experience in planning and executing base line and evaluation studies; uses mixed research methods - qualitative and quantitative approaches to evaluate program impacts. He is an author of 'Human Development in India, Challenges for a Society in Transition-2010', Oxford University Press.



Centre for Research and Debates in Development Policy

A702, Plot 97, I. P. Extn., Delhi-110092, India

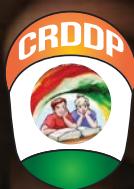
PH: +91 11 22232515



US-India Policy Institute

110 Maryland Avenue NE, Suite 508, Washington, DC 20002, USA

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A702, Plot 97, I.P. Extn, Delhi -110 092. India

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