

EWS Quota - an Epitome of Social Justice as Fairness

The Supreme Court's Economically Weaker Sections (EWS) judgment epitomizes American Political Philosopher John Rawls's theory of justice with fairness for it fulfills both cardinal prerequisites of the Rawls social contract that exhorts for "greatest benefit to the least advantaged" achieved through the quintessential 'veil of ignorance'. EWS may be a harbinger of a new governance paradigm to celebrate, ideate, promulgate, and deepen constitutional promises in the state-citizen matrix.



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The watershed judgment by the Supreme Court on 7 November 2022 that upheld the Constitutional 103rd Amendment in the *Janhit Abhiyan versus Union of India* by a split verdict of 3-2, is an overdue course correction by the State in respect of Economically Weaker Sections (EWS) or poor among the General/Unreserved category. There is widespread discussion on the three facets emerging from the judgment viz.- constitutional provisions for caste and class as a basis of backwardness rather than an economic deprivation of family, economic backwardness as a transient phenomenon, and reservations as an antidote to caste discrimination and prejudices. Let's examine how these facets stand to the scrutiny of fairness which refers to "an ability to judge without reference to one's feelings or interests"- in the context of understanding and practice of social justice.

The first facet of the judgment that acknowledges the economic backwardness of the individual bequeathed through his family, honours the true spirit of the natural/fundamental rights theory that emanated from the recognition of the unalienable individual rights to life, liberty, dignity, and property. The thinkers and champions of natural/fundamental rights from the medieval period like St. Thomas Aquinas to the modern scholars like John Locke, Hugo Grotius, and Samuel von Pufendorf premised fundamental rights on an individual identity rather than that of his ascriptive associations' viz. race, class, estate, etc. The pivot of social contract theorists like Thomas Hobbes-Leviathan, Jean-Jacques Rousseau's -volonté générale (" general will ") or John Rawls-veil of ignorance, envisaged protection and extension of fundamental rights of individuals in the society rather than creating, strengthening, and perpetuating new collectivities (e.g. bourgeoisie/proletariats), overshadowing and jeopardizing individual identity in the liberal democracies.

While democracies in the West do celebrate, ideate, and promulgate constitutional promises in the state-citizen matrix, the democracies elsewhere especially in the East moulded by tradition, camouflage the individual identity with his/her



overbearing collectivity identity. The Constitution of India acknowledges the rights of the citizens as individuals but circumscribes the promulgation of the majority of provisions in a state-collectivity (class/caste/ethnicity/ etc.) matrix that masks the internal disparities and resource asymmetries premised on omnibus criteria like ethnicity, race, caste, religion, etc. The emerging *laabharthi* (beneficiary) locus in the post-2014 political landscape of India, in the delivery of constitutional promises and public service delivery appears to be course correction through what the celebrated American Political Scientist, Charles Lindblom calls “the intelligence of democracy” that refers to the superiority and ability of pluralist democracy to encourage intelligence and learning in the process of policymaking.¹ The emergence of EWS as a harbinger of *laabharthi* (beneficiary) locus and political discourse is a portentous political pivot and a sign of maturing and deepening of India’s democracy.

The absence of economic criterion in the General category was unwarranted discrimination towards EWS students whose potential(s) are straitjacketed not only due to economic hardships of the family but injustices from twin social arrangements. Firstly, the astounding competition from the progeny of well-heeled, educated, and helicopter parents from the general category students and secondly, exclusion from the scholarships, fees-waiver, and age relaxation available to similarly economically placed students in other categories. The EWS quota is likely to ring-fence the ‘talent and social potential’ of the students of economically weaker families from the vagaries of economic hardships of the family.

The second facet that economic backwardness is a transient phenomenon is likely to be subscribed by one whose earlier at least four generations were economically privileged and born with a silver spoon in their mouth. The success and magnetism of Marxist philosophy were premised on how the economic deprivation in the infrastructure of society crafts an equally sturdy, impregnable, and formidable superstructure of politics, culture, and law to perpetuate the economic deprivations and poverty among generations in the families. The celebrated German Sociologist Max Weber introduced the idea of ‘life chances’ to study inequality, social stratification, and intergenerational mobility.² In a modern society a person’s ‘life chances’ refer to his/her chances of “doing well” for herself/himself throughout life. The decisive early ‘life chances’ of a person viz. educational attainment, physical and mental health, and career choices are closely linked to the economic resources provided by the family or state to him. The consummation of these life chances has a cascading effect on the attainment of other ‘life chances’ viz. life expectancy, housing, working conditions, etc.

The rollback of the government in the provisioning of public services and goods, and accentuating asymmetry in access to quality education, healthcare, and early motivation that helps to unlock the potential of the child, establishes economic deprivation as the starkest basis of injustice vis-a-vis other omnibus basis considered till now.

The third facet that recognizes reservations as a potent antidote to caste discrimination and prejudices in Indian society simplifies the other concomitant factors that bolstered this instrument against social injustices. A sincere student of Indian sociology will vouch that the weakening of discrimination started with the emergence of caste-free occupations with the advent of British Rule in India and opportunities for employment in cities and other economically well-off states in India. Caste in India was/is not a primitive, static, homogeneous, and cohesive unit of the social





helpless guards in the gated communities, numbing news of insult and assault experienced by the gig workers of delivery platforms from e-commerce in the metro cities, and servants asked to use separate service lifts instead of lifts for the apartment owners.

organization of Hindu society. Notwithstanding some despicable, isolated cases of caste discrimination in rural areas that attract headlines in national dailies, a survey by Pew Research Centre in 2021, in the context of recent experience with caste discrimination underlines a heartening trend that “Not only do most Indians say that lower castes do not experience a lot of discrimination, but a strong majority (82%) say they have not personally felt caste discrimination in the past 12 months.”³ There is no dearth of discrimination emerging in new forms with economic backwardness in urban India with recurrent news of ill-treatment to

EWS in the touchstone of John Rawls-Justice with Fairness

The EWS judgment respects both cardinal prerequisites of the John Rawls celebrated Theory of Justice which is regarded as the lodestar of affirmative actions for the marginalized or vulnerable citizens and not communities *per se* in modern societies. Equality of opportunity is banal rhetoric in absence of fairness and coterminous ‘equality of outcome’. This can be achieved by minimizing two factors viz. ‘natural lottery’ and ‘social lottery’ over which people have no control but which decisively affect their lifetime economic prospects and overall well-being. The recognition of both these lotteries by the members of the community and the provision of guardrails for the ‘less fortunate’ through public patrimony lies at the heart of justice with fairness in the social contract theory of American political philosopher John Rawls beautifully encapsulated in his seminal work - John Rawls, ‘*A Theory of Justice* (1971)’.⁴ A child may be born in a favoured race or gender this ‘natural lottery’ may give tailwinds to his educational attainment and career choices. In some cases, the ‘natural lottery’ is further supplemented by the ‘social lottery’ that refers to the person born in more or less nurturing families and social circumstances. The presence of both natural and social lotteries, or one or none of the either, have profound bearings on the educational attainments, career choices, life expectancy etc. of a person.

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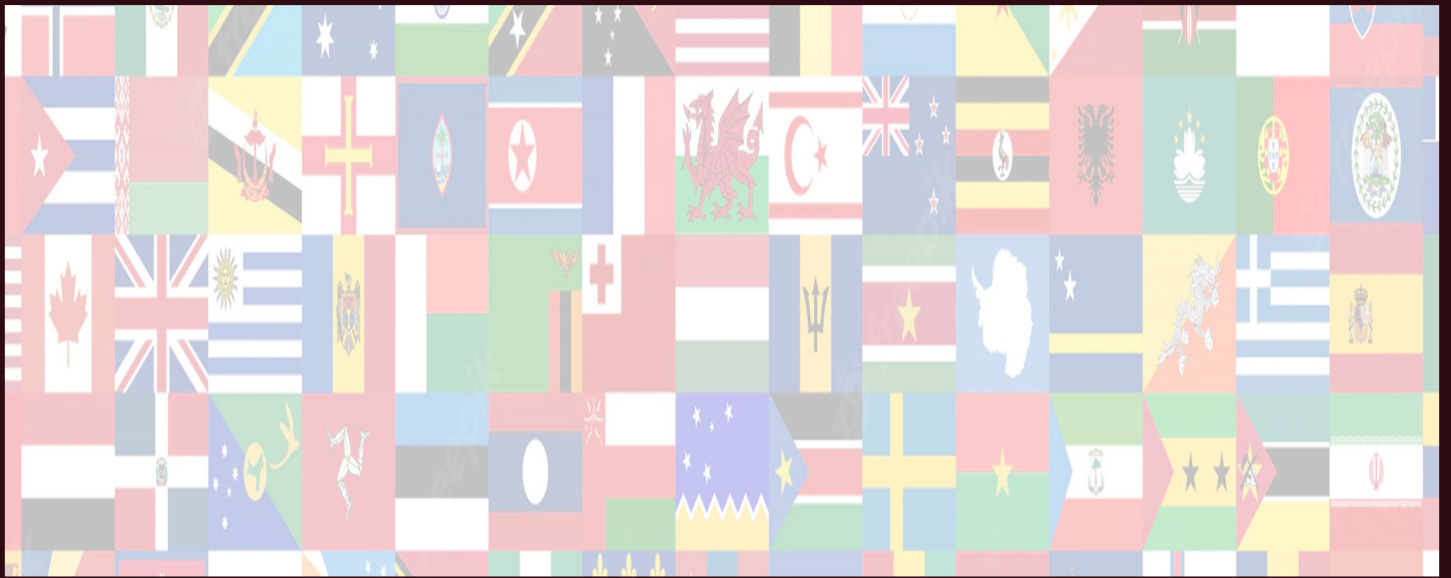
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EWS quota acts as a guardrail for equality of opportunity for EWS students among General categories *sans* which the precipice of poverty will continue to stymie the blossoming of their talent and potential(s). EWS for poor among General Category Students in the context of India is also what John Rawls calls “of greatest benefit to the least advantaged” which is the soul of Rawls’s theory of social contract in unequal societies. This is likely to be a precursor of more benign, benevolent, and beneficiary-oriented policies of the governments at the Union, State, and Local administration levels. The underlying reason for this optimism is the emergence of John Rawls’s second cardinal prerequisite for fairness in justice - ‘the veil of ignorance’ that refers to a hypothetical situation devoid of power, class, or gender asymmetries, the leitmotif of social interaction and community life. The members in absence of any privileges or disabilities will arrive at a fair and just understanding and practice of the idea of justice for there will be no bias and self-interest to protect, perpetuate or partake when injustice will be addressed at the level of the individual interface rather in case of EWS students rather than at the collective interface in the resilient Indian democracy.

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