
RESERVATION POLICIES IN TRANSITION: THE SUPREME COURT'S APPROACH TO THE EWS QUOTA AND THE 50% CAP

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“Reservations are not a charity but a right to equality”

- Dr. B.R. Ambedkar

ABSTRACT

This paper provides a comprehensive analysis of the evolution and current status of reservation policies in India, focusing on the Supreme Court's pivotal role in shaping these measures. It traces the historical origins of reservations aimed at uplifting Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), highlighting constitutional provisions such as Articles 15(4), 16(4), and 46. The study examines landmark judgments including *Indra Sawhney v. Union of India* (1992), which established a 50% cap on reservations and introduced the concept of the "creamy layer," as well as subsequent cases like *M. Nagaraj v. Union of India* (2006) and *Jarnail Singh v. Lachhmi Narain Gupta* (2018) that refined these principles. The introduction and judicial scrutiny of the Economically Weaker Sections (EWS) quota in 2019 are analyzed for their impact on the traditional reservation framework. Through critical evaluation, the paper explores ongoing debates surrounding the 50% cap, state-specific challenges, and the balance between social justice and meritocracy. It concludes by underscoring the Supreme Court's ongoing responsibility in ensuring that reservation policies adapt effectively to India's evolving social and economic landscape while upholding constitutional ideals of equality and fairness.

I. INTRODUCTION

Reservation in India is a system of affirmative action designed to uplift historically marginalized communities, including Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).¹ The roots of reservation can be traced back to the pre-independence era when efforts were made to ensure the inclusion of these groups in various sectors, particularly in education and public employment.² The framers of the Indian Constitution recognized the deep-seated social inequalities prevalent in Indian society and thus incorporated provisions to ensure equality of opportunity.

The Constitution of India, under Articles 15(4), 16(4), and 46, provides the legal basis for reservations. Article 15(4) allows the state to make special provisions for the advancement of socially and educationally backward classes, SCs, and STs.³ Similarly, Article 16(4) permits reservations in public employment for any backward class that, in the opinion of the state, is not adequately represented in the services under the state. These provisions aim to promote social justice by enabling marginalized communities to access opportunities that were historically denied to them.

The role of reservation in India extends beyond mere inclusion; it is seen as a tool for correcting historical injustices and ensuring social and economic equality.⁴ However, the implementation of reservation policies has often sparked intense debate, particularly concerning the extent of reservations and their impact on meritocracy.⁵ The Supreme Court of India has played a pivotal role in shaping the contours of reservation policies, especially with its decision to impose a 50% cap on reservations in the landmark *Indra Sawhney v. Union of India* (1992) case.

This paper aims to critically analyze the Supreme Court's stance on the 50% reservation cap, focusing on the legal and social implications of this limitation. The discussion will trace the historical evolution of the reservation policy, examine key judicial decisions that have shaped

¹ Raj, M. S. Y. S., and Mr P. Gokulraja. "An analysis of reservation system in India." *International Journal of Research (IJR)*, ISSN,(2348-6848) (2015).

² *Ibid*

³ Pathak, V. (2021, November 28). *The Hindu Explains: The new 10% quota, its implications, and more*. The Hindu. <https://www.thehindu.com/news/national/10-quota-faces-several-legal-and-politicalchallenges/article61554109.ece>

⁴ Supreme Court Observer. (2023, October 9). *SCO explains: The 50% limit on reservations (2/4) - Supreme Court observer*. <https://www.scobserver.in/journal/sco-explains-the-50-limit-on-reservations-2-4/>

⁵ *Ibid*

the 50% cap, and explore the impact of recent developments, such as the introduction of the Economically Weaker Sections (EWS) quota. By evaluating these aspects, the paper seeks to provide a comprehensive understanding of how the 50% cap influences the broader goals of social justice and equality in India.

II. HISTORICAL EVOLUTION OF RESERVATION POLICY

The Historical Evolution of Reservation in India

The concept of reservation in India, a policy aimed at providing opportunities for historically disadvantaged groups, has a complex and multifaceted history.⁶ Its roots can be traced back to the colonial era, when the British introduced measures to address the backwardness of certain castes and tribes.⁷ However, it was not until the adoption of the Indian Constitution in 1950 that reservation was institutionalized as a cornerstone of India's social justice framework.

The seeds of reservation were sown during the British Raj with the introduction of separate electorates for different religious communities, including Muslims, Sikhs, and Christians. This was aimed at addressing the political representation of minority groups often marginalized by the majority Hindu community. However, the Communal Award of 1932, which introduced this system, faced opposition from Mahatma Gandhi, who advocated for a unified Hindu electorate.⁸

The Poona Pact of 1932, a compromise between Gandhi and Dr. B.R. Ambedkar, led to the replacement of separate electorates with reserved seats in the legislature for Dalits, formerly known as Untouchables.⁹ This marked a significant step towards ensuring representation for the most marginalized sections of society.

The Indian Constitution, upon its adoption in 1950, enshrined provisions for reservation in education and employment for Scheduled Castes (SCs) and Scheduled Tribes (STs).¹⁰ This laid

⁶ John Bell and Amarpal Singh, "Affirmative Action Programme: A Comparative Study of India and US," European Academy of Legal Theory, 2003

⁷ Judith Heyer and Niraja Gopal Jayal, *The Challenge of Positive Discrimination in India*, Centre for Research on Inequality, Human Security and Ethnicity, University ..., 2009

⁸ Spectrum Books Pvt. Ltd., *A Brief History Of Modern India* By Spectrum (Old Edition), 2018)

⁹ Bipan Chandra, *History of Modern India*, 2020th ed. (New Delhi: Orient Blackswan, 2020)

¹⁰ Durga Das Basu et al., *Introduction to the Constitution of India* (LexisNexis Gurgaon, 2015)

the foundation for the modern reservation system. The Constitution also reserved seats in the Lok Sabha and state assemblies for these communities, ensuring their political participation.

Over the years, the reservation policy has evolved to include other marginalized groups. The Mandal Commission, established in 1979, identified Other Backward Classes (OBCs) as a socially and educationally backward group and recommended a 27% reservation for them.¹¹ The implementation of these recommendations in 1990 expanded the scope of reservation to encompass a wider range of disadvantaged communities. The Supreme Court's ruling in the Indra Sawhney case in 1992 set certain limits on the reservation policy.¹² The court upheld the principle of reservation but imposed a 50% cap to ensure that the rights of the general category were not unduly compromised.¹³ Additionally, the court introduced the concept of a "creamy layer," excluding affluent members of reserved categories from benefiting from reservation.

In recent years, there have been debates and controversies surrounding the extension of reservation benefits to other groups, such as the economically weaker sections (EWS) and specific caste groups in certain states.¹⁴ The government's introduction of a 10% quota for EWS in 2019 and the ongoing discussions on reservations for Marathas in Maharashtra highlight the evolving nature of the reservation policy.

The reservation policy in India has been a subject of intense debate and scrutiny.¹⁵ While it has undoubtedly played a crucial role in promoting social justice and providing opportunities for marginalized communities, it has also faced criticism for potential drawbacks, such as the exclusion of deserving candidates from other communities and the perpetuation of caste-based divisions.¹⁶ As India continues to evolve, the reservation policy will likely remain a subject of discussion and debate. Finding a balance between the need to address historical injustices and the principle of meritocracy will be a key challenge for policymakers and society as a whole.

¹¹ Arvind Kumar, "Mandal, Mandal Commission and Making of an OBC Identity," in *The Routledge Handbook of the Other Backward Classes in India* (Routledge India, 2021), 184–214

¹² Sayontika Das, "Reservations: Case Study of Indra Sawhney v. Union of India," *Union of India* (April 17, 2011)

¹³ *Ibid*

¹⁴ V Santhosh Kumar, *Social Justice and the Politics of Reservation in India*, 1st ed. (Mittal Publications, 2008)

¹⁵ C Basavaraju, "Reservation under the Constitution of India: Issues and Perspectives," *Journal of the Indian Law Institute* 51, no. 2 (2009): 267–74

¹⁶ *Ibid*

III. THE SUPREME COURT'S STANCE ON RESERVATION LIMITS

The landmark judgment in *Indra Sawhney v. Union of India* (1992)¹⁷, also known as the Mandal Commission case, is a cornerstone in the legal landscape of reservations in India. The Supreme Court, through this judgment, set out key principles, including the introduction of a 50% cap on reservations and the exclusion of the creamy layer within Other Backward Classes (OBCs). However, the interpretation of these principles has evolved over time through subsequent judgments, particularly in *M. Nagaraj v. Union of India* (2006)¹⁸ and *Jarnail Singh v. Lachhmi Narain Gupta* (2018).¹⁹

Indra Sawhney v. Union of India (1992):

In August 1990, Prime Minister V.P. Singh announced the implementation of the Mandal Commission Report, which recommended 27% reservation for OBCs in central government jobs. This decision led to widespread controversy and legal challenges, culminating in a case brought by the Supreme Court Bar Association, where prominent lawyers like Nani Palkhivala argued against the use of caste as a criterion for reservation.

The core issue in the *Indra Sawhney* case was whether caste could be used as a criterion for identifying backward classes for the purposes of reservation under Article 16(4) of the Indian Constitution.²⁰ The Supreme Court formed a nine-judge bench to decide on the legality of the government's order and other related issues. The Court's majority opinion held that caste could be a criterion for backwardness if it also reflected social and educational backwardness.²¹ The concept of the "creamy layer" was introduced, meaning that the more affluent members of OBCs should be excluded from the benefits of reservation.²² This was a significant development in ensuring that reservations were targeted at those who genuinely needed them.

A crucial aspect of the judgment was the Court's recognition of the overlap between caste and class. While caste and class are distinct sociological categories, the Court acknowledged that

¹⁷ *Indra Sawhney & Ors. v. Union of India*. Decided, 16 November 1992. AIR 1993 SC 477

¹⁸ *M. Nagaraj v. Union of India* (2006) 8 SCC 212

¹⁹ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396.

²⁰ Singh, M., & Bhutia, U. (2022). JUDICIAL DISCOURSE ON CASTE-BASED RESERVATION IN INDIA FROM BALAJI TO INDRA SAWHNEY. *Lex Humana (ISSN 2175-0947)*, 14(2), 91-106.

²¹ *Ibid*

²² *Ibid*

they can reinforce each other, particularly in the context of social hierarchy and discrimination in India.²³ The Court argued that caste, as an extreme manifestation of class, could be used to determine backwardness in a secular society. Justice B.P. Jeevan Reddy, speaking for the majority, emphasized the deep-seated relationship between caste and social status, particularly in rural India, where caste-based occupational identities remain strong.²⁴ The Court also recognized the role of the state in addressing social inequalities, affirming that caste-based reservations were necessary to redress historical discrimination and promote social justice.

The Court also addressed the contentious issue of whether reservations should be limited to 50% of available seats. While the majority upheld this limit, they allowed for exceptions in extraordinary situations, such as in remote or marginalized areas where different conditions might justify a relaxation of the rule. However, there was dissent among the judges on this point, with some arguing that the 50% limit should not be strictly applied.

Nagaraj v. Union of India (2006)²⁵

M. Nagaraj v. Union of India (2006) was a significant case where the Supreme Court laid down conditions that the State must meet before providing reservations in promotions for Scheduled Castes (SCs) and Scheduled Tribes (STs). These conditions included proving the backwardness of the class, their inadequate representation in the particular post or position, and that the reservation would not hinder administrative efficiency. This ruling introduced a more stringent framework for applying reservations, especially in promotions, and reiterated the importance of balancing various constitutional principles.²⁶

Jarnail Singh v. Lachhmi Narain Gupta (2018)²⁷

The Supreme Court revisited the principles set out in Nagaraj. The Court upheld the conditions laid down in Nagaraj but with a crucial modification: it struck down the requirement to prove backwardness for SCs and STs, acknowledging that these communities are already presumed to be backward.²⁸ Furthermore, the Court emphasized that the creamy layer among SCs and

²³ Bhaskar, A. (2023). Reservation as a fundamental right: Interpretation of article 16 (4). *Indian J. Const. L.*, 10, 1.

²⁴ Justice B.P. Jeevan Reddy in *Indra Swahney vs. Union of India*. AIR 1993 (SC) 477.

²⁵ M. Nagaraj v. Union of India (2006) 8 SCC 212

²⁶ *Supra* note 25.

²⁷ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396.

²⁸ *Ibid*.

STs should be excluded from benefiting from reservations in promotions. This ruling reinforced the need for States to gather reliable data on the inadequate representation of these communities, adding a layer of complexity to the reservation policy.

IV. EVOLVING LEGAL FRAMEWORK OF RESERVATION POLICIES IN INDIA

One of the critical questions that emerged from Jarnail Singh was how States should determine the inadequacy of representation. The Supreme Court provided some clarity by stating that inadequacy should be assessed at the cadre level, rather than across the entire service. However, the decision left room for interpretation and implementation challenges, as States struggled to collect the necessary data to justify reservations, leading to ongoing legal battles.

Recent Developments and State-Specific Cases

The principles set out in *Indra Sawhney*, particularly the 50% cap on reservations, have been challenged and reinterpreted in various state-specific cases. Tamil Nadu, for example, has consistently breached the 50% ceiling with its reservation policy, which currently stands at 69%.²⁹ This policy is protected under the Ninth Schedule of the Constitution, which has historically shielded certain laws from judicial review.³⁰ However, the validity and fairness of such a high reservation percentage have been repeatedly questioned.

In March 2022, the Supreme Court struck down the reservations granted to the Vanniyar community in Tamil Nadu under a 2021 Act that provided 10.5% reservations within the 20% seats reserved for the State's Most Backward Classes (MBCs).³¹ The Court ruled that the Tamil Nadu government relied on outdated and insufficient data, which unfairly disadvantaged other MBC communities.³² This judgment highlighted the ongoing struggle to balance the need for affirmative action with the principles of equality and fairness, especially in the context of state specific reservation policies.

²⁹ Verma, V. (2023). Taking the EWS Quota Seriously: Is It Fair and Just?. *Social Change*, 53(1), 98-107.

³⁰ *Ibid*

³¹ S, M. I. (2023, October 14). *SHOULD THE 50 % LEGAL CEILING ON RESERVATION BE RECONSIDERED?* Lukmaan IAS. <https://blog.lukmaaias.com/2023/10/14/should-the-50-legal-ceiling-onreservation-be-reconsidered/>

³² S, M. I. (2024, April 4). *89% of Tamil Nadu's population already eligible for reservation, State tells Madras High Court.* The Hindu. <https://www.thehindu.com/news/national/tamil-nadu/89-of-tamil-nadus-populationalready-eligible-for-reservation-state-govt-tells-madras-high-court/article68024416.ece>

Another significant challenge to the 50% cap came from Maharashtra's Maratha reservation case. The Supreme Court, in 2021, struck down the law granting reservations to the Maratha community, ruling that it violated the 50% cap established by Indra Sawhney.³³ The judgment emphasized that the cap is a critical safeguard to ensure equality and prevent excessive fragmentation of society along caste lines.³⁴

These state-specific cases underscore the delicate balancing act that the judiciary must perform in interpreting and applying reservation policies. While affirmative action remains a vital tool for social justice, the principles of equality and administrative efficiency must also be preserved.

Introduction of EWS Quota (2019)

The introduction of the Economically Weaker Sections (EWS) quota in 2019 added a new dimension to the reservation debate. The 103rd Constitutional Amendment Act, which introduced this 10% reservation in education and public employment for EWS, marked a significant shift in the reservation policy.³⁵ Unlike traditional reservations based on caste, the EWS quota is aimed at individuals from economically weaker backgrounds, irrespective of their caste. The legislative intent behind the EWS quota was to provide opportunities for those who, despite not being socially backward, are economically disadvantaged.³⁶ This move was seen as an attempt to address the concerns of those who do not benefit from caste-based reservations but still face economic hardships. The introduction of the EWS quota required an amendment to Articles 15 and 16 of the Constitution, adding clauses that specifically allow for reservations based on economic criteria.³⁷

Legal Challenges and Judicial Scrutiny of the EWS Quota

The EWS quota has faced significant legal challenges, with critics arguing that it violates the 50% cap on reservations and undermines the principles of social justice. One of the key cases

³³ Kakodkar, P., & India, T. O. (2024, February 4). How demand for Maratha quota took a dramatic turn. *The Times of India*. <https://timesofindia.indiatimes.com/city/mumbai/maratha-quota-demand-the-battle-forreservation-in-maharashtra/articleshow/107393923.cms>

³⁴ Ibid

³⁵ Sharma, Aditi, and Tanvi Garg. "Reservation for EWS: A Move Anti or Pro Discrimination?." *Supremo Amicus* 20 (2020): 40.

³⁶ Kamath, S. (2023). Reservation in India With Special Reference to EWS Quota. *Available at SSRN 4548152*.

³⁷ Ibid

challenging the EWS quota was *Janhit Abhiyan v. Union of India* (2020)³⁸, where petitioners argued that the quota breached the 50% ceiling and discriminated against SCs, STs, and OBCs who are economically disadvantaged but already have reservations.³⁹

In November 2022, the Supreme Court's Constitution Bench, by a narrow 3:2 majority, upheld the validity of the 103rd Constitutional Amendment. The Court ruled that the EWS quota does not violate the basic structure of the Constitution, including the 50% ceiling, as the cap is not inflexible.⁴⁰ This judgment introduced a new exception to the 50% rule, indicating that reservations exceeding the cap could be justified under specific circumstances, particularly when they are not caste-based.⁴¹

Impact and Implementation of the EWS Quota

The introduction of the EWS quota has had a profound impact on the existing reservation framework. It has challenged the traditional understanding of reservations as primarily a tool for addressing social backwardness. The Supreme Court's ruling in favor of the EWS quota has opened the door for further exceptions to the 50% cap, potentially leading to more complex and varied reservation policies across different states.⁴²

The implementation of the EWS quota has also raised practical challenges, particularly in how it interacts with existing reservations for SCs, STs, and OBCs. While the EWS quota aims to address economic inequality, its introduction has sparked debates about the fairness and effectiveness of the overall reservation system.⁴³ Critics argue that the focus on economic criteria could dilute the original purpose of reservations, which was to address deep-rooted social and historical injustices.⁴⁴

³⁸ WP (C) 55/2019

³⁹ Apoorva. (2023, April 19). *Legal analysis of recent judgments on reservation policies in India* | SCC Blog. SCC Times. <https://www.sconline.com/blog/post/2023/04/19/legal-analysis-of-recent-judgments-on-reservation-policies-in-india-legal-research-legal-news-updates/>

⁴⁰ Poddar, U. (2022, November 20). Does the EWS judgment remove the 50% cap on reservations? *Scroll.in*. <https://scroll.in/article/1037537/does-the-ews-judgment-remove-the-50-cap-on-reservations>

⁴¹ *View of 'JANHIT ABHIYAN VS UNION OF INDIA' FAMOUSLY KNOWN AS 'EWS RESERVATION CASE.'* (n.d.). <https://pulr.puchd.ac.in/index.php/pulr/article/view/44/10>

⁴² *Supra* note 27.

⁴³ Jyoti, D. (2022, November 8). Decoding EWS quota and its implications. *Hindustan Times*. <https://www.hindustantimes.com/india-news/as-sc-upholds-ews-quota-all-you-need-to-know-about-it101667803952019.html>

⁴⁴ *Ibid.*

V. CRITICAL ANALYSIS AND FUTURE PERSPECTIVES

Critique of the 50% Cap

The 50% cap on reservations, originally established by the Supreme Court in the Indra Sawhney case, has long been a point of contention in India's legal and political landscape. Critics argue that the cap is either too restrictive or not restrictive enough.⁴⁵ On one hand, proponents of the cap argue that it is essential to maintain a balance between affirmative action and meritocracy, ensuring that reservation policies do not undermine the principle of equality. They contend that breaching the 50% ceiling could lead to excessive reservations, diluting the merit-based selection process and potentially marginalizing deserving candidates who do not benefit from reservations.⁴⁶

Conversely, opponents of the cap argue that it is an arbitrary limit that fails to address the unique socio-economic realities of various states. For instance, states like Tamil Nadu and Jharkhand have sought to exceed this limit to address the needs of their specific populations, reflecting the view that the cap does not accommodate the diverse socio-economic conditions across India.⁴⁷ The recent EWS judgment has added a new dimension to this debate by allowing reservations for economically weaker sections (EWS) without considering the 50% ceiling as a rigid barrier. This judgment suggests that the 50% limit is flexible, which could pave the way for future legal and legislative challenges to the cap.

The Future of Reservation Policy

The future of India's reservation policy is likely to be shaped by ongoing debates and potential legal reforms. The EWS judgment signals a shift in the judiciary's approach, suggesting that the 50% cap is not inviolable and that there is room for flexibility based on the socio-economic context. This could lead to a reevaluation of the reservation policies in various states, where demands for higher quotas may gain traction. States like Karnataka, Bihar, and Odisha, which are already advocating for exceeding the 50% cap, may now find stronger legal grounds to

⁴⁵ Analyzing the Constitutional Validity of Reservation for Economically Weaker Section. (2023). *International Journal of Creative Research Thoughts*, 11(4), 325–326. <https://www.ijert.org>

⁴⁶ Ibid

⁴⁷ Tamil Nadu: A case for allowing reservation over 50 per cent, *The Economic Times* (2024) <https://indianexpress.com/article/opinion/columns/tamil-nadu-a-case-for-allowing-reservation-over-50-per-cent9336041/>

push for constitutional amendments that would place their laws in the Ninth Schedule, making them harder to challenge in court.

Moreover, the judgment may influence future constitutional amendments and legislative actions aimed at expanding reservations beyond caste-based quotas to include economically disadvantaged groups. The recognition of economic criteria as a basis for reservations could lead to more inclusive policies that address the needs of marginalized communities across caste lines. However, this also raises questions about how such policies will be implemented without undermining the principle of equality and merit.

Balancing Social Justice with Meritocracy

One of the central challenges in the evolution of India's reservation policy is striking a balance between social justice and meritocracy. The legal framework must navigate the tension between providing opportunities to historically disadvantaged groups and ensuring that merit-based selection processes are not compromised. The EWS judgment exemplifies this challenge by introducing economic criteria into the reservation system, which has traditionally been based on caste.

To achieve this balance, the legal framework could focus on creating more targeted and dynamic reservation policies that are periodically reviewed and adjusted based on socioeconomic data. This would ensure that reservations remain relevant and effective in addressing the needs of disadvantaged groups while minimizing the potential for abuse or overreach.

Additionally, merit-based criteria could be integrated into the reservation system, ensuring that beneficiaries meet certain minimum standards, thereby preserving the integrity of the selection process.

VI. CONCLUSION

The Supreme Court of India has played a pivotal role in shaping the contours of reservation policies in the country, particularly in the context of the Indra Sawhney case and the subsequent introduction of the Economically Weaker Sections (EWS) quota. The Court's rulings have

sought to balance the competing interests of social justice and equality, ensuring that affirmative action measures do not impinge upon the rights of other sections of society.⁴⁸

The Indra Sawhney judgment established the principle of 50% as a ceiling for reservations, recognizing the need to safeguard the interests of the unreserved category. However, the Court also acknowledged the importance of affirmative action in addressing historical and structural inequalities. The subsequent introduction of the EWS quota, while aimed at providing opportunities to economically disadvantaged sections, raised concerns about the potential for further fragmentation of society.

The Supreme Court's rulings on reservation have been instrumental in ensuring that affirmative action policies are implemented in a manner that is both just and equitable. By striking a delicate balance between the competing interests of different sections of society, the Court has helped to shape a reservation regime that promotes social justice while upholding the principles of equality and non-discrimination.

As India continues to evolve, the Court's role in interpreting and upholding the constitutional provisions relating to reservation will remain crucial. By carefully considering the changing social and economic realities of the country, the Court can help to ensure that affirmative action policies remain relevant and effective in addressing the challenges of inequality and discrimination.

⁴⁸ Supra note 31.

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