

# **ANALYZING IMPLICATION OF EWS SCHEME AND RESERVATION SYSTEM IN INDIA: THEORETICAL CONSIDERATIONS, ARGUMENTS, AND IMPLICATIONS**

*Written by Deepika Kulhari*

*NLU J Alumni*

---

## **INDIAN CONSTITUTION ARTICLES ATTRIBUTING TO RESERVATION POLICY**

According to Article 17 of the Indian Constitution, the practise of untouchability in any form is a criminal offence punishable by law, and its continuation in any form is a criminal offence punishable by law. In accordance with Article 39-A of the Social Security Charter of Directive State Policy, the state is required to provide equal justice and free legal aid to economically disadvantaged groups, and in accordance with Article 45, the state is required to improve the living conditions and overall health of economically disadvantaged groups.<sup>i</sup>

Specifically, Articles 330-342 provide specific protections for a range of groups of people, including Scheduled Castes, Scheduled Tribes, Anglo-Indians, Linguistic minorities, and Other Backward Classes, among others. Article 335 is crucial in maintaining a sense of balance in the process of seat allocation based on reservation requests. Specifically, according to this Article, the State shall evaluate claims by members of Scheduled Castes and Scheduled Tribes for any administrative positions, but only if doing so will result in increased administrative efficiency. It should be noted that the State is under no obligation to assign these seats merely on the basis of a member's social rank.

In carrying out its responsibilities under the treaty, the state is guided by the provisions of the article, which does not prevent SCs and STs from pursuing their claims. In accordance with Indian law, all people are treated equally and no one is discriminated against on the basis of religion, ethnic origin, caste, gender, or place of birth. In addition, it provides specific protection for the most vulnerable members of society, including children.

The following is stated in Article 15(4):

Nothing should prevent the state from taking special steps to advance the interests of any segment of the population that is socially or educationally backward, as well as the interests of Scheduled Castes and Tribes (SCTs). This empowers the state to take particular measures to ensure that backward classes such as the SCs, STs, and OBCs are appropriately represented in educational institutions, public jobs, and the legislative branch of the government. Although Dr. Bhimrao Ramji Ambedkar acknowledged that equality is an illusion, he advocated that it be adopted as a guiding principle.<sup>ii</sup>

Under Article 14 of the Indian Constitution, the state is prohibited from denying any citizen inside the country's borders "equal treatment under the law or equal protection of the laws." Discrimination on the basis of religion, ethnicity, caste, gender, or place of birth is prohibited under international law. Equal protection under the law and equality before the law are two topics that are emphasised in Article 14.

### **LEGAL PROTECTION ON AN EQUAL FOOTING:**

It is based on the principle of equality established by English common law, which holds that no one is above the law and that all individuals must be treated in the same manner regardless of race, religion, rank, or position. This concept is seen negatively since it limits any individual the ability to claim exclusive privileges. Additionally, it emphasises that all individuals are subject to the regular jurisdiction of the court system. Legal equality is a concept that refers to the equality of all people under the law. This concept is based on the Constitution of the United States of America.<sup>iii</sup> It means that persons with equivalent talents must be treated equally; it assures that people be treated equally in situations that are comparable to their own. Environmentalism is regarded as having a positive impact on the environment. In the United States, equal treatment rules are based on the principle that similars should be treated similarly, which means that people in comparable situations should be treated similarly. discrimination against individuals who are on the same level and in the same position is prohibited by this law. Unequals, on the other hand, are not prohibited from being treated differently by the law.

Article 14 provides equality to everyone on Indian territory, not only Indian nationals, and this includes non-Indians as well. In the words of a wise man once said, "There is no greater inequity than uneven treatment of unequals." Felix Frankfurter is a German journalist and

author.<sup>iv</sup> The Supreme Court ruled in *Andhra Pradesh v. Nalla Raja Reddy* that equality is breached not only when equals are treated unequally, but also when unequals are treated equally.<sup>v</sup>

The equality of equals principle, which says that unequals should be treated differently, is the foundation of the Indian constitution. Because of this, a reserve is established for persons who are considered to be marginalised in society. Articles 15 and 16 of the Indian Constitution provide for the reservation of rights for socially and educationally disadvantaged sections of the population. It enables state and federal governments to set aside a specific number of seats in government services for people from minority and disadvantaged backgrounds. In accordance with Article 29(2), the state may pass specific laws for the advancement of any socially or educationally disadvantaged group of persons, including Scheduled Castes and Tribes, notwithstanding the provisions of this article.

Article 16(4) states:

In accordance with the provisions of this article, the state may establish a reserve of appointments or positions for members of any backward class who, in the state's opinion, are underrepresented in the state's services. Among the Special Provisions for Certain Classes in Part XVI of the Indian Constitution are reserves for Scheduled Castes and Scheduled Tribes, the Anglo-Indian community, and other backward classes.

## **SEATS IN EDUCATIONAL INSTITUTIONS**

Legislation to change the Constitution was introduced by the government in 2005, making it the 93rd amendment. Article 15 (5) of India's constitution was amended as a result of the act. The following is provided in Article 15(5):

No provision of this article or sub-clause (g) of clause (1) of Article 19 prohibits the State from enacting special legislation for the advancement of any socially and educationally backward classes of citizens, Scheduled Castes or Scheduled Tribes, insofar as such legislation relates to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than minority educational institutions. This ensures that students from socially and educationally disadvantaged groups are given priority admission to

public and private educational institutions. This amendment, on the other hand, has been contested on the grounds that it violates the notion of equality as well as the fundamental underpinning of the constitution.

There was a legal challenge to the 93rd constitutional amendment act of 2005, which was brought by Ashoka Kumar Thakur against Union of India.<sup>vi</sup> According to the Supreme Court, reservations provide an additional benefit to individuals who would not otherwise be able to complete university courses if they did not get such assistance.

It is not possible to argue that the 93rd constitutional amendment legislation violates the essential structure of the constitution because it simply adjusts or abridges the principle of equality to a bare minimum.

- Reservations are made in the name of affirmative action in educational institutions.
- In order to determine whether or not there are backward classes, one's social and economic situations must be investigated. The establishment of reservations on the basis of caste or economic deprivation should be avoided at all costs. When making a reservation, it is important to take into account the backwardness of the population on social, economic, and educational levels.
- The concept of omitting creamy layers from consideration should not be extended to SCs and STs as well.

## **PROMOTIONAL OFFERS FOR RESERVATIONS**

The legislature and the Supreme Court have been at loggerheads over the issue of reservations for SCs and STs in government jobs. In the 1992 case of *Indra Sawhney v. Union of India*, the Supreme Court ruled that Article 16(4) did not allow for promotion reservations to be introduced.<sup>vii</sup> As a result, in 1995, the parliament passed the 77th Constitutional Amendment Act, which included a new paragraph (4A) under Article 16 authorising the state to implement reservation measures addressing the promotion of SCs and STs in public service, among other provisions.

Specifically, Article 16 (4A) of the Indian Constitution states that-

Nothing in this article prevents the State from making reservations in matters of promotion and seniority to any class] or classes of posts in the State's services in order to benefit Scheduled Castes and Scheduled Tribes who, in the State's opinion, are underrepresented in the State's services from being considered for such reservations. The 82nd Constitutional Amendment Act, 2000, was passed by the legislature in the year 2000.

The following proviso was inserted to Article 335 of the Constitution as a result of this amendment:- Nothing in this article prohibits the adoption of provisions in favour of Scheduled Castes and Scheduled Tribes members, such as the lowering of qualifying examination or assessment standards, or the reservation of promotion opportunities. This amendment expressly empowers the state to implement laws lowering qualifying marks or evaluation standards for members of the SC and ST groups when it comes to promotion in public employment.

M. Nagaraj v. Union of India was a 2006 Supreme Court decision that extended the creamy layer exclusion principle to women and minorities while also outlining three conditions for women and minorities to advance in public service.<sup>viii</sup> Prior to imposing quotas on any group, the government must demonstrate its backwardness.

- There should be an insufficient representation of the community; additionally, there should be a representation based on quantitative facts.
- The promotion reserve shall not jeopardise the overall efficiency of the public administration.
- The court holds that the state is not required to offer special consideration to SCs and STs when it comes to promotion opportunities. The state has complete discretion over whether to include reservations in the promotional package.

## **RESERVATIONS FOR SECTIONS OF LOWER INCOME**

The new reservation was included in the 103rd Constitutional Amendment Act of 2019 enacted by the legislature. As a result of this development, the economically vulnerable segment of society, commonly referred to as the EWS, got a 10% reserve. It ensures that economically disadvantaged groups (EWS) are treated more favourably in government employment and admission to public and private educational institutions. Previously, the maximum number of

bookings was limited to 50%. SC and ST candidates received 22.5 percent of available seats in the final round of competition (7.5 percent for STs, 15 percent for SCs). Additionally, OBCs were granted a 27% reservation on available tickets. Prior to the 103rd constitutional amendment, the entirety of the reservation was 49.5 percent, in accordance with the requirement that the reservation not exceed 50% of the total population.<sup>ix</sup>

The 103rd Constitutional Amendment Act of 2019 adds 10% to the existing reservation, increasing the total to 20%. This results in a total reservation of approximately 60%, thus contradicting the existing guideline of a maximum reservation of 50% under special circumstances.

The Supreme Court held in *Balaji v. State of Mysore* that, while predicting the precise permissible percentage of reservation would be impossible, it could be stated broadly that it should be less than 50%; how much less than 50% would depend on the relevant prevailing circumstances in each individual case.<sup>x</sup>

The Supreme Court of India held in *Indra Sawhney v. Union of India* that, like any other power bestowed by the constitution, the power conferred by Article 16(4) must be exercised fairly. Additionally, the 50% over-reservation limit should never be exceeded.<sup>xi</sup>

In *Nagaraj v. Union of India*, the Supreme Court held that the 50% ceiling on reservation is an integral aspect of the constitution's essential structure and acts as a balancing factor between formal and substantive equality.<sup>xii</sup>

The converse, however, is true:

According to the *Appanna v. State of Karnataka* decision, states have the authority to make such provisions or reservations for the benefit and amelioration of the weaker and economically backward sections, as well as to carry out the directive principle enshrined in Article 46 of the Constitution.<sup>xiii</sup>

In *R. Balaji v. State of Mysore*, the court determined that the following was true: It is not sufficient to examine an individual's caste for determining whether or not a given caste is backward.<sup>xiv</sup> Poverty, occupation, and residence may all be crucial factors to consider while making this decision. The court continued by stating that only because a caste has been categorised as backward once does not mean it will always be backward. The government



should examine the results of the test, and if a class reaches a stage of development where reservation is no longer necessary, it should be removed from the list of backward classes.

According to *Indra Sawhney v. Union of India*, the Indian Supreme Court has ruled that the reservation policy must be implemented on a year-to-year basis and cannot be maintained in perpetuity.<sup>xv</sup> The State has the authority to decide the eligibility of a group of people who consistently fall behind socially and educationally. Additionally, it has been determined that article 15(4) does not require that the percentage of reservations be proportional to the percentage of the population classified as backward in relation to the entire population. The state may choose to maintain an appropriate amount of reserve funds, taking into account all legitimate claims and applicable standards, among other factors.

India's then-finance minister Arun Jaitley remarked in support of the 103rd Constitutional Amendment Act, "If two persons are not equal by birth or economic circumstances, they cannot be treated similarly." The Supreme Court's 50% reservation cap applies exclusively to caste-based reservations, suggesting that the Economically Weaker Section (EWS) quota will remain unchanged "as a result."

### **THE CREAMY LAYERS EXCLUSION PRINCIPLE (ALSO KNOWN AS THE CREAMY LAYER EXCLUSION THEOREM)**

The creamy layer exclusion notion is believed to be a significant principle that contributes to the achievement of the reservation goal by granting reserve to those who legitimately require it for their social, educational, and economic well-being to progress. *Indra Sawhney v. Union of India*[xi] in 1992 brought the notion of Creamy layer exclusion to the public. (Also referred to as the Mandal Commission case). In this case, a nine-judge panel ruled as follows:

The advanced section of the OBC's must be determined in order to exclude the Creamy layer from reservation advantages. Additionally, this technique was used to exclude those classified as SCs or STs.

Additionally, the Supreme Court asked the federal government to establish standards for determining the presence or absence of a creamy material layer. The government fixed the ceiling for the creamy layer at 1 lakh in 1993, and it has remained constant since then. The

number was increased to 2.5 lakh in 2004, 4.5 lakh in 2008, 6 lakh in 2013, and 8 lakh this year.

The following definition was given for the term "creamy layer": Certain members of a backward class are more advanced socially, economically, and educationally than the majority of the society's population. They are the advanced members of that specific backward class, and they consume all of the benefits intended for that class, preventing them from reaching the truly backward members. The Creamy Layer Exclusion Principle is applied to SCs and STs in this work.

K.G. Balakrishnan, India's Chief Justice, has decided that the creamy layer theory does not apply to scheduled castes and tribes because it is used primarily to define the backward class and not as a principle of equality. The Supreme Court, however, upheld the legislature's decision in *M. Nagaraj v. Union of India* and extended the creamy layer exclusion principle to SCs, STs, and other minorities. The court stated:- To redistribute quota benefits to the weakest of the weak and to prevent quota benefits from being snatched away by members of the same class who were in the top creamy layer, the cream of Scheduled Castes/Scheduled Tribes communities that are socially, educationally, and economically advanced must be excluded from reservation benefits in government services.

Additionally, it was stated: The entire purpose of reservation is to progress backward groups of people so that they can march with other Indian citizens in the country on an equal basis. This will not be conceivable if just the cream of the class is able to get all of the most desirable public sector employment and ensure their own longevity, leaving the rest of the class as backward as they have always been.

In India, reservation regulations were enacted to provide additional protection to the socially and educationally disadvantaged groups of society. In terms of accomplishing this goal, the Creamy layer Exclusion concept is a positive step. When this strategy is followed, reserve policy benefits are transferred to individuals in genuine need. However, critics of the Supreme Court's decision contended that economic growth cannot be the sole metric of social advancement in a democracy. Economic issues should be examined with other aspects, such as the social and educational backwardness of a certain group of people, when determining a country's economic standing.



The Supreme Court reiterated the use of the creamy layer exclusion criterion in relation to SCs and STs in the case of *Jarnail Singh v. Lachmi Narayan*.<sup>xvi</sup>

## CONCLUSION

In India, the quota policy was implemented with the intention of raising some castes that had suffered atrocities, social and economic backwardness as a result of the caste system's widespread dominance in Hindu culture at the time. This theory has lost some of its veracity in the modern era, as the castes that should benefit from the quota system do not, while other castes benefit from a system that was never intended for them to begin with. Today, the reservation system is mostly used by politicians to diversify their voter bases. Gujarat Patels have launched a historic campaign to have their status as OBCs recognised by the Indian government. The entire country has been taken aback by this movement, as the folks campaigning for reservations in Gujarat are neither socially nor economically poor.

According to the State of Tamil Nadu, the reservation system was a catastrophe for society because Brahmans successfully positioned themselves in the backward people's league and reaped great benefits as a result.<sup>xvii</sup>

It is likely that the Creamy Layer was removed off the list of Scheduled Castes, Scheduled Tribes, and Other Backward Classes as a result of the Mandal Case. In one of the pivotal findings in *Ashok Kumar Thakur v. Union of India*, Justice Ravindran accurately remarked, recognising the dangers of the current reservation trend, that when more individuals aspire to backwardness rather than forwardness, the country stagnates. In other words, when a greater proportion of people aim for regression rather than advancement, the country as a whole stagnates.<sup>xviii</sup>

It is nearly impossible to determine whether a reservation policy is beneficial or detrimental, because those who benefit from it will always support it and declare it to be beneficial, while those who suffer a loss as a result of the system will always curse it and declare it to be dreadful. The argument is not so much about the merits of the reservation policy as it is about the concept and rationale for its implementation. If that rationale fails to hold water, it is unavoidable that the reserve policy will be deemed insufficient. Political indulgence in the reservation process

has simply been reduced from a lofty goal to a strategy for increasing votes in a certain constituency or party. Additionally, the reservation criterion has come under fire. The socially and economically backward classes are not, in a practical and actual sense, backward; rather, the mere fact that one is from a backward caste is sufficient to qualify for caste-based reservations.

As long as no competent candidate is denied an opportunity as a result of the current reservation system, the reserve policy is appropriate. To my mind, there is no need to prioritise worthless applicants over deserving children when it comes to admissions. If certain groups of people have historically been denied opportunity, the same scenario is now playing out with the general population. The deserving should not share their rewards with the undeserving, and vice versa.

It is also vital to recognise that we cannot discuss development without simultaneously discussing backwardness. If we continue to demand increasing backwardness, it is clear that we will be incapable of progressing and that our growth will eventually become stagnant. It is also critical to sustain the core concept of reservation policy and to recompense true backward classes who are denied access to school, career chances, and other opportunities in real life, rather than fantasy. This reservation policy should not be used as a stepping stone to the top of the corporate ladder of profit, money, and other associated interests for individuals who are only passing as members of a backward class but are far more stable socially and economically than the general class.

## REFERENCES

---

<sup>i</sup> NATH BHAT, Janki. "Untouchability in India." *Civilisations*, vol. 4, no. 4, 1954, pp. 565–70.

<sup>ii</sup> Ambedkar, B. R.. (2000). In A. Motyl (Ed.), *Encyclopedia of nationalism: Leaders, movements, and concepts*. Oxford, United Kingdom: Elsevier Science & Technology. Retrieved from [http://proxy2.library.illinois.edu/login?url=http://search.credoreference.com/content/entry/estnational/ambekar\\_b\\_r/0](http://proxy2.library.illinois.edu/login?url=http://search.credoreference.com/content/entry/estnational/ambekar_b_r/0)

<sup>iii</sup> Galanter, Marc. "Untouchability and the Law." *Economic and Political Weekly*, vol. 4, no. 1/2, 1969, pp. 131

<sup>iv</sup> In 1950, during the supreme court case *Dennis v. United States*, Supreme court justice Felix Frankfurter said, "It was a wise man who said that there is no greater inequality than the equal treatment of unequals."

<sup>v</sup> *Andhra Pradesh v. Nalla Raja Reddy* 1967 AIR 1458

<sup>vi</sup> *Ashoka Kumar Thakur Vs Union of India* (2007) 4 SCC 361

<sup>vii</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 477

<sup>viii</sup> *M. Nagaraj vs Union of India* AIR 2007 SC 71

---

<sup>ix</sup> *OBC Representation in Central Jobs Less Than Actual Quota: Government*, The Wire, <https://thewire.in/rights/obc-representation-in-central-jobs-less-than-actual-quota-government>

<sup>x</sup> M.R.Balaji v. State of Mysore 1963 AIR 649.

<sup>xi</sup> Indra Sawhney v. Union of India 1992 Supp 2 SCR 454

<sup>xii</sup> Nagaraj v. Union of India Writ Petition (civil) 61 of 2002

<sup>xiii</sup> Appanna And Ors. vs The State Of Karnataka And Ors., AIR 1980 Kant 113, 1980 (2) KarLJ 92.

<sup>xiv</sup> Supra note 10

<sup>xv</sup> Supra note 11

<sup>xvi</sup> SPECIAL LEAVE PETITION (CIVIL) NO.22985 OF 2018

<sup>xvii</sup> Dr Venkatanarayanan S., '*It's High Time Tamil Nadu Rationalises Its Quota System*', The wire, 17 Aug,2019, Available at : <https://thewire.in/uncategorised/tamil-nadu-reservation-quota>

<sup>xviii</sup> Ashoka Kumar Thakur Vs. Union of India & Ors [2008] INSC 613 (10 April 2008), 2008 Latest Caselaw 368 SC

