

New Era for Affirmative Action: Indian Supreme Court's Perspective on Reservation

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ABSTRACT

Historically, reservations for 'Scheduled Castes' (SC), 'Scheduled Tribes' (ST), and 'Other Backward Classes' (OBC) have been a key component of 'affirmative action' in India, intending to redress social injustices and advance equality for excluded populations. Articles 15 and 16 of the Constitution form the very 'bedrock of Reservations' in education and government jobs, respectively. These two articles have proved to be a major cause of controversy and litigation at the Supreme Court, particularly regarding the scope and extent of their application. A major change in reservation policy is the creation of the 'Economically Weaker Sections' (EWS) reservation, which expands benefits based on economic factors independent of caste. A crucial turning point in the evolution of 'affirmative action' laws in India has been reached by the Indian Supreme Court ruling pronounced on August 1, 2024 (State of Punjab v Davinder Singh, 2024), which approved the subclassification under the 'Scheduled Caste' (SC) and 'Scheduled Tribe' (ST) classifications. Given the diversity of the SC/ST groups and the range of social and economic disadvantages they experience, the Court recognized the need for a more nuanced application of reservation regulations. By ensuring that the most marginalized members of these groups benefit from 'affirmative action', this subclassification seeks to improve the efficacy of reservation rules. This paper evaluates the constitutional foundation that supports the EWS reservation, looking at its origins, application, judicial review, and wider ramifications. Also, by examining its constitutional aspects, the purpose of subclassification to maximize the effectiveness of reservation rules by ensuring that the most marginalized members of these groups receive the benefits of affirmative action, the author wants to comprehend the policy's influence on the 'affirmative action' environment and its possible future course.

Keywords: India, Affirmative Action, EWS Reservation, Social Justice, Equality.

INTRODUCTION

The Indian Constitution functions as a 'social contract,' with most provisions directly or indirectly advancing 'social justice objectives.' As stated in the 'preamble' and the corresponding chapters on 'fundamental rights' and 'directive principles of state policy', the state has a duty to uphold democracy on three fronts: 'economic,' 'political,' and 'social.' The fundamental ideas of the declaration are 'justice,' 'liberty,' 'equality,' and 'fraternity.' The Indian judiciary has been entrusted with an essential role at every stage; in this regard, the higher judiciary is more crucial in interpreting laws passed by the legislature and making sure they adhere to constitutional principles, protecting federal law, and guaranteeing that the fundamental rights of all citizens are safeguarded.

India's social justice program, which aims to improve historically underprivileged groups like 'Scheduled Castes' (SC), 'Scheduled Tribes' (ST), and 'Other Backward Classes' (OBC), has made 'affirmative action' a pillar. By extending benefits based on economic factors regardless of caste, the 103rd Constitutional Amendment, which established reservations for 'Economically Weaker Sections' (EWS) in 2019, represents a paradigm change. 103rd Constitutional Amendment Act, which came into being in the Sixty-ninth year of the Republic of India, offers 10% reservation to 'Economically Weaker Sections' of society in educational institutions, both private and public, as well as recruitment in government jobs in addition. The EWS involves those unreserved sections of the

population in the country having an annual family income of less than 8 lakh rupees (GOI,2019). The amendment conjures up an image of an inclusive society, narrowing the educational divide and diminishing social and economic inequalities. It ensures educational upliftment of underrepresented sections and would go a long way in ensuring 'Antyodaya,' i.e., the 'development of the last person in society,' in a true sense. Moreover, the Supreme Court (SC) ruling in the 'Janhit Abhiyan v. Union of India'(2022) is a significant milestone in shaping India's 'affirmative action' dynamics.

With the introduction of the 'EWS reservation policy,' the Government seeks to address the issue of 'economic inequality,' which has been prevalent in Indian society since immemorial. By providing educational opportunities and government jobs to economically disadvantaged individuals, the amendment tries to bridge the gap among various socio-economic strata. The policy aims to achieve 'economic justice' and take society closer to 'social and political justice'. Education is often seen as the great equalizer, and by making it more accessible to the economically weaker sections, the government aims to empower these individuals, hence empowering them to break through the cycle of poverty.

Education is fairly considered the keystone for any society to develop. Hence, it is a fundamental right for "free and compulsory education to all children in the age group of 6- 14 years in any manner as the state may via law determine" (Constitution, 1950, art.,21A). Despite the provision, the accessibility of higher and quality education is limited to certain sections of society, mainly the 'affluent ones', and such an arrangement reinforces the never-ending chain. By reserving seats in educational institutions for 'EWS' candidates, the amendment sets the seal on giving more opportunities to individuals from 'economically weaker backgrounds.' This aims to create a richer learning environment for all, both positive and stimulating.

The principle of 'Antyodaya' stands for the idea that the 'fruits of development are bore by all', primarily benefitting the most marginalized sections. To achieve this, education can be the key to ensuring social and political mobility and economic equality. A better education results in better job opportunities, higher income, and improved living standards, paving the way for a 'balanced and just society'. Such arrangements will also result in a better utilization of the country's demographic dividends.

A key development in the journey of the 103rd amendment is the SC ruling in the case of 'Janhit Abhiyan (2022), which put the seal of legality by upholding the constitutional validity of the amendment, hence shutting off the majority of critiques and clearing the way for its efficient implementation. The Judgement in the case is important not only regarding the amendment but also because it sets a precedent for new and innovative economic inclusion policies in the future. The ruling clarifies that the "traditional approach of determining social and educational backwardness based on caste remains a vital criterion but not the sole criterion; the economic dimension to the approach will aid in filtering the result and efficiently target the most deserving beneficiaries of the scheme." The inclusion acknowledges the multi-dimensional nature of inequalities and injustices and provides a more holistic approach to address such disadvantages. The policy also aims to expatiate the importance of the economic dimension in ensuring complete justice, hence shaping the way for future legislation. This article explores the constitutional aspects of this change, including a thorough examination of its inception, application, judicial review, and broader ramifications

Historical Context and Need for the 'EWS' Reservation

'Affirmative action' in India originates in pre-independence initiatives to alleviate 'socioeconomic inequality.' Following the attainment of independence, the Indian Constitution formalized these endeavors by incorporating clauses aimed at protecting the rights of underprivileged groups. Notable legislative initiatives and historic court rulings have shaped the development of these policies. The idea of reservation in India to uplift 'marginalized sections' of the country is not new. However, it dates back to the colonial era when, in the Madras legislature, 28 out of 65 general seats were reserved for non-Brahmins, similar to the case in Bombay (Verma, 2022). Further, keeping historical injustices and social discrimination faced by 'Scheduled Castes' and 'Scheduled Tribes' in mind, the Constitution of independent India included provisions of reservation for them, which was later extended to 'Other Backward Castes.'

After the implementation of recommendations based on the 'Mandal Commission' (reservation of 27% seats to OBC)(Report, 1980), it was only in 2006, based on recommendations of the SR Sinho Commission(Report,2010), that Prime Minister Manmohan Singh's government, for the first time, explored the idea of reserving seats for 'EWS' among forward castes to 'bridge economic disparities among them' but did not bore any fruits legislatively at the center level. Nevertheless, it was not all in vain because, later in 2014, a few state governments, namely those of Gujarat and Rajasthan, passed bills providing reservations to 'EWS' at the state level. Hence, the spark of reservation based on income criteria again caught fire and fructified itself in 2019. Subsequently, Prime Minister Narendra Modi's government laid the groundwork for the 103rd constitutional amendment, adding Articles 15(6) and 16 (6) to the Constitution, which ensured that the "government could provide 10% reservations in government jobs and educational institutions in addition to existing reservations." (Amendment Act, 2019). This was particularly significant in the context of India's growing economy and the need for inclusive growth

Thus, the recommendations of the Sinho Commission laid the foundation for an argument favoring the reservations of 10% for 'economically weaker sections' in 'education' and 'employment' (Parthasarathy,2022). The Commission conducted rigorous data collection by visiting all Indian States and Union Territories to interact with multiple government functionaries, media persons, and social activists before providing the report. Using the limit of taxable income to ascertain the economic backwardness of the candidate was one of many recommendations put forward by the Commission. The Commission also pointed out that policies to improve health and sanitation, along with better education and skill building, could go a long way in ensuring complete justice in the true sense. Despite the contrast between the methodologies employed by the 'Mandal Commission' and the 'Sinho Commission', both bodies will have a deep impact in shaping the policies aiding inclusivity in the future.

The understanding that economic disadvantage is a significant barrier to ensuring equality of opportunities in accessing education and, in turn, jobs served as a brainchild for the amendment. The government acknowledged the need to extend the ambit of 'affirmative actions' and reservation to those who fall outside the conventional categories of 'SCs,' 'STs,' and 'OBCs' but face socio-economic disadvantages. The government took a significant step by adding Articles 15 (6) and 16 (6) to the Constitution to address these disparities. India's vision of becoming the third largest economy in the world wouldn't be truly fulfilling if the growth that comes with the advancement is not evenly distributed. Guaranteeing the benefit to the economically weaker sections that come with the economic boom is essential for sustaining long-term economic development and sustainable nations' progress.

The amendment (Amendment Act, 2019) emerged as one of the most politically controversial issues, annoying various Indian politicians and caste activists. The amendment was viewed as a violation of fundamental safeguards provided to the 'marginalized section' by bringing the 'historically privileged castes' at par with those who have suffered injustices for centuries. The issue's controversial nature was further made clear by several petitions filed in the SC challenging its constitutionality. Finally, in November 2022, SC ruled on the matter, and three out of the five judges upheld the amendment as 'reasonable and constitutionally valid', treating the 'EWS' as a separate class and bringing the debate around the nature of the constitutionality of the amendment to an end (Janhit Abhiyan,2022). However, the relevance and effectiveness of the amendment will be determined by a 'periodical review' and adjustment of the 'eligibility criteria(Express Web Desk,2022).'

'Affirmative Action': Constitutional framework

'Affirmative action' laws have changed over the years due to several legislative changes and court rulings. Two significant turning points in the history of the law are the First Amendment Act of 1951, which inserted Article 15(4), and the 'Mandal Commission Report' of 1980, which paved the way for the implementation of 'OBC reservations.' 'Affirmative action' has been justified by judicial rulings such as 'Indra Sawhney v. Union of India' (1993), which struck a balance between the merit principle and the necessity of social justice. The primary goals of the Indian constitution's reservation provisions are to guarantee 'social equality' and correct historical injustices by giving certain 'marginalized communities' preferential treatment. Constitutional provisions seek to improve

historically 'marginalized communities' representation and involvement in a variety of domains, including 'governance', 'employment,' and 'education,' namely;

Preamble

The preamble of the Indian Constitution mentions Justice – 'social, economic, and political' and equality of 'status and opportunity' as a fundamental guarantee to all its citizens. The vision of the framers of the Indian Constitution is clear in granting 'social' and 'economic' justice to its citizens, without any discrimination based on 'religion,' 'caste,' 'sex,' or 'race.' Later, the addition of the word 'socialist' in the Indian constitution via the 42 Amendment further strengthened the spirit of lawmaking bodies to ensure 'social' and 'economic' justice.

Article 14

Article 14 of the Constitution mentions that the "state shall not deny any person equality before the law or the equal protection of the laws within the territory of India". The article's primary aim is to ensure 'equality of status and opportunity' for all individuals, furthering the objectives mentioned in the preamble. While providing for equality, it does not prohibit the classification of individuals done on 'reasonable grounds', provided such grounds are not 'arbitrary,' 'artificial,' or 'evasive.' The SC has also upheld that "Article 14 provides for equals to be treated equally while unequal can be treated differently. Hence, differential treatment on reasonable grounds does not inherently violate Article 14 but, in turn, furthers its objective of creating an equal nation while striving for excellence" (Mantur, 2020). The 'EWS' reservation is aligned with the purpose of 'Article 14', which is to promote equality among different classes of society. The policy also exemplifies the principle of 'reasonable classification' and 'non-arbitrary discrimination', ensuring individuals receive equal protection in line with a broader constitutional commitment to equality.

Articles 15 and 16

Articles 15 and 16 of the Constitution establish a strong foundation for 'affirmative action'. While discrimination based on 'religion', 'race', 'caste', 'sex', or 'place of birth' is outlawed under 'Article 15', the state is expressly authorized to establish exceptional measures under 'Articles 15(4) and 15(5)' for the advancement of 'socially' and 'educationally' disadvantaged sections, such as 'SC', 'ST', and 'OBC' and can also make a specific provision for advancing any 'socially' and 'educationally' backward class or SCs/STs.

Article 16 ensures "equal opportunities in public employment," and Article 16(4) permits the state to make "special provisions for backward classes if it determines that these groups are not adequately represented in public services." These provisions have been strengthened and made clearer by several SC rulings and constitutional amendments. These rules and rulings have formed a thorough legal foundation for 'affirmative action' in India.

A significant change in India's 'affirmative action policy' is the reservation for 'EWS,' which places more emphasis on 'economic factors than caste.' The main goal of the 'EWS' reservation, which was established to alleviate the economic hardships experienced by members of the general public who do not benefit from the current caste-based reservations, is to guarantee economically disadvantaged groups in society fair access to opportunities for employment and education. Various political parties, social organizations, and the general public contributed to shaping the country's economic reservation policy. Following various committees' extensive public debates and recommendations, the 103rd Constitutional Amendment Act was passed in 2019. The amendment added two new clauses to the Indian Constitution, namely;

- Article 15(6), which empowered the government to make "special provisions for the economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) of the same article", enables the reservation of 'economically weaker sections' in educational institutions. "Although the provision does not allow for reservation in minority educational institutions, it provides for reservations even in private institutions, whether aided or unaided by the state"(Amendment Act, 2019).
- Article 16 (6) provides for "reservation of up to 10% to EWS other than the classes mentioned in clause (4) of the same article in both central and state government jobs."(Amendment Act, 2019)

Article 46

Article 46 of the Constitution, which is a part of Directive Principles of State Policies, promotes the educational and economic interests of 'SCs,' 'STs,' and 'Weaker Sections.' It vigorously promotes the idea of constitution-makers to ensure the prevalence of 'social justice' in society, which is to emerge in post-independent India. The mention of the term 'weaker sections' clarifies the intention of the constitution framers to protect those wronged historically and ensure that no other section of society falls prey to similar disadvantages in the years to come. This article empowers the parliament to protect other sections of society, differing from the traditional caste-based 'affirmative action' approach.

'Affirmative Action': Judicial perspective

'State of Madras v. Champakam Dorairajan' (1951) was one of the first cases involving the reservation problem. The SC overturned the 'State of Madras' Communal Government Order' (GO), which reserved seats in medical and engineering colleges based on caste and religion. The Court determined that the "GO was unconstitutional under Article 15(1) of the Constitution, which forbids discrimination based on sex, religion, race, caste, or place of birth." In 'M. R. Balaji v. State of Mysore' (1963), the SC ruled that "the reservation cannot be more than 50% of the available seats." The ruling highlighted that although reservations are important for advancing 'socially' and 'educationally' disadvantaged groups, they shouldn't unnecessarily infringe upon other people's rights.

The historic ruling in 'Indra Sawhney v. Union of India' (1993), popularly known as the 'Mandal Commission case', maintained the 27 percent reservation for 'Other Backward Classes' (OBCs) in central government appointments. The Court also established several important guidelines, such as the 50% reservation maximum upper limit, the exclusion of the 'creamy layer' from reservations, the applicability of 'caste' as a factor for 'class identification,' and 'no reservation in promotion.' Similarly, In 'T. M. A. Pai Foundation v. State of Karnataka' (2002), the main issue was how private educational institutions, especially those serving minority groups, might employ reservation practices. The Court acknowledged "the state's authority to enforce reservation policies in aided institutions, but it also concluded that private unaided institutions have the freedom to create and manage their own admissions criteria." In reiterating its ruling from the T. M. A. Pai case (2002), the Court decided in 'P. A. Inamdar v. State of Maharashtra' (2005), that "state-imposed reservation laws do not apply to private, unaided educational institutions". Subject to appropriate limitations and conditions, this ruling upheld the admission sovereignty of private 'unaided educational institutions'.

The constitutional amendments that permitted reservations in promotions (Amendment Act, 1995) for SCs and STs and introduced the concept of 'consequential seniority' (Amendment Act, 2001) were challenged in 'M. Nagaraj v. Union of India' (2007) The amendments also introduced the 'quantifiable data' and 'creamy layer' promotion principles. The SC upheld the validity of amendments, holding that reservation should not impair 'administrative efficiency'. In 'Ashoka Kumar Thakur v. Union of India' (2008), the "93rd Constitutional Amendment, which permitted SC, ST and OBC reservations in educational institutions, including private colleges, aided or unaided except minority educational institutions, was maintained as lawful, but the Court reiterated that the 'creamy layer' is not entitled to reservation benefits".

Further, the SC in 'Jarnail Singh v. Lachhmi Narain Gupta' (2018) affirmed the "legality of giving SCs and STs preference regarding government job promotions". However, it changed the standards outlined in the previous M. Nagaraj case (2007), and the Court held that "the obligation to gather 'quantifiable data' to demonstrate the backwardness of SCs and STs was unnecessary. The Court acknowledged that for reservations in promotions, SCs and STs are considered backward and do not need to provide 'quantifiable data' to support this belief. The Court extended the 'creamy layer' principle to promotions, i.e., reservations in promotion should not be granted to advanced sections of SCs and STs."

Subsequently, the 'Karnataka Determination of Seniority of the Government Servants Promoted based on Reservation (to the Posts in the Civil Services of the State) Act, 2002' was challenged in the Court as invalid. This Act gave Karnataka's 'STs' and 'SCs' preference for promotions. In 'B.K. Pavitra I v. Union of India' (2017), the

SC invalidated the Act due to its failure to adhere to the standards outlined in the 'M. Nagaraj'(2007), which included a suitable study to produce 'quantifiable data' on the backwardness and 'inadequate representation' of 'SCs' and 'STs' in public employment and the requirement to preserve 'administrative efficiency'

The State of Karnataka studied the situation and gathered data that could be measured. This resulted in the passing of the 'Karnataka Extension of Consequential Seniority to Government Servants Promoted based on Reservation (to the Posts in the Civil Services of the State) Act, 2018', which again allowed 'SCs' and 'STs' to be given preference in promotions. The Karnataka government had conducted thorough research to obtain 'quantifiable data' on the 'inadequate representation' and 'backwardness' of 'SCs' and 'STs', meeting the standards outlined in 'M. Nagaraj'(2007); therefore, in 'B.K. Pavitra II v. Union of India'(2019), the SC upheld the validity of the Act and held that "the 2018 Act has rectified the shortcomings found in the earlier Act that was overturned in 'B.K. Pavitra, I'(2017). It has clarified the prerequisites for incorporating reservations in promotions, stressing the importance of measurable evidence on administrative effectiveness, backwardness, and inadequate representation." These rulings offer States a model to adhere to when enacting legislation on reservations in promotions, guaranteeing adherence to court rulings and constitutional precepts.

By extending benefits based on 'economic factors' regardless of caste, the 103rd Constitutional Amendment, which established reservations for 'EWS' in 2019, represents a paradigm change. Despite the potential benefits and support of various reports and statistical data, the amendment raised various controversies. While some acknowledged it as a progressive step in the right direction, others expressed worry regarding the constitutionality of the amendment and the policy's potential impact on the nation's current reservation scenario. Politicians and Activists also raised concerns about the violation of the basic structure doctrine, most importantly the issue of 'equality' and 'non-discrimination'. In the 'Janhit Abhiyan VS Union of India'(2022), the SC addressed the following significant points, namely:

1. Can reservation be the policy for including socially and educationally backward classes in mainstream society?
2. Is reservation strictly based on economic criteria against the basic structure of the constitution of India?
3. Is the exclusion of classes mentioned in Articles 15 (4), 15 (5), and 16 (4) from getting benefits under economically weaker sections against the equality code and harnessing the principle of positive discrimination for the social and economic upliftment of mentioned classes?
4. Whether the amendment surpassed the reservation limit of 50%, as mentioned in the prior judicial judgment of 'Indra Sawhney Vs. Union of India'(1993), does such a breach of the ceiling limit of 50% violate the basic structure?

The court, referring to the detailed explanation provided in 'Dr. Jaishri Laxmanrao Patil v. Chief Minister and Ors' (2021) regarding the scope and operation of reservation, said that "achieving real and substantive equality calls for affirmative actions, and reservation is one such tool within a liberal democracy and an exception to the general rule of equality." The court further clarified that "such benefits can be extended to sections other than those currently benefiting without posing a threat to the basic structure of the Constitution". India's founding fathers understood very well that 'representative democracy' is meaningless without 'economic' and 'social justice'. The words of Dr.B.R. Ambedkar are worth quoting:

"Sir, that is why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution. without any direction as to what our economic ideal and our social order ought to be, we deliberately included the Directive Principles in our Constitution. I think if the friends who are agitated over this question bear in mind what I have said just now, that our object in framing this Constitution is really twofold:

- (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government, whatever it is in power, shall strive to bring about economic

democracy, much of the misunderstanding under which most members are laboring will disappear...” (CAD, Vol VII)

Hence, reservation based on ‘economic criteria’ does not violate the ‘basic structure’ of the constitution. In the ‘Janhit Abhiyan’ (2022), the court upheld the 103rd amendment as legal and did not violate the ‘basic structure’ of the constitution. The shift in stance highlights the evolving nature of reservation policies, keeping in mind the changing needs of society, which is reflected in constitutional interpretations. When India was an ‘infant democracy’ in 1951, the court felt that the primary need of the State must be to protect the ‘fundamental rights’ of its citizens, which was very well reflected in its judgment underscoring the primacy of ‘fundamental rights’ over ‘Directive Principles of State Policy’, hence, mandating the State to align its policies as per the ‘fundamental rights’, but after 75 years of independence, India is one of the largest and most successful democracies in the world, the changing needs of the nation are very well articulated. Hence, this reflection in the judgment (‘Janhit Abhiyan,’ 2022) affirms the legitimacy of ‘economic criteria’ in reservation policies. Such a significant shift allows for ‘economic-status-based reservations’; the ruling illustrates the Constitution’s flexibility in addressing contemporary issues.

While answering the question of whether the exclusion of classes mentioned in Articles 15 (4), 15 (5), and 16 (4) from getting benefits under the ‘economically weaker section’ is against the ‘equality code’ and harnesses the principle of ‘positive discrimination’ for the social and economic upliftment of mentioned classes, the SC held that “the argument excluding SCs, STs, and OBCs from the reservation seems reasonable at first as even the mentioned groups include many economically disadvantaged people, but on closer inspection, it is clarified that such exclusion was necessary to efficiently deliver benefits to those not covered under any reservation. Hence, the challenge to the 103rd Amendment does not stand valid, as it is not direct discrimination but a necessary measure to achieve real equality” (Janhit Abhiyan, 2022).

In *M.R. Balaji* (1963), the court struck down the government's order as it exceeded the 50% ceiling limit of reservation, saying that “the reservation must be less than 50%, and the prevailing circumstances in each case would determine the extent of the reservation below 50%”. The Court further explained that “reservation must remain within reasonable limits, specifically not exceeding 50% of total seats, to balance the advancement of marginalized communities with the overall welfare of society.” The decision warned against excessive, arbitrary quotas that could harm fairness and efficiency. 103rd Amendment marked a notable change by introducing reservations based on ‘economic status’, broadening the scope beyond ‘social and educational’ considerations. In *Indra Sawhney* (1993), the court also upheld the executive's authority to create reservation provisions under Article 16 (4). It upheld the ‘rule of caution’ provided in *M.R. Balaji* (1963), i.e., the reservations must not cross the 50% limit.

But in *Janhit Abhiyan* (2022), SC clarified that the court decision should not be interpreted as forbidding the parliament from introducing new ‘affirmative actions’; this ruling serves as a significant development in the history of the development of Indian reservation policy. The amendment diverges from the caste-based reservations discussed in *Indra Sawhney* (1993). The Court held that the “reservation framework can be extended by focusing on economic criteria to include a different population segment.” The case in point is a prime example of the livability of the Indian Constitution and its ability to remain relevant in changing times.

The decision to grant ‘EWS Reservations’ was contested in ‘*Society for the Rights of Backward Communities versus Janhit Abhiyan*’ (2023), a review petition filed on December 6, 2022, which was rejected on May 9, 2023. The Court rejected further hearings after finding no justification for reexamining the earlier Bench's ruling. It held that “after reviewing the review petitions, no errors are evident on the face of the record in earlier judgment”. The Court further held that “according to Supreme Court Rules of 2013, there is no case for review under Order XLVII Rule 1; for this reason, the review requests are denied.”

Affirmative action analysis would be incomplete without referring to *E.V. Chinnaiah v State of Andhra Pradesh*. (2005), in which the SC has held that “the Scheduled Castes cannot be further classified for reservation because, as a class, they cannot be treated differently because their inclusion in the Presidential list makes them an internally homogenous class. Since the Scheduled Castes are already classified under the Constitution, any additional

classification and the ensuing preferential treatment were deemed to violate Article 14 since they would amount to a ‘micro-classification,’ which is prohibited by the Constitution.”

However, the SC in ‘State of Punjab v Davinder Singh’ (2024), while overruling ‘E.V. Chinnaiah’ (2005), highlighted the ‘heterogeneity’ within the ‘SC’ and ‘ST’ communities and held that “treating them as monolithic blocks undermines the purpose of reservations.” The SC supported ‘substantive equality’ over ‘formal equality’ and emphasized that within these categories, subclassification aids in identifying and assisting the ‘most marginalized populations’. This judgment enables the States to create ‘subclassifications’ based on factual information to guarantee the ‘fair distribution’ of reservation benefits.

However, ‘sub-classification’ is only acceptable if founded on a logical concept related to the classification's intended use. The principle must be grounded in factual information regarding ‘underrepresentation’ or ‘backwardness’ in public services rather than being dictated by political considerations. By addressing the disparities in disadvantage across the ‘SC’ and ‘ST’ communities, the ruling is viewed as a critical step towards attaining ‘substantive equality’.

‘EWS’ Reservation: Criteria

There are two primary criteria to determine eligibility for ‘economic reservation policy’ in India: firstly, Individuals must be outside the reservation schemes for ‘SCs’, ‘STs’, and ‘OBCs’; secondly, the family's ‘Gross annual income’ must fall below Rs 8 lakh per annum. The income that is considered includes earnings from all sources, such as ‘salary,’ ‘agriculture,’ ‘business,’ and ‘profession,’ from the financial year before the application year (GOI,2019), but the family-owning:

1. “Agricultural land measuring up to and above 5 acres;
2. Residential property measuring up to and above 1000 sq feet;
3. Residential plot with dimensions of or above 100 sq. Yards in any notified municipality;
4. Residential plot with dimensions of or above 200 sq. yards in areas other than notified municipalities.” (GOI, 2019) is excluded from the ‘EWS’ category.

The term ‘family’ comprises the “applicant, his/her parents, siblings under 18 years of age, and spouse and children under 18 years. For this purpose, property owned by individuals falling within the definition of family at multiple locations is aggregated to apply the land or property holding test.” (GOI,2019)

The 10 percent reservation bill for the general category is a ‘non-caste’ and ‘non-religion’ based initiative drawn to benefit the poorer sections of upper-caste Hindus and other religions who currently do not receive any quota benefits. Most importantly, the quota adds to the existing 50% reservation for the SCs, STs, and OBCs. Drawing attention to the fact that the new reservation will not encroach upon the existing quotas provided to ‘SC/ST and OBC’, the quota will apply to ‘economically disadvantaged’ individuals who have had long-standing demands for reservations and have led various protests that have caused social unrest.

‘EWS’ Reservation: Results and Implications

One of the most commendable aspects of the ‘EWS’ reservation is its potential to create a more ‘inclusive and equitable society’. Historically, ‘affirmative action’ in India has focused on addressing the social injustices faced by ‘SC,’ ‘ST,’ and ‘OBC.’ While these efforts have led to significant progress, they have also overlooked ‘economically disadvantaged’ individuals from higher castes who do not qualify for existing reservations. The introduction of the ‘EWS’ quota addresses this oversight, offering new opportunities for education and employment to those who need it the most.

Aggravating issues of ‘economic inequality’ and increasing political mobilization around ‘religious,’ ‘communal,’ and ‘caste identities and aspirations,’ ‘EWS’ reservation provides a new dimension embedded in the principle of ‘socio-economic justice.’ The amendment provides for better representation of the ‘marginalized populations’ in education and employment opportunities, providing both ‘social and economic’ mobility and guaranteeing access to higher education.

Reservation and 'affirmative actions' were previously seen as tools to uplift historically 'marginalized sections'. However, the latest developments can also significantly uplift 'economically oppressed' individuals. Previously, the reservation was based on 'collective caste identities,' which are based upon 'birth' and are largely permanent, but now it is possible to efficiently identify individuals or groups who need 'affirmative action' for their liberation from 'socio-economic injustices.' It has expanded the logic of 'positive discrimination' and 'equality' under 'Articles 14- 16' of the Indian Constitution. The 103rd Amendment (2019) makes reservations a channel to battle the problems of 'poverty,' 'economic deprivation,' and 'unemployment.'

However, the criteria for 'EWS' reservation, being income, is fluid, as the financial situation can vary from time to time, which can pose a significant challenge in determining the individuals eligible for benefits. The inadequacy of data collected and the ambiguity over the ways of data collection can result in fallacious declaration of income, leading to inefficient implementation of the scheme. Hence, detailed data collection, strategies, and guidelines must be established to identify and deliver services to the most deserving individuals.

Further, expanding the reservation policy beyond the 50% ceiling might open 'Pandora's box', generating more demand and avenues of reservation, which can have detrimental consequences on the country's competitive landscape of politics and governance.(Ghosh,2022) The law, without doubt, aims to shape the dynamics of the procedural discourse of reservation in India; it is important to note that the 'right to equality of opportunity' and the 'right to education' are the basic principles of India's constitutional imagination.

'EWS' Reservation: Hurdles and Critiques

The amendment (Amendment Act,2019) and the judgment ('Janhit Abhiyan', 2022) are significant milestones in achieving a more equal and inclusive society, but 'all that glitters is not gold'; despite its potential benefits, there are various policy implementation challenges. Although the judgment ('Janhit Abhiyan', 2022) has upheld the 103rd amendment's constitutionality, various critics raised concerns over the breach of the reservation limit. Many fears open up multiple avenues, like 'subcategorization' based on 'economic criteria' within the 'scheduled castes, tribes, and other socially and educationally backward classes'. Without the imposition of any new limit and the breach of the previous one, it raises eyebrows questioning where exactly it stops.

Another significant issue is the reasoning behind the annual income criteria of 'Rs 8 lakhs per annum', which is even above the national annual per capita income; such income cut-off determination may include large sections of society. Also, recognizing the beneficiaries and efficient policy implementation would be challenging in a country like India, which has a low taxable population and opaque income generation channels via unorganized means. Moreover, various politicians took to Twitter calling 'EWS' a misnomer, as it's a reservation of forward castes with income as high as '8 lakhs per annum'. The supporters put forward the rationale that the threshold is set at such height to create a broad safety net and include a significant portion of 'economically disadvantaged' individuals. (Kaur, 2019)

A section of the politicians and social activists also highlighted that the castes, the 'EWS' reservation targets, are well represented in 'social,' 'economic, and 'public affairs.' The argument questions the use of reservation as a 'poverty alleviation program'. It states that such policy employment may weaken the original purpose of reservation, which is to address deep-rooted 'social' and 'educational' disadvantages specific communities face. As a monetary feature, poverty can efficiently be eroded through monetary means. Implementing policies like a reservation is perceived as draconian by many.

The amendment can also result in sidelining deserving individuals who are economically well off, thus failing to meet the financial criteria and facing other social obstacles (Maumdar,2023). Such loss of potential assets can significantly harm the nation's overall progress. Policymakers must balance the need for 'economic reservations' to address inequalities.

Way Forward

Reservation policies in India have significantly evolved in these 75 years of independence, and there is still a long way to go. Although it started as a temporary provision, current developments in the field tell us it is there to stay. With that being said, we shall look into the impact such events have on the further evolution of the policy.

Legal interpretations, socio-economic developments, technological progress, and public discourse are a few of the many elements that will shape the future of reservation policies in India, aiming to create a more 'just and equitable' society while also balancing 'fairness,' 'efficiency,' and 'merit.' Significant judgments, like 'Indra Sawhney'(1993) and 'Janhit Abhiyan'(2022) have established key precedents and expanded the scope of the reservation to 'class' rather than 'caste' by including economically oppressed individuals belonging to the forward caste. These cases also provide the scope of 'subcategorizing the population' for efficient implementation and broadening the approach to 'affirmative action'. The dual framework of reservations, encompassing both 'socioeconomic' and 'economic criteria', will prompt a more layered approach in policymaking, acknowledging multiple disadvantages. Further, the judgments may also change existing policies to align them with current legal standards. The aim will always be to build an inclusive society that upholds 'justice' and 'equality' while maintaining high standards of 'efficiency' and 'merit'.

Moving forward with 'EWS' reservations requires a thorough and inclusive strategy considering the 'administrative,' 'socioeconomic,' and 'legal aspects. The 'EWS' reservation policy can be made more equal and effective by guaranteeing 'legal stability,' 'transparent standards,' 'efficient implementation,' 'continuous oversight,' and 'periodic policy review.' The effectiveness and acceptance of 'EWS' reservations depend heavily on addressing socioeconomic challenges and upholding social peace. To ensure that the intended benefits reach the most deserving segments of society, regular policy reviews and stakeholder involvement will aid in fine-tuning the strategy, which include

1. Transparent Identification Standards:

There is a need to establish precise standards for determining who is eligible for 'EWS' benefits; giving specific income thresholds and other pertinent socioeconomic data is part of this. It is imperative to ensure that the most deserving portions benefit and periodically evaluate and revise the criteria to reflect shifting economic realities. This should comprise particular salary levels, restrictions on the amount of property owned, and more socioeconomic metrics. To guarantee openness and accessibility, it is essential to make the requirements widely known through official channels and public awareness campaigns.

2. Method of Implementation

Providing thorough instructions for implementing 'EWS' reservations in government employment and educational settings is vital. These policies should address the requirements for documentation, selection, and application processes. Administrators and officials implementing EWS reservations should participate in training courses to guarantee that the rules are applied consistently and effectively.

3. Monitoring and Evaluation

The implementation of 'EWS' reservations should be supervised by national, state, and local monitoring committees. The government, academic institutions, civil society, and beneficiary communities should all have members on these panels. A regular meeting schedule is necessary for these committees to discuss issues, evaluate results, and recommend enhancements. Introducing a routine auditing system to evaluate how well 'EWS' reservations are working is crucial. This should include audits conducted by independent organizations and internal government authorities, and the reports should be released regularly. Information on beneficiary demographics, employment, educational outcomes, and any difficulties that have been detected should be included in these reports, which should be available to the general public. Finding gaps and opportunities for improvement will be much easier with this.

4. Harmony and Inclusivity

It is necessary to ensure a balance in the 'EWS' reservation policy and that it doesn't cause societal unrest and set up policies to guarantee that, regardless of caste or religion, the 'EWS' reservation policy is inclusive and benefits

all eligible segments of society. The guarantee should be given that benefits are fairly allocated among qualified applicants from all societal segments.

5. Review and Adaptation of Policies

It is crucial to provide a system for the regular evaluation of 'EWS' criteria so that they can be adjusted to the economy's needs and kept current and useful by creating expert panels to revisit the criteria and make recommendations for revisions. Economists, social scientists, and legislators should be on these panels to make the 'EWS' reservation policy applicable and useful by reviewing it regularly. Changes to the policy should be made in response to feedback, shifting socioeconomic circumstances, and the results of monitoring and assessment procedures. Stakeholders should be involved in giving their opinions and developing a consensus on the required changes to the policy, including legislators, experts, and community leaders.

Conclusion

Introducing a 10% reservation for the economically weaker sections ('EWS') among the general category marks a pivotal moment in India's ongoing efforts to achieve 'social equity'. It represents a shift from traditional caste-based reservations to a model that acknowledges the multifaceted nature of economic hardship. This initiative, underpinned by the 'National Commission for Economically Backward Classes' recommendations and led by figures like 'SR Sinho,' signifies a broader recognition of the economic disparities beyond caste lines (Govindharaj et al. , 2023).

The 'EWS' reservation policy harbors the 'principle of equality', a foundation of the ideals of democracy. The government is trying to bridge a significant gap in the existing 'affirmative action' framework by including economically disadvantaged individuals from higher castes in the reservation quota. This move is not merely about fulfilling electoral promises or engaging in vote-bank politics; it is a genuine attempt to level the playing field for those marginalized by economic constraints despite their caste status.

However, implementing the 'EWS' reservation is not without its challenges and criticisms. Critics argue that the policy might be a strategic move by the government to secure the support of the upper-caste electorate. There are concerns about the adequacy of the criteria used to identify economically weaker sections and the potential for misuse of the benefits by those who do not genuinely qualify. Moreover, there is a need for a robust and transparent mechanism to ensure that the benefits reach the intended recipients. A wider understanding of implications and challenges can make room for more articulated and efficient social policies in the future and possibly influence global discourse on 'affirmative action'.

Developing a reliable and empirical procedure for identifying eligible candidates is crucial to address these concerns. The government must invest in creating a comprehensive database that accurately reflects the economic conditions of individuals. This will help prevent the misuse of reservations and ensure that only those needing assistance receive it. Additionally, periodic reviews and audits of the reservation process can help maintain its integrity and effectiveness.

Furthermore, the success of the 'EWS reservation policy depends on its integration with broader 'socio-economic reforms.' Addressing 'economic inequality' requires a multi-faceted approach that improves access to quality 'education,' 'healthcare,' and 'employment' opportunities. The government should also focus on enhancing skill development programs and creating a conducive environment for 'entrepreneurship' and 'economic growth.'

Thus, the 10% reservation for 'economically weaker sections' is a significant step towards achieving 'social equity' in India. It acknowledges the complex nature of economic deprivation and extends a helping hand to those left behind by the current system of 'affirmative action' policies. While the policy faces challenges and criticisms, its potential to transform lives and foster a more inclusive society cannot be overlooked. By addressing the economic disparities within the general category, the 'EWS' reservation policy paves the way for a more 'equitable' and 'just society,' aligning with the core democratic values of equality and fairness. The path ahead requires careful implementation, continuous monitoring, and integration with broader socio-economic reforms to ensure that the benefits of this policy are realized to their fullest potential.

Also, the Supreme Court's 2024 ruling (*State of Punjab v Davinder Singh*, 2024) on 'subclassification' inside 'SC/ST' reservations is a big milestone in attaining 'substantive equality' in India. The decision aims to guarantee that the most marginalized subgroups benefit from reservations by acknowledging the diversity among these communities and permitting specific 'affirmative action' initiatives. Given the disparities in the level of disadvantage experienced by the 'SC' and 'ST' groups, the ruling is considered a significant step toward realizing substantive equality. Due to this ruling, India's reservation policy has undergone a sea change, highlighting the use of rational concepts and empirical evidence to guarantee the fair distribution of quota benefits. Thanks to this decision, States can now more effectively target the most disadvantaged subgroups within 'SC/ST' communities with 'affirmative action' policies. States shall gather and evaluate copious amounts of data, set precise regulations and oversight procedures, guarantee openness and public knowledge, and so forth to effectively carry out this ruling. The objectives of this historic decision must be met by utilizing frequent evaluations and modifications grounded in factual data.

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28. The Constitution of India, 1950, Article 15 provides prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
29. The Constitution of India, 1950, Article 16 provides for equality of opportunity in all government employment.
30. The Constitution of India, 1950, Article 15(6): Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.
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