



FROM COLONIAL RULE TO CONSTITUTIONAL MANDATE: THE TRANSFORMATION OF RESERVATION POLICIES IN INDIA & CRITICAL ANALYSIS OF TITLE

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ABSTRACT

This article analyses the development, legal framework, and judicial policy regarding reservations in India, focusing on horizontal reservation application within Economically Weaker Sections. The reservation system in India, which stems from a historical legacy of caste and class-based exclusion, has slowly evolved to cater not just to Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), but also to women, disabled individuals, and other groups. The 2019 103rd Constitutional Amendment, which added articles 15(6) and 16(6) based on purely economic lines, moved the constitution toward granting reservations exclusively on economic grounds. Although the Supreme Court has accepted the constitutional validity of EWS reservations, their practical enforcement—especially about horizontal reservations—continues to be contentious. The case of Neha Sharma & 53 Others v. State of U.P. arose quite recently and encapsulate the disputes revolving around women's horizontal reservation within EWS categories. Drawing on landmark precedents such as Indra Sawhney, Rajesh Kumar Daria, Anil Kumar Gupta, and Saurav Yadav, this paper explores the conceptual and procedural dimensions of interlocking reservations.

Keywords: Basic Structure Doctrine, Vertical Reservation, Horizontal Reservation, Compartmentalised Reservation.

INTRODUCTION

Reservation in India is a system of affirmative action designed to uplift historically marginalised communities, including Scheduled Castes (SCs), Scheduled Tribes (STs), and

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Other Backward Classes (OBCs).¹ India is a country marked by rich diversity, where people of various classes, communities and backgrounds have coexisted for centuries. In the ancient period, the people of India introduced a caste system, which led to discrimination against certain people by others based on their caste. This led to social exclusion and economic disadvantage for such a community. To address the inequalities and promote inclusivity and upliftment of such a community, the Indian Constitution introduced the reservation policy. This promotes social equality, reduces economic disparities and ensures diverse representation in education, employment and governance. Over time, the scope of reservation has expanded beyond caste-based groups and included reservations for special categories of people in society, such as women, disabled people, etc. Recently, through the 103rd Amendment, reservation based on economic criteria was introduced. This kind of reservation was a long-time demand, especially by the upper-class section. Firstly, it was introduced by the Narasimha Rao government in 1991, but was declared unconstitutional by the Hon'ble Supreme Court of India, and later, after a lot of debate, it was introduced in 2019. 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.² Even though the constitutional validity of reservation for the Economically Weaker Section was upheld by the court, its application is still not clear. This Article examines the difficulties surrounding the application of the reservation for economically weaker sections of society and the correct application of horizontal reservation within economically weaker sections.

HISTORY

The Caste Disabilities Removal Act, 1850, was passed by the British Indian government during the East India Company's rule. This was enacted by Section 9, Regulation VII, 1832, of the Bengal Code. The 1850 law was limited to protecting the civil rights of those who had, for whatever reason, been deprived of caste.³ The preamble states that whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the

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 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>

³ <https://www.newsclick.in/caste-struggle-india-legal-history>

Hindu and the other of the Muhammad an persuasion, or where one or more of the parties to the suit shall not be either of the Muhammad an or Hindu persuasions the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled.⁴ Thus, any law or usage that inflicts on any person forfeiture of the right of inheritance or affects rights on change of religion or loss of caste shall cease to be enforced as law in any court. The Concept of caste-based reservation was initially conceived by William Hunter and Jyotirao Phule in 1882 to address social inequalities. Even though they proposed for Caste Based reservation, it wasn't formed until much later. The significant early step was taken by Rajarshri Shahu Maharaj, who was the king of the princely State of Kolhapur. On July 26, 1902, he issued a historic order granting 50% reservation for lower castes in government jobs in the princely state of Kolhapur. The order reads as "to encourage the backward classes (varnas) of the government's subjects to opt for higher education, His Highness has decided that a higher portion of the princely state's employment opportunities should be kept aside for the backward classes.

In this regard, His Highness orders that, of all the seats that go vacant from the date of his proclamation, 50% should be filled with the backward classes. In all the Offices where backward-class employees number less than 50%, all the next appointments should go to the backward Classes. After the publication of this order, the Chiefs of each department should send a tri-monthly report of all appointments to the Highness. The backward classes should be understood as all classes except Brahmin, Prabhu, Shenvi, Parsi and other advanced classes.⁵ Meanwhile, the partition of Bengal created a communal Divide which led to the formation of the Muslim League under the leadership of Aga Khan and Nawab Mohsin-ul-Mulk. In 1908, at the Amritsar session of the league, under the presidentship of Sir Syed Ali Imam, arose the demand for a separate electorate for the Muslims. Thus, under the Indian Council Act, 1909 separate electorate for Muslims was proposed by the British government. This Constitutional reform was intended to divide and rule, which would facilitate the Britishers to safeguard their rule in India. By 1918, most of the administrative posts were held by Brahmins, and few or no posts were given to other castes or communities, which led to agitation among several non-Brahmin organisations. Thus, under the Mysore Raja Nalvadi Krishnaraja Wadiyar, the Miller committee was created to implement reservations for castes

⁴ The caste Disabilities Act, 1850

⁵ Volume Rajarshi Shahu Gaurav Granth (p 1077)

and communities that had little share in the administration. The Miller Committee Report in 1919 laid the foundation for the proportionate representation of Mysore citizens in Education and government jobs. The Committee report states that the government should lay down a policy for each department of the public service and fix the minimum educational qualifications for entry into particular grades of appointments according to the nature of their functions. In the case of candidates of the backward classes, the age limit for entry into the service may be raised from 25 to 28 years. All competitive examinations, including the Munsiffs' examination) should be abolished, and until this is done, a larger number of the appointments in the higher grades should be given to members of the backward communities by nomination. A board of representative officers may be appointed for the selection of candidates instead of the competitive examinations. For non-gazetted appointments, no higher general educational qualifications than S.S.L.C, and Lower Secondary for Shekdars. Steps may be taken to bring out equality in the Secretariats in three or five years and the administration report of each year should show the proportion of Brahmins to all other classes in each grade of appointment, together with the number of appointments and the percentage of appointments given to members of backward classes to the total number of appointments in each grade showing also how the principle of progressive reduction of the inequality in public service has worked during the particular year.

The report may also publish what special facilities for the education of backward classes have been provided and how far they have helped the promotion of even distribution of education in the State. A standing committee consisting of official and non-official gentlemen representing the classes for whose benefit the above reforms are introduced should be appointed to watch the administration of the rules. A Member of Council may be the president of the Committee.⁶ In 1919, the Madras Presidency passed a Communal GO which provided for caste based reservation. It provided for the reservation of 44% jobs for Non-Brahmins, 16% Brahmins, 16% Muslims, 16% Anglo- Indians and Christians and 8% Scheduled Caste. As the Indian Council Act of 1909 made provisions for separate electorates for Muslims, leaders of many other depressed classes also demanded reservation of seats for their representation in legislative bodies. Eventually, the depressed class leaders succeeded in forcing the British government to invite their representative to the Second Round Conference in London. During this conference, Ambedkar proposed a separate electorate for the depressed community, which was rejected by Mahatma Gandhi. To resolve the impasse,

⁶ <https://www.roundtableindia.co.in/miller-committee-report-1919/>

Ramsay MacDonald, who chaired the committee on minorities, came up with the offer of the Communal Award. This Communal award declared separate electorates for Muslims, Europeans, Sikhs, Indian Christians, Anglo- Indians, depressed classes, women, and even the Marathas, and such arrangement shall be made for 20 years. Gandhiji's vehement opposition to the award led to tensions, necessitating negotiations between Gandhiji and Ambedkar, ultimately resulting in the signing of the Poona Pact. The Poona Pact of 1932, a pivotal agreement between Mahatma Gandhi and B.R. Ambedkar, laid down crucial provisions shaping the political representation of the Depressed Classes, now referred to as the Scheduled Castes.⁷ This agreement was signed by 23 people, including Madan Mohan Malaviya, on behalf of Hindus and Gandhi and Dr B R Ambedkar on behalf of the depressed classes.⁸ Following this, the Government of India Act, 1935, significantly expanded communal representation and introduced the reservation of depressed classes.

FOUNDATION OF MODERN RESERVATION

After Independence, the Constitution of India guaranteed reservations in Education and government jobs for the members of the Scheduled caste and the Scheduled Tribes. In the 1930s, there emerged a heightened call for the recognition of representation rights for marginalised communities, notably the backwards classes. In response to the inadequacies in addressing the needs of Other Backwards Classes (OBCs) within the Indian Constitution, the All-India Backward Classes Federation was established on January 26, 1950.⁹ To define what a backward class is, the first backward class commission was established by a presidential order on 29 January 1953, which was led by the Kaka Kalelkar Commission. The Commission, popularly known as the Kaka Kalelkar Commission, was required “to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove difficulties and to improve their conditions.”¹⁰ This commission was established to determine the criteria to be adopted in considering whether any section of the population in the territory of India, in addition to SC and ST as socially backwards classes and, using such criteria, it was to prepare a list of such classes, setting out the appropriate members and their territorial distribution. The criteria

⁷ Ambedkar and the Poona Pact , The Hindu-IN, <https://www.thehindu.com/opinion/op-ed/ambedkar-and-the-poona-pact/article31333684.ece, ISSN 0971-751 X> Retrieved 30 January 2024

⁸ "[gandhi-ambedkar-and-the-1932-poona-pact](#)"

⁹ Unfinished Discourse Of 'Backwardness' In Independent India, ISSN: 1741-8992 (Online)

¹⁰ <https://thelawmatics.in/the-first-backward-classes-commission-kalelkar-commission/>

adopted for recognising the backward class are low social position in the traditional caste hierarchy, lack of general educational advancement among a major section of the caste or community, inadequate or no representation in government services and inadequate representation in the field of trade, commerce and industry. The commission submitted its report on March 30, 1955. The Central government was not satisfied with the approach adopted by the commission in determining the criteria for identifying the backwards class under 15(4) of the Constitution. Thus, the report was rejected because it had not applied any objective tests for identifying the backwards class and also in pursuit of ultimately creating a casteless society. Despite the non-acceptance of the committee's report by the central government, various states in India, including Mysore, Madras, Kerala, Bombay, Maharashtra, and Andhra Pradesh, took proactive steps to promote Article 16(4) for providing reservations for the backward classes.¹¹

No meaningful action was taken after 1956, either for constituting another Commission or for evolving a better criterion. Ultimately, on August 14, 1961, the Central Government wrote to all the State Governments stating inter alia that "while the State Governments have the discretion to choose their criteria for defining backwardness, in the view of the Government of India it would be better to apply economic tests than to go by caste."¹² The controversy over reservations for other backwards classes led to the formation of the Second Backward Commission in 1978. In December 1978, the commission was established by Prime Minister Morarji Desai and was chaired by B.P. Mandal. It included four other members of Parliament. "The major objectives of the commission were: Firstly, to determine the criteria for defining the socially and educationally backward classes; secondly, to recommend steps to be taken for the advancement of said classes; thirdly, to examine the desirability of making provisions for reservations in public services and posts in favor of such backward class citizens that were not adequately represented; and fourthly, to present to the President a report revealing their findings and making necessary recommendations."¹³

"The Mandal Commission recommended the creation of a third category of groups eligible for reservations: Other Backward Classes (OBC). They recommended an additional 1,257 groups to be taken into account in these reservation systems, estimating the total population to be accommodated to originate from around 52% of the total population of India.

¹¹ Unfinished Discourse Of 'Backwardness' In Independent India, ISSN: 1741-8992 (Online)

¹² <https://thelawmatics.in/the-first-backward-classes-commission-kalelkar-commission/>

¹³ Government of India (1980), "Report on Backward Classes Commission First Padulert

Additionally, the appointments from the Commission increased the number of seats subject to reservation from 22.5% to 49.5%. While these recommendations led to controversy, ultimately, they were implemented between 1990 and 2006.”¹⁴ As the commission had concluded that 52 per cent of the country's population consisted of OBCs, it initially argued that the percentage of reservations in public services for backward classes should also match that figure. However, as this would have gone against the earlier judgement of the Supreme Court of India which had laid down that reservation of posts must be below 50 per cent, the proposed reservation for OBCs had to be fixed at a figure, which when added to 22.5 per cent for SCs and STs, remains below the cap of 50 per cent. Given this legal constraint, the commission was obliged to recommend a reservation of 27 per cent only for backwards castes.¹⁵ After being neglected for 10 years, this commission report was accepted in the year of 1990 by the National Front government.

CONSTITUTIONAL PROVISIONS

The President shall, through a public notification, specify the castes, races, or tribes that are classified as Scheduled Castes, Scheduled Tribes and Socially & educationally backward classes for a State or Union Territory, as laid down in Article 341, 342 and 342A. After the initial notification by the President, Parliament may, by law, add or remove any caste, race, or tribe, but no subsequent notification can alter the initial one. As per section 2 of the National Commission for Backward Classes Act, 1993, the term backward classes mean backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as specified by the Central government in the list. The Constitution (Scheduled Castes) Order, 1950 (as amended from time to time) states that no person professing a religion different from the Hindu, Sikh or Buddhist religion can be deemed to be a member of a Scheduled Caste. There is, however, no religious bar for being treated as a Scheduled Tribe or Other Backwards Class.¹⁶ According to Article 335 of the Indian Constitution, the claims of scheduled castes and scheduled tribe members shall be considered to ensure the efficiency of administration and making appointments to services and posts connected with the affairs of the State or Union. However, according to the Constitution (Eighty-Second Amendment) Act, 2000, nothing in this Article shall prevent the State from making provisions in favour of members of SC/ST for relaxation of qualifying scores for exams, services, or promotions. Under

¹⁴ Osborne, E. (2002). “Culture, Development, and Government: Reservation in India.” *Economic Development and Cultural Change*, 49 (3): 659-685

¹⁵ *Mandal Commission Report, Vol. 1, Recommendations*. pp. 57–60

¹⁶ https://dpe.gov.in/sites/default/files/Reservation_Brochure-2.pdf

Article 340, the President shall appoint a Commission to investigate the conditions of socially and educationally backward classes within the territory and to make recommendations as to steps which should be taken by the Union and State governments to remove difficulties and improve their conditions in the society. Article 46 obligates the State to promote educational and economic interests of the weaker sections and, in particular, the Scheduled Caste and the Scheduled Tribes and protect them from social injustice and all forms of exploitation. Additionally, Article 15(4) and 16(4) of the constitution enabled the central and State governments to reserve seats in government services for the members of SC and ST. In the Context of political representation, Articles 330 and 332 of the constitution allow seats to be reserved in the House of People and the Legislative Assembly for the Scheduled Caste, the Scheduled Tribes, except ST in the autonomous districts of Assam and ST in the autonomous districts of Assam. Article 243D mandates the reservation of seats in panchayats, and Article 243T extends similar provisions to Municipalities.

CONSTITUTIONAL AMENDMENTS

State of Madras V. Champakam Dorairajan¹⁷ is the first Supreme Court judgement to decide and strike down a reservation policy. The State of Madras issued a Communal Government Order for Communal reservation in medical colleges and engineering colleges. The petitioner argued that the Government Order is violative of her rights enshrined under Article 15(1) and Article 29 (2). The Government Order classifies the applicants based on caste, religion, and race, which violates the Constitution of India. The State contended that Article 46 (Directive Principles of State Policy) overrides Article 29 (2), it charges the state to take extra care to help people who are socially or economically weaker, especially those belonging to Scheduled Castes and Scheduled Tribes, and thus it is a fundamental principle for governance and Article 37 makes it obligatory on the States to apply those principles. The Court held that when admission is denied solely on the grounds of religion, caste, and race, then there is a clear breach of Fundamental Rights. The Supreme Court also held that the Government Order is inconsistent with Article 29 (2) and is to be struck down. In 1951, the 1st Constitutional Amendment Act was introduced. This amendment added Article 15(4), which stated that “Nothing in this article or clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backwards classes of

¹⁷ 1951 AIR 226

citizens or the Scheduled Castes and the Scheduled Tribes”.¹⁸ In the Indra Sawhney Case,¹⁹ the Mandal Commission was constituted in 1979 to determine socially and educationally Backward classes in India and provide recommendations for their representation. The Commission submitted a report in 1980, which recommended a 27% reservation for OBCs in central government jobs, in addition to the already existing reservations for Scheduled Castes and Scheduled Tribes. The Prime Minister V.P. Singh, following the report, released an Office Memorandum for reserving 27 per cent seats for Socially and Educationally Backwards classes along with seats that were reserved for SCs and STs. This Office Memorandum was challenged and was heard by a nine-judge constitution bench.

The main issues framed by the Supreme Court bench were

- Whether Article 16(4) is an exception to Article 16(1) or operates independently of it in the context of reservations.
- What constitutes “backward class” under Article 16(4)?
- Whether a reservation solely on economic criteria is permissible under Article 16(1).
- Whether the identification of backward classes requires quantifiable data on social and educational backwardness.
- What should be the maximum (cap) of total reservations in public employment?
- Whether the “creamy layer” (advanced sections within OBCs) should be excluded from reservation benefits.
- Whether reservations can be extended to promotions or limited to initial appointments only.
- Whether the “carry forward” rule for unfilled reserved vacancies is valid, and if so, whether it is subject to the 50% reservation cap.

The petitioners contended that the system of caste based reservations, implemented by the government, contravenes the constitutional principles of equality and also administrative

¹⁸ <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951>

¹⁹ AIR 1993 SC 477

efficiency. The reservation policy is based on the 1931 caste census, which does not accurately reflect the present Indian population, and a new commission under Article 340(1) shall be formed. The petitioners assert that backwardness should not be determined only based on caste but should also include economic, social, and educational factors determining backwardness. Introducing the concept of the “creamy layer” is therefore essential to prevent rich individuals from taking over the benefits intended for the truly needy. Reservation demoralises meritorious candidates and also risks interfering in the efficiency of public administration, violating Article 335 of the Constitution, which mandates efficiency in government services.

The respondents argued that the reservation mandated by the Mandal Commission is necessary for the upliftment of the backward classes. The Mandal Commission is a continuation of the first minority commission (Kaka Kalelkar Commission) report; it also recommended positive steps to uplift the backward classes of society. Only the community-wise population count was obtained from the 1931 census report. The identification of other backward classes was based on the 1961 census report. Caste as a principal criterion to determine backwardness is justified as it is aligned with the social realities of India and the problems faced by the backward classes due to it. Caste is the most reliable indicator for identifying socially and educationally backward classes. Affirmative action, such as reservations, should be aimed at correcting historical wrongs and the long-standing oppression faced by backward classes. Reservations are a means for the Backward classes to fulfil their claims in society. The Supreme Court upheld the constitutional validity of 27 per cent of reservations to Other Backward Classes (OBCs) in public employment under Article 16(4). However, the Court set important guidelines such as the total reservations shall not exceed 50%, mandated the exclusion of the “creamy layer” (the more advanced among OBCs) from reservation benefits, and disallowed reservations in promotions. The judgment confirmed that caste is a valid criterion for identifying social and educational backwardness and also stated that economic criteria alone are insufficient. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States has not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled

Tribes.²⁰ Therefore, in 1995, the 77th Amendment Act was introduced, which enables the government to provide reservations in promotion. Under the 81st Constitutional Amendment Act, 2000, Article 16 (4B) was introduced. The Government, after considering various representations, reviewed the position and has decided to amend the constitution so that the unfilled vacancies of a year, which are reserved for being filled up in that year by any provision for reservation made under clause (4) or clause (4A) of article 16 of the Constitution, shall be considered as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent.²¹ In *Jagdish Lal V. State of Haryana*,²² the issue was whether the application of reservations in promotions by operating the roster system, which thereby impacts the seniority of general category candidates, violates the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellants, belonging to the general category, argued that the reservation in promotions of Scheduled Castes and Scheduled Tribes candidates through the roster system resulted in their juniors being promoted over them. This practice affected their seniority and future promotions within the public service. This operation of the reservation roster in promotions violated their right to equality under Articles 14 and 16 of the Constitution of India. The equality of opportunity in public employment is compromised if reservation affects seniority and supersedes merit.

The respondents contended that the promotions were made following the law and consistent with the Supreme Court's interpretation of Articles 14 and 16. The reservation roster is a constitutional tool to uplift socially and economically backward classes, and is not arbitrary. The respondents contended that reservation not only promoted equal opportunity but was also essential for achieving equality of status, as intended by the Constitution. The Supreme Court dismissed the appeal and upheld the promotions granted to Scheduled Castes and Scheduled Tribes candidates under the reservation policy and the roster system. The Court upheld the constitutional validity of reservation in promotions for Scheduled Castes and Scheduled Tribes as a measure of affirmative action under Articles 14 and 16. The court stated it is a legitimate means to achieve equality and ensure representation for historically disadvantaged groups in public employment. The Court emphasized that reservation in promotions via the

²⁰ <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventy-seventh-amendment-act-1995>

²¹ <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-first-amendment-act-2000>

²² 1997 (6) SCC 538

roster system does not violate the principle of equality, since the intent is to bridge social and economic gaps and bring Backward class communities into the limelight. Thus, the Constitution (eighty-fifth Amendments) Act, 2002, was enacted to nullify this Judgement. In article 16 of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted.²³ In *P. A. Inamdar & Ors V. State of Maharashtra & Ors*,²⁴, the aggrieved persons before the bench were classified as one class, unaided minority and non minority institutions imparting professional education. The issue in this case was whether private unaided educational institutions, including both minority and non minority institutions, have the right to regulate their own admissions and fee structures without being compelled to follow state-imposed reservation quotas or common entrance tests. The petitioners contended that the State should not control their fee structures, provided the fees are reasonable and not exploitative.

The inference of the state infringes the fundamental rights under Article 19(1) (g), the right to practice any profession or carry on any occupation, trade or business and Article 30, the right of minorities to establish and administer educational institutions. Mandatory participation in government-conducted common entrance tests undermines their autonomy and ability to ensure a selection process consistent with their institutional philosophies. The respondents argued that there is a necessity for fair, transparent, and merit-based admissions, which is possible only through common entrance exams for all candidates. The State has a legitimate interest in regulating admissions and fee structures to promote social justice, prevent exploitation of students. Limited or reasonable regulation of these private institutions does not amount to a violation of fundamental rights, as it is required to maintain education standards and prevent discrimination. The Supreme Court delivered a unanimous judgment that upheld the autonomy of private unaided educational institutions, including minority and non-minority institutions, regarding admissions and fee structures. The Court stated that these institutions have the right to administer their affairs with minimal state interference. State governments cannot enforce reservation quotas for admissions to these institutions. However, regulation by the State is permissible only to the extent necessary for ensuring transparency, preventing commercialisation and maintaining educational standards. These regulations must not curtail the essential autonomy of these institutions. Based on this judgment, the

²³ <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-fifth-amendment-act-2002>

²⁴ 2005 (6) SCC 537

Constitutional (Ninety-Third Amendment) Act, 2005, was introduced. This amendment allows the state to make laws for reserving seats for SC, ST, and backward classes in educational institutions, including private unaided educational institutions.

JANHIT ABHIYAN V. UNION OF INDIA

The 103rd Constitutional Amendment Act, 2019, was enacted, which introduced Articles 15(6) and 16(6). The Constitutionality of the amendment was brought into question in *Janhit Abhiyan v. Union of India*,²⁵ Where the Judgement was passed by Chief Justice of India UU Lalit, Justices Dinesh Maheshwari, S Ravindra Bhat, Bela M Trivedi and JB Pardiwala, the 5 Judge Constitution bench upheld the 103rd amendment of the Constitution of India, the reservation for Economically Weaker Section by a 3:2 majority. It was argued that the main aim of the reservation is representation for the disabled groups and not as financial upliftment. In the *Indra Swahmney* case, it was stated that a reservation shall not be solely based on economic criteria. The basis of the Economically Weaker Sections is based on the factor of economic stability. The main goal for the backward class is equality, and the only way to achieve it is through Representation. The introduction of Economically Weaker Sections violates the principles of equality as it blatantly avoids the socially and educationally backward class from this reservation and thus amounts to the infringement of the basic structure of the constitution. Reservation is not linked to caste identity but rather to the social and educational backwardness and lack of representation. The misinformation spread about the socially and educationally Backward class is that it excludes the forward class. In *Kumari v. State of Kerala*, it was said that all classes are entitled to inclusion as socially and educationally backward classes. An additional 10 per cent of reservations for Economically Weaker Sections above the 50 per cent ceiling are a violation of the Constitution, as the 50 per cent ceiling limit gained constitutional recognition in the judgments of *Nagaraj v. Union of India* and *Jaishree Patil v. Chief Minister*. Respondent contended that the 103rd Amendment helped to establish a path for the betterment of Economically Weaker Sections by enabling provisions for them along with the 1st Constitutional Amendment and the 93rd Constitutional Amendment. It was stated that the SCs and STs are “Loaded with benefits” by way of affirmative actions. Both General sections and Forward classes have Economically Weaker Sections, and it was submitted through the 103rd amendment that the State can provide affirmative actions to such Economically

²⁵ 2022 SCC 1540

Weaker Sections, who don't receive any benefits from the existing reservations. Economically Weaker Sections is independent from the reservation of Socially and Economically Backward class, allowing assistance for the vulnerable individual in the forward class or general class, as it does not reduce or “eat into” the existing reservation for the Socially and Educationally Backward class. The 50 per cent was meant to apply only to reservations for backward classes, not to affirmative action for others, such as the economically weak among the general category. Reservations for Economically Weaker Sections are not “further reservations within reservations.” They only apply to those who have not benefited from the existing “backward class” reservations. The Supreme Court Constitution Bench upheld the validity of the 103rd Constitutional Amendment by 3:2 majorities.

The Supreme Court stated 3 main issues in the case-

- Whether the 103rd Constitution Amendment is violative of the basic structure for providing reservation solely based on economic criteria.
- Whether the amendment is violative of the basic structure for excluding the poor among the SC/ST/OBC categories from the Economically Weaker Sections Quota.
- Whether the amendment is violative of the basic structure for breaching the 50% ceiling limit.

As per the majority view, it was held that the 103rd amendment was not violative of the basic structure or any of the above questions. Reservation solely based on economic criteria and the breach of the 50 per cent ceiling doesn't violate the basic structure of the Constitution. "Reservation is an instrument of affirmative action by the State to ensure an inclusive approach. It is an instrument not only for the inclusion of socially and educationally backward classes...Reservations for Economically Weaker Sections do not violate basic structure on account of 50% ceiling limit because the ceiling limit is not inflexible."

NEHA SHARMA AND 53 OTHERS V. STATE OF U.P

The judgment in *Neha Sharma & 53 Ors V. State of UP* addresses the critical aspect of the reservation system in India and outlines the procedure for applying horizontal reservation within the scope of the Economically Weaker Sections category. The reservation policy in

India is divided into two parts: vertical and horizontal reservation, which guides recruitments within reservation categories. Vertical reservation pertains to reserving seats for certain backward classes, including SC, ST, other Backward Classes, and Economically Weaker Sections, as specified under Articles 16(4), 16(5), and 16(6) of the Indian Constitution. Horizontal reservation is designated for other disadvantaged groups such as women, persons with disabilities etc. They are premised on their overlaps and are “interlocking reservations.”²⁶ Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not interchangeable; this would be a case of compartmentalization reservations.²⁷ In *Rajesh Kumar Daria V. Rajasthan Public Service Commission*,²⁸ the court held that “Where a special reservation for women is provided within the social reservation for a particular vertical category, the proper procedure is first to fill up the quota for such vertical category in order of merit and then find out the number of candidates among them who belong to the special reservation group of such vertical category-women.

If the number of women in such a list is equal to or more than the number of special reservation quotas, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of women from that particular vertical category shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to that vertical category. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus, women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women”. This case deals with the intersection of horizontal reservation in the vertical category. A similar issue arose in *Anil Kumar Gupta V. State of UP*,²⁹ where the court held that the State should specify whether the horizontal reservation is a compartmental one or an overall one. The proper and correct course is to first fill up the Open Competition quota (50%) based on merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied, in case it is an overall horizontal reservation, no further question arises. But if it is not so satisfied, the requisite number of special reservation

²⁶ *Sourav Yadav V. State of U.P.*, (2021) 4 SCC 542

²⁷ *Anil Kumar Gupta V. State of Uttar Pradesh*, 1995 SCC (5) 173

²⁸ 2007 (8) SCC 785

²⁹ 1995 SCC (5) 173

candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied. Furthermore, the court expressed the view that having a compartmentalised horizontal reservation would be preferable to avoid complications and intractable problems. In *Saurav Yadav V. State of U.P.*,³⁰ court held that “After the initial allocation of Open General Category seats is completed, the claim or right of reserved category candidates to be admitted in Open General Category seats based on their merit stands exhausted and they can only be considered against their respective column of vertical reservation. If there is any resultant adjustment on account of horizontal reservation in the Open General Category, only those candidates who are not in any of the categories for which vertical reservations are provided alone are to be considered.

In other words, at the stage of horizontal reservation, the Open General Category is to be construed as a category meant for candidates other than those coming from any of the categories for whom vertical reservation is provided. The complexity in this case stemmed from the application of Women’s horizontal reservation within the economically weaker section vertical category. The petition was filed by a group of women candidates from the economically weaker section who participated in a recruitment process for the position of Sub Inspector / Platoon Commander but were unsuccessful. Those petitioners claimed for complete and independent 20% horizontal women reservation under total EWS reservation instead of clubbing horizontal women reservation under the open category and Economically Weaker section category. The council for the petitioner placed reliance on *Indra Sawhney and Ors v. Union of India*,³¹ *Rajesh Kumar Daria V. Rajasthan Public Service Commission & Ors.*,³² and *Anil Kumar Gupta & Ors V. State of UP.*³³ The Respondent State failed to show any provision, order or G.O that instead of applying reservation for woman independently and separately under the Open Category and EWS, they could club both reservations, which could lead a situation, as in the present case that only 34 women under EWS quota were

³⁰ AIR 2021 SUPREME COURT 233

³¹ AIR 1993 SC 477

³² (2007) 8 SCC 785

³³ (1995) 5 SCC 173

benefited with horizontal reservation instead of 181 i.e. reserved seats.³⁴ The Court relied on *Sunaina Delu V. State of Punjab & Ors*, which considered vertical and horizontal reservations and held that: Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class may compete for non-reserved posts, and if they are appointed to the non-reserved posts on their merit, their numbers will not be counted against the quota reserved for the respective backward class. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota.

Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to the Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus, women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Similarly, in *Saurav Yadav & Ors V. State of U.P.*, the Supreme Court held that as a sequel, they are to be calculated concurrently and along with the inviolate 'vertical' (or "social") reservation quotas, by application of the various steps laid out with clarity in paragraph 11 of Justice Lalit's judgement. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment, i.e. examining whether, on merit, any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/ social reservation. Referring to the two previous judgments, the Court determined that the State had incorrectly combined the reservation for women in the open category with that of the Economically Weaker Sections (EWS). The Court issued the following guidelines-

- The relevant respondent must prepare a separate merit list for EWS candidates (women), including a 20% horizontal reservation.
- Subsequently, a list of likely affected selected candidates must be prepared.

³⁴ WRIT A No – 7118 of 2022

- Any vacant seats should then be identified and filled by women candidates from the previously prepared list, based on merit. These candidates should not already be part of the 903 women who were selected; however, no currently selected candidates will be displaced.
- In future selection processes, the State must adhere to the correct and legal methods for applying all reservations, including horizontal reservations.

CONCLUSION

In several key judgments, including *Anil Kumar Gupta v. State of U.P.*, *U.P. Power Corporation Ltd. v. Rajesh Kumar & Ors.*, and *Neha Sharma & Ors. v. State of U.P.*, the courts have shown a preference for compartmentalised reservation, there is still no uniform rule firmly established by the Supreme Court. This leads to many cases being filed on identical legal questions. The Supreme Court has often ruled in favour of compartmentalised reservation, where seats reserved for horizontal categories (e.g., women, persons with disabilities) are proportionately allotted within each vertical category (such as SC, ST, OBC, General), which helps ensure fair representation and avoids overlap or double reservation. Landmark cases like *Anil Kumar Gupta* emphasised the need for compartmentalisation of reservations to promote clarity in the reservation process. Though courts favour compartmentalised reservation, it is nowhere stated that overall reservation is deemed invalid, but overall reservation can sometimes lead to a lower number of reserved category candidates benefiting from horizontal reservations. To prevent the recurrence of litigation on identical legal issues, the above-mentioned uniform rule is suggested. Furthermore, to ensure fair and legally compliant implementation of reservations, especially for women and EWS candidates, States should set up dedicated Reservation departments under the supervision of Liaison Officers. Recruitment notifications must notify of the reservation breakdowns and how it is calculated. Before the notification is released, it shall undergo thorough legal checks to ensure there is no disparity. Regular monitoring, detailed record keeping, and regular audits will ensure improvements and transparency.