



## High Court Struck Down Bihar 65% Quota Rule

**For Prelims:** [Bihar Reservation Law](#) and Breaching 50% Limit, [Supreme Court \(SC\)](#), Scheduled Castes, Scheduled Castes & Other Backward Classes, 77th Constitutional Amendment Act, 1995, EWS Reservation.

**For Mains:** Bihar Reservation Law and Breaching 50% Limit, Caste-Based Reservation and Related Issues, Government Policies and Interventions for development in various sectors and issues arising out of their design and implementation.

[Source: TH](#)

### Why in News?

Recently, the Patna [High Court](#) struck down the Bihar government's decision to increase the reservation quota from **50% to 65%** for [Backward Classes \(BC\)](#), [Extremely Backward Classes \(EBC\)](#), [Scheduled Castes \(SC\)](#) and [Scheduled Tribes \(ST\)](#) in educational institutions and government jobs.

- This move by the Bihar government has raised important questions about the legal limits on reservation policies in India.

### What is the Background of the High Court's Ruling?

- **Background:**
  - In November 2023, the Bihar government issued gazette notifications to raise the quota for deprived castes from 50% to 65%.
  - This decision was taken following a [caste-based survey report](#), which showed the need for increased representation of BC, EBC, SC and ST communities.
  - The Bihar Assembly unanimously passed the Bihar Reservation Amendment Bill in November 2023 to implement this 65% quota.
- **Key Arguments in Court Verdict:**
  - A [Public Interest Litigation \(PIL\)](#) was filed challenging the Bihar government's decision to increase reservations beyond 50%.
  - The Patna High Court ruled that the 65% quota **violated the 50% limit set** by the [Supreme Court](#) in the [Indira Sawhney case \(1992\)](#).
  - The court argued that the state government's decision was **not based on "adequate representation"** in government jobs, but on the proportional population of these communities.
  - The court also noted that together with the **10% [Economically Weaker Sections \(EWS\)](#)** quota, the bill has pushed total reservation to 75%, which is unconstitutional.
- **Need for Extended Reservation in Bihar:**
  - **Socio Economic Backwardness of the State:**
    - Bihar has the **lowest per capita income** in the country (below USD 800 per year), **which is 30% of the national average**.
    - It has the **highest fertility rate** and only **12%** of the population lives in urban areas, compared to the national average of 35%.

- The state has the **lowest college density** in the country and **30%** of the population lives below the **poverty line**.
- **Inadequate Representation of Backward Classes:**
  - **SC, STs and Backward Classes** constitute **84.46%** of Bihar's population, but their representation in government jobs and education was not proportionat
- **Other Alternatives to Extending Reservation Limit:**
  - **Building a Strong Foundation:**
    - Implement recommendations from the [Right to Education \(RTE\)](#) Forum to **improve early childhood development (ICDS centres)**, enhance **teacher training**, and **shift towards interactive and technology-integrated learning** methods.
- **Skilling Bihar's Youth for the Future:**
  - Develop **skill-building programs** aligned with growing industries alongside fostering **entrepreneurship** through programs like the **SIPB (Single-window Investment Promotion Board)** to attract businesses and create a vibrant job market.
- **Infrastructure for Inclusive Growth:**
  - Invest in **improved irrigation systems** to tackle **floods and droughts**, and develop a **robust transport network** connecting rural and urban areas.
- **Empowering All Residents of States:**
  - Promote **women's education, skill development, and financial inclusion** to increase their participation in the workforce and achieve greater social equality. **Enforce laws more strictly** to tackle **social stratification** and promote social harmony.

#### Note:

- Other states having reservations above the 50% limit are **Chhattisgarh (72%), Tamil Nadu (69%)**.
- **North-eastern States** including Arunachal Pradesh, Meghalaya, Mizoram and Nagaland (**80% each**).
- **Lakshadweep has 100% reservations for STs.**

### What is the Reservation?

- **About:**
  - Reservation is a form of positive discrimination, created to promote equality among marginalised sections and to protect them from social and historical injustice.
  - It gives preferential treatment to marginalised sections of society in employment and access to education.
  - It was also originally developed to correct years of discrimination and to give a boost to disadvantaged groups.
- **Pros and Cons of Reservation:**

| Aspect                | Pros  | Cons   |
|-----------------------|---|--|
| <b>Social Justice</b> | <ul style="list-style-type: none"> <li>▪ Provides opportunities for historically disadvantaged groups (SCs, STs).</li> <li>▪ Levels the <b>playing field by addressing historical injustices</b>.</li> <li>▪ Increases social mobility and representation in government.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Can be seen as <b>perpetuating the caste system</b>.</li> <li>▪ May <b>not be reaching the most deserving</b> within reserved categories.</li> <li>▪ Raises questions about efficiency and effectiveness</li> </ul> |

|                            |   |  |
|----------------------------|---|--|
| <b>Meritocracy</b>         | <ul style="list-style-type: none"> <li>Can <b>incentivise excellence within reserved categories.</b></li> </ul>   | <ul style="list-style-type: none"> <li>May lead to the <b>selection of less qualified candidates over more qualified</b> general category candidates.</li> </ul>                                 |
| <b>Representation</b>      | <ul style="list-style-type: none"> <li>Ensures <b>diverse voices in government</b> and institutions.</li> <li>Promotes <b>social inclusion</b> and national integration.</li> </ul> | <ul style="list-style-type: none"> <li>May <b>not reflect current</b> socio-economic realities (wealthy individuals within reserved categories)</li> </ul>                                       |
| <b>Creamy Layer</b>        | <ul style="list-style-type: none"> <li>Exclusion of creamy layer (wealthy) within reserved categories attempts to target the most disadvantaged.</li> </ul>                         | <ul style="list-style-type: none"> <li>Defining and identifying the creamy layer can be challenging.</li> <li>Also there is <b>opposition from particular groups like SC and STs.</b></li> </ul> |
| <b>Economic Upliftment</b> | <ul style="list-style-type: none"> <li>Reservation in education can lead to better job prospects for reserved categories</li> </ul>   | <ul style="list-style-type: none"> <li>Does not directly address economic disparities</li> </ul>   |

## What are the Constitutional Provisions Related to Reservations in India?

- Part XVI of the [Constitution of India](#) deals with the reservation of **SC** and **ST** in **Central** and **State legislatures.**
- [Article 15](#) of the Constitution empowers the State to make the following provisions:
  - Article 15(3)** provides special provision for **women and children.**
  - Article 15(4) and Article 15(5)** provides special provision for the advancement of **any socially and educationally backward classes** of citizens or for the SCs and the STs, including their admission to educational institutions, including private ones.
- Article 15(6)** provides special provisions for the advancement of any [Economically Weaker Sections \(EWS\)](#) of citizens other than the classes mentioned in clauses (4) and (5).
- [Article 16](#) provides for the grounds of positive discrimination or Reservation in government jobs.
  - Article 16(4)** provides for the reservation of appointments or posts in favour of any **backward class of citizens.**
  - Article 16(4A)** provides for reservation in promotion for [Scheduled Castes \(SC\)](#) and the [Scheduled Tribes \(ST\).](#)
    - The Constitution was amended by the **Constitution (77<sup>th</sup> Amendment) Act, 1995** and a **new clause (4A)** was inserted in **Article 16** to enable the government to provide reservation in promotion.
    - Later, **16(4A)** was modified by the **Constitution (85<sup>th</sup> Amendment) Act, 2001** to provide **consequential seniority to SC and ST candidates promoted by giving reservation.**

- **Article 16 (4B)** allows states to consider unfilled reserved vacancies from a previous year meant for SCs and STs.
  - It was inserted by the **81<sup>st</sup> Constitutional Amendment Act, 2000**.
- **Article 16(6)** provides for the reservation of appointments or posts in favour of any [Economically Weaker Sections \(EWS\)](#).
- **Article 233T** provides reservation of seats for **SCs and STs in every Municipality**.
- **Article 243D** provides reservation of seats for **SCs and STs in every Panchayat**.
- **Article 335** of the constitution says that the claims of SCs and STs shall be taken into consideration consistently with the maintenance of efficacy of the administration.
- **Articles 330 and 332** provide for specific representation through the reservation of seats for SCs and STs in the [Parliament](#) and in the [State Legislative Assemblies](#) respectively.

## What are Developments Related to Reservations in India?

- [Indra Sawhney Judgment, 1992:](#)
  - The court upheld the constitutionality of the **27%** reservation for OBCs but **put a ceiling of 50%** unless exceptional circumstances warranted the breach so that the constitutionally guaranteed [Right to Equality](#) under [Article 14](#) would remain secure.
  - This 9-judge bench judgement held that **Article 16(4)** of the Constitution, which allows [reservation](#) in appointments, **does not extend to promotions**.
  - The carry forward rule is valid but it is subject to **50%**. There should be no **reservation in the promotions**.
  - The court clarified that **Article 16(4)** is not a separate rule that overrides **Article 16(1)**. Article 16(1) is a fundamental right and **Article 16(4)** is an **enabling provision**.
    - **Article 16(1)**: It states that there **shall be equality of opportunity** for all citizens in matters relating to employment or appointment to any office under the State.
  - Further, the Court directed to exclude [Creamy Layer](#) (economically well-off) from [Other Backward Classes \(OBCs\)](#) from getting reservation benefits.
    - However, it specifically **excluded SCs and STs from this concept**.

## 85th Amendment Act (2001)

- It introduced the concept of **consequential seniority for SC/ST candidates** promoted through reservations. This **applied retroactively to June 1995**.
  - "**Consequential seniority**" refers to the concept of **granting seniority to government servants** belonging to SC and ST in cases of promotion through reservation rules.
- [M. Nagaraj Judgment, 2006:](#)
  - This judgment partially overturned Indra Sawhney's judgment.
  - It introduced a **conditional extension of the "creamy layer" concept to SC/ST communities seeking promotions in government jobs**.
    - This concept was previously applied only to Other Backward Classes (OBCs).
  - Judgment laid down **3 conditions** to allow states to provide reservations in promotions for SCs/STs.
    - **Inadequacy of Representation:** The state must demonstrate SCs/STs are inadequately represented in promotions.
    - **Creamy Layer Exclusion:** Reservation benefits should not extend to the "creamy layer" within SCs/STs.
    - **Maintain Efficiency:** Reservation should not affect overall administrative efficiency.
- [Jarnail Singh vs Union of India, 2018:](#)
  - In this case, the **SC** reversed its stance on data collection.
  - **States No Longer Need Quantifiable Data:** The SC ruled that states no longer needed to **collect quantifiable data to prove the backwardness of the SC/ST community** when implementing **reservation quotas for promotions**.
  - It allowed the government to implement "**accelerated promotion with consequential seniority**" for SC/ST members more easily.




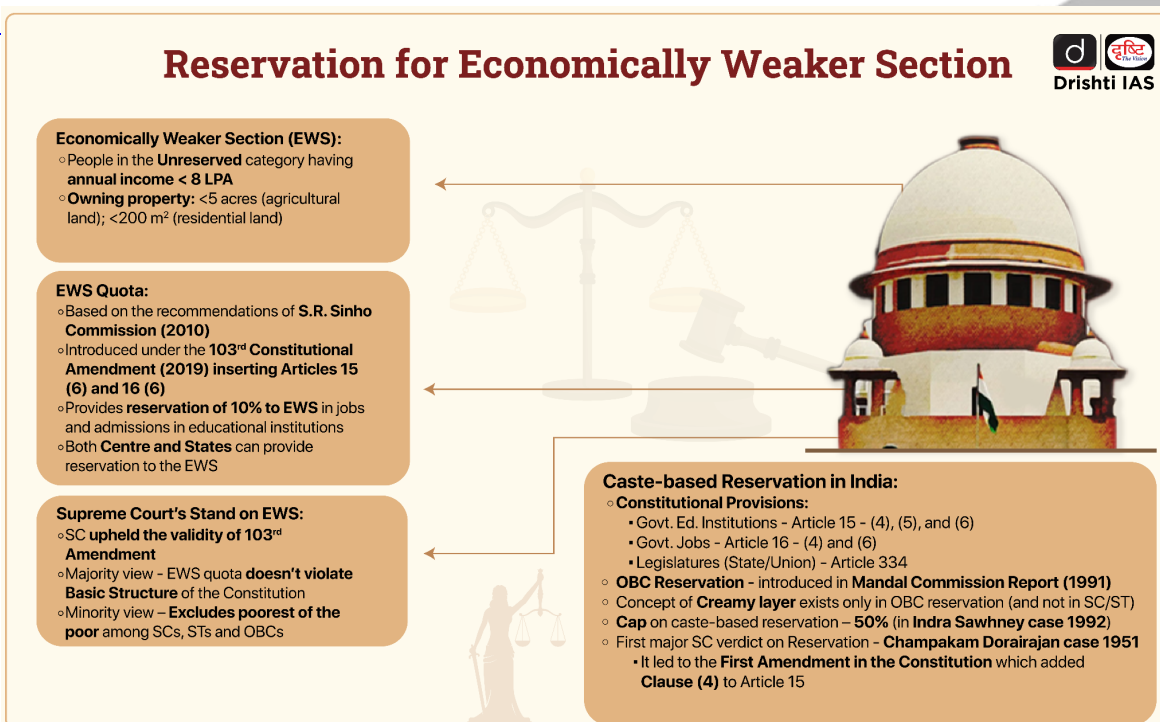
## 103<sup>rd</sup> Constitution (Amendment) Act, 2019:

- It provides for **reservation to EWS** in jobs in central government jobs as well as government educational institutions.
  - It was introduced by amending [Articles 15 and 16](#) and inserted Article 15 (6) and Article 16 (6).
  - It was enacted to promote the welfare of the poor not covered by the 50% reservation policy for [Scheduled Castes \(SCs\)](#), [Scheduled Tribes \(STs\)](#) and [Socially and Educationally Backward Classes \(SEBC\)](#).
  - It enables both the Centre and the States to provide reservations to the EWS of society
- **Janhit Abhiyan v. Union of India, 2022:**
- It challenged the 103<sup>rd</sup> Constitutional Amendment. In a 3-2 verdict, the Court upheld the amendment.
  - It allowed the government to provide reservation benefits based on economic standing, alongside existing reservations for disadvantaged social groups.

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### Reservation for Economically Weaker Section

 Drishti IAS



**Economically Weaker Section (EWS):**

- People in the **Unreserved** category having **annual income < 8 LPA**
- **Owning property:** <5 acres (agricultural land); <200 m<sup>2</sup> (residential land)

**EWS Quota:**

- Based on the recommendations of **S.R. Sinho Commission (2010)**
- Introduced under the **103<sup>rd</sup> Constitutional Amendment (2019)** inserting **Articles 15 (6) and 16 (6)**
- Provides **reservation of 10%** to EWS in jobs and admissions in educational institutions
- Both **Centre and States** can provide reservation to the EWS

**Supreme Court's Stand on EWS:**

- SC **upheld the validity of 103<sup>rd</sup> Amendment**
- Majority view - EWS quota **doesn't violate Basic Structure** of the Constitution
- Minority view - **Excludes poorest of the poor** among SCs, STs and OBCs

**Caste-based Reservation in India:**

- **Constitutional Provisions:**
  - Govt. Ed. Institutions - Article 15 - (4), (5), and (6)
  - Govt. Jobs - Article 16 - (4) and (6)
  - Legislatures (State/Union) - Article 334
- **OBC Reservation** - introduced in **Mandal Commission Report (1991)**
- Concept of **Creamy layer** exists only in OBC reservation (and not in SC/ST)
- **Cap** on caste-based reservation - **50%** (in **Indra Sawhney case 1992**)
- First major SC verdict on Reservation - **Champakam Dorairajan case 1951**
  - It led to the **First Amendment in the Constitution** which added **Clause (4)** to Article 15

## Way Forward

- **Focus on Merit with Relaxation:** Promoting a system that emphasises merit while allowing for **some relaxation in qualifying marks** for SC/ST/OBC candidates in promotions, **ensuring that qualified candidates from these communities** have a better chance while maintaining an acceptable competency level.
- **Data-Driven Approach:** It is needed to assess the **current representation of SC/ST/OBCs across different levels and departments**. This data can be used to establish concrete targets for filling reservation quotas.
- **Addressing Concerns:** Acknowledge **concerns about unqualified candidates** getting promoted due to reservations.
  - Propose solutions like **rigorous training and mentorship programs** for promoted SC/ST/OBC employees to bridge any skill gaps and ensure they excel in their new roles.
- **Long-Term Vision:** Emphasise that **reservations are a temporary measure** to achieve long-term social justice and equal opportunity in promotions.
  - Advocate for **parallel initiatives that improve education and access to resources for these communities**, ultimately leading to a situation where reservations may not be necessary.

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**Drishti Mains Question:**

Critically analyse the role of the reservation policy in promoting social justice and equality, as well as its challenges and limitations. Suggest measures to make the system more effective and equitable.

**UPSC Civil Services Examination Previous Year Question (PYQ)**

**Q1. Consider the following statements: (2009)**

1. Between Census 1951 and Census 2001, the density of the population of India has increased more than three times.
2. Between Census 1951 and Census 2001, the annual growth rate (exponential) of the population of India has doubled.

**Which of the statements given above is/are correct?**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (d)**

**Q. Consider the following statements: (2020)**

1. The Constitution of India defines its 'basic structure' in terms of federalism, secularism, fundamental rights and democracy.
2. The Constitution of India provides for 'judicial review' to safeguard the citizens' liberties and to preserve the ideals on which the Constitution is based.

**Which of the statements given above is/are correct?**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (d)**

**Q. Which of the following are regarded as the main features of the "Rule of Law"? (2018)**

1. Limitation of powers
2. Equality before law
3. People's responsibility to the Government
4. Liberty and civil rights

**Select the correct answer using the code given below:**

- (a) 1 and 3 only
- (b) 2 and 4 only
- (c) 1, 2 and 4 only
- (d) 1, 2, 3 and 4

**Ans: (c)**

## **Mains**

**Q.** Whether the National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine. **(2018)**

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