

50% Cap on Reservation

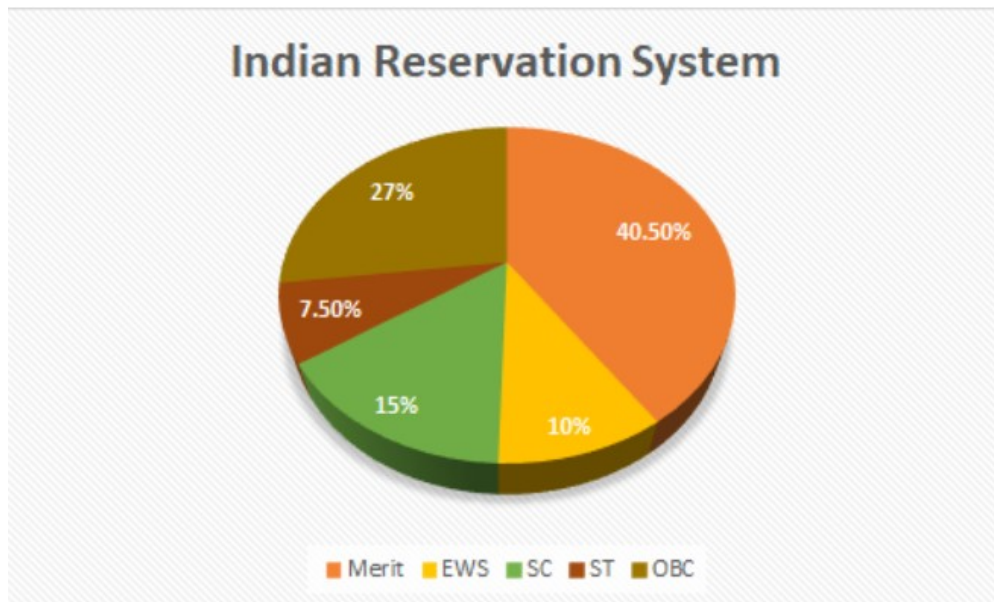
Mains: *GS II – Welfare schemes for vulnerable sections of the population by the Centre and States*

Why in News?

Recently, the leader of the opposition in Bihar, Tejashwi Yadav, has declared that if voted to power, their alliance would increase reservation to 85%.

What are Reservations in India?

- **Reservations** – They are a system of affirmative action that provides a fixed percentage of seats in government jobs, educational institutions, and legislatures for historically disadvantaged groups, such as
 - Scheduled Castes (SC)
 - Scheduled Tribes (ST)
 - Other Backward Classes (OBC)
 - Economically Weaker Sections (EWS).
- **Objective** – The policy was established in the Indian Constitution to address centuries of social and economic inequality.
- To promote the empowerment of marginalized communities, and ensure their adequate representation in various sectors of society, stemming from the historical injustices of the caste system.
- **Constitutional provisions** – Articles 15 and 16 guarantee equality to all citizens in any action by the state (including admissions to educational institutions) and public employment respectively.
- In order to achieve social justice, these Articles also enable the state to make special provisions for the advancement of socially and educationally backward classes or Other Backward Classes (OBCs), SCs and STs.
- **The reservation in the Centre at present**



- This results in a ***total reservation of 59.5%.***
- The reservation percentages vary from State to State according to their demographic profile and policies.

What have courts ruled?

- The issue arises due to two ostensibly competing aspects of equality — formal and substantive.
- **Formal equality** - It is where the *reservations are seen as an exception to equality of opportunity* and hence cannot exceed 50%.
- **Balaji versus State of Mysore (1962)** - The SC noted that reservations under Articles 15 and 16 for backward classes *should be 'within reasonable limits'* and should be adjusted with the interests of the community as a whole.
- The court further ruled that such special provisions for reservation should not exceed 50%.
- **Substantive equality** - It is based on the belief *that formal equality is not sufficient to redress the difference between groups that have enjoyed privileges in the past* and groups that have been historically underprivileged and underrepresented.
- **State of Kerala versus N. M. Thomas (1975)** - A seven-judge bench have proposed the aspect of substantive equality.
- The court in this case opined *that reservation for backward classes is not an exception to equality of opportunity* but is an assertion and continuation of the same.
- However, since the 50% ceiling was not a question before the court, it did not give a binding judgment on this aspect in the case.
- **Indra Sawhney case (1992)** - A nine-judge Bench *upheld the 27% reservation for OBCs.*
- It opined that caste is a determinant of class in the Indian context.
- Further, in order to uphold the equality of opportunity, *it reaffirmed the cap of 50% for reservation as held in the Balaji case*, unless there are exceptional circumstances.
- The court also provided for the exclusion of a creamy layer within OBCs.
- **Janhit Abhiyan case (2022)** - The court by a majority of 3:2 *upheld the constitutional validity of the EWS reservation.*

The journey of reservations

A brief summary of important developments with respect to reservations at the central level

Year	Key development
1950 and 1951	Commencement of the Constitution and the First Amendment — enabling provisions in Articles 15 and 16 for the advancement of OBCs, SCs and STs
1982	Reservations for SCs and STs fixed at 15% and 7.5% respectively in central educational institutions and public sector undertakings
1990	The introduction of 27% reservation for OBCs in central government employment based on the recommendation of the Mandal Commission
2005	Article 15(5) inserted by the 93rd constitutional amendment that enabled reservations for OBCs, SCs and STs in educational institutions, including private ones
2019	Articles 15(6) and 16(6) inserted by the 103rd constitutional amendment which enabled up to 10% reservation for the EWS among the unreserved category in educational institutions and public employment

- It held that economic criteria could be a basis for reservation.
- It also opined that the 50% limit set in the Indra Sawhney case was meant for backward classes while the EWS reservation of 10% is for a different category among unreserved communities.

What are the issues and competing arguments?

- **Views of Dr. B.R. Ambedkar** - In his Constituent Assembly speech in November 1948, he justified the need to have reservations for backward communities that have been left out in the past.
- He also opined that reservations should be confined to a minority in order to uphold the guaranteed right of 'equality of opportunity.'
- **Recent demands** - There has been a growing demand for increasing the reservation percentage beyond the judicial cap of 50% to reflect the proportion of backward classes in the population.
- The demand for a caste census has been strong in order to have actual data about this proportion rather than mere estimates.
- **Unfilled seats** - It must also be noted that as per various government replies in Parliament, 40-50% of seats reserved for OBCs, SCs and STs in the Central government remain unfilled.
- Concentration of reservation benefits - The Rohini Commission, was set up for providing recommendations on the sub-categorisation among OBC castes.
- It has estimated that 97% of reserved jobs and seats in educational institutions have been garnered by just around 25% of the OBC castes/sub-castes at the central level.
- Close to 1,000 of around 2,600 communities under the OBC category have had 0 representation in jobs and educational institutes.
- A similar issue of concentration of reservation benefits persist in SC and ST categories as well.
- There is no exclusion of 'creamy layer' for SC/ST communities.
- **State of Punjab versus Davinder Singh (2024)** - Four judges of a seven-judge Bench impressed the Central government to frame suitable policies for the exclusion of 'creamy layer' in SC and ST reservations.
- The Central government in a cabinet meeting in August 2024 reaffirmed that the 'creamy layer' does not apply to reservations for SCs and STs.

- Critiques who are against the extension of a creamy layer to SCs and STs argue that the vacancies for these communities are anyway not fully filled.
- Therefore, the question of a creamy layer within such communities seizing the opportunities of even more marginalised castes does not arise.
- The exclusion of a creamy layer based on any criteria will result in an even more increased backlog of vacancies.
- There is also a fear that such backlog vacancies may be converted in the long run to unreserved seats thereby depriving the SCs and STs of their rightful share of opportunities.

What can be done?

- **Right to equality of opportunity** – It is a fundamental right and an increase in reservation up to 85% may be seen as violating such right.
- Nevertheless, substantive equality through affirmative action is required to uplift the underprivileged.
- **Discussion among stakeholders** – Based on empirical data of the ensuing Census in 2027, which will also enumerate backward castes, there must be wide ranging discussions with all stakeholders to arrive at a suitable level of reservation.
- **Sub-categorisation of OBCs** – Equally important is to implement sub-categorisation among the OBCs as per the Rohini Commission report based on Census data.
- **For SCs and STs** – As demanded in the plea before the Supreme Court, a two-tier reservation system may be considered.
- Under such a scheme, priority would be given to more marginalised sections before extending it to those who are relatively well-off within those communities.
- These measures would ensure that benefits of reservation reach the more marginalised among the underprivileged in successive generations.
- It must also be borne in mind that considering the opportunities available in the public sector and the young population of our country, any scheme of reservation would not meet the aspirations of large sections of the society.
- **Skill development** – There must be sincere efforts to provide suitable skill development mechanisms that would enable our youth to be gainfully employed.

Reference

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