

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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THE CHANGING CONCEPT OF 'BACKWARDNESS' **AFTER THE RISE OF EWS RESERVATION**

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I. Abstract

India's reservation system has always been built on the idea that certain communities are 'socially and educationally backward.' This idea is written into Articles 15(4), 16(4), and 340 of the Constitution. The Supreme Court has shaped and refined this concept in many important judgments like from State of Madras v Champakam Dorairajan (1951) all the way to the massive nine-judge decision in Indra Sawhney v Union of India (1992). Then, in 2019, Parliament made a big change. The Constitution (103rd Amendment) Act introduced a new 10% reservation for Economically Weaker Sections (EWS) meaning people who are simply poor, regardless of their caste or community. The Supreme Court upheld this change by a 3:2 majority in Janhit Abhiyan v Union of India (2022). This paper traces how 'backwardness' has been understood in Indian law, how the four most important court cases treated this idea, how money-based poverty fits into the picture, and whether the EWS quota makes the old idea of social and educational backwardness weaker, leaves it unchanged, or actually strengthens it. The paper concludes that the EWS reservation opens up reservation law to a new kind of thinking. But it also creates a real tension with the original logic of why reservation exists in the first place.

II. Introduction

Reservation in India, setting aside seats in colleges and government jobs for people who face disadvantage, has been one of the most debated and consequential policies since independence. Right from the very beginning, when the people who wrote India's Constitution were debating what kind of disadvantage would justify such special treatment, the word 'backwardness'

became the key to the whole system. Who is 'backward'? How do you decide? What kind of disadvantage counts?

India's answer was different from most countries. In America, affirmative action focuses mainly on race. In some European countries, it focuses on economic class. India took a third path: the idea that certain communities had been crushed for centuries by the caste system, by untouchability, social exclusion, and a denial of access to education and power. This was not ordinary poverty. It was a deeply rooted social injury. And it was this specific kind of disadvantage that reservation was designed to fix.

The phrase 'socially and educationally backward classes' in Articles 15(4) and 340 of the Constitution was not an accident. The people who wrote the Constitution chose those words deliberately. They wanted the law to focus on communities that had suffered social disadvantage, especially because of caste, rather than simply on communities that were poor. Being poor was seen as a result of being socially backward, not the same thing as being socially backward.

For more than seventy five years, the Supreme Court kept this distinction alive. In *M R Balaji v State of Mysore* (1963), the Court said that backwardness has to be both social and educational, one cannot get reservation just because your community is poor.¹ In the famous *Indra Sawhney* case (1992), nine judges came together and struck down a separate 10% reservation that the government had tried to create purely on economic grounds, ruling clearly that 'a backward class cannot be determined only and exclusively with reference to economic criteria.'²

The Constitution (103rd Amendment) Act, 2019 changed all of this. It was passed by the Parliament in January 2019 with strong support. The Amendment added new provisions to Articles 15 and 16 allowing the State to reserve up to 10% of seats for 'Economically Weaker Sections' (EWS). The EWS category is defined purely by money i.e, a family income below ₹8 lakh a year, along with limits on property ownership.³ Importantly, the Amendment explicitly

¹ *M R Balaji and Others v State of Mysore* AIR 1963 SC 649 (Supreme Court of India, 28 September 1962).

² *Indra Sawhney and Others v Union of India* AIR 1993 SC 477 (Nine-Judge Constitution Bench, 16 November 1992), per Jeevan Reddy J.

³ Constitution (One Hundred and Third Amendment) Act 2019, inserting Arts 15(6) and 16(6) of the Constitution of India 1950; Office Memorandum No 36039/1/2019-Estt(Res) (Ministry of Personnel, Public Grievances and Pensions, 31 January 2019) specifying the EWS income and asset criteria.

says that people already covered by SC, ST, and OBC reservations cannot benefit from this new quota.

When this Amendment was challenged in *Janhit Abhiyan v Union of India* (2022), the Supreme Court's five-judge bench upheld it 3:2. The majority said that economic disadvantage is a valid ground for reservation and that the old 50% limit from the *Indra Sawhney* case was not a rigid ceiling. Justice Ravindra Bhat, in a strong dissent joined by the then Chief Justice, disagreed. He found that barring SC/ST/OBC communities from the new economic quota struck at the 'heart of the equality code.'⁴

This paper asks a simple but important question: what has the EWS reservation done to the understanding of what 'backwardness' means in Indian constitutional law? Has it weakened the original idea? Has it just added a new category alongside the old one? Or has it actually strengthened the overall system of social justice?

III. Research Problem

This paper tries to address the clash between two different ways of thinking about disadvantage that now both exist within India's constitutional framework of reservation.

The first way, which governed India's reservation system for over seventy five years, says that backwardness is about social and educational disadvantage. It is rooted in the idea that the caste system created deep, structural wounds that cannot be healed simply by improving someone's income. Communities that were excluded from education, denied dignity, and kept out of power for generations need the State to actively help them catch up. This is a corrective approach: it aims to fix a historical injustice.

The second way, introduced by the 103rd Amendment, says that being poor is enough. If your family earns below ₹8 lakh per year and does not own significant property, you qualify. It does not matter whether your community was discriminated against historically. This is a distributive approach: it aims to spread opportunities more evenly based on current economic conditions.

⁴ *Janhit Abhiyan v Union of India* WP (C) 55/2019 (Supreme Court of India, 7 November 2022), Bhat J (dissenting).

These two frameworks are built on different foundations. The first asks: what injustice happened to your community, and are the effects still being felt? The second asks: is your family poor right now? Bringing both into the same constitutional space creates a real tension. The logic that justifies one does not automatically justify the other.

IV. Research Question

Does giving legal recognition to purely economic backwardness through the Constitution (103rd Amendment) Act, 2019 and the EWS reservation make the old idea of 'social and educational backwardness' weaker, leave it unchanged alongside the new system, or actually strengthen it?

V. Research Objective

1. To trace the historical origins of the concept of 'backwardness' in Indian law.
2. To examine what India's Constituent Assembly intended when it used the phrase 'socially and educationally backward.'
3. To analyse how the Supreme Court of India understood and applied the concept of backwardness in four landmark judgments.
4. To determine whether the recognition of purely economic backwardness through EWS dilutes, coexists with, or reinforces the concept of social and educational backwardness.

VI. Research Methodology

This paper follows a doctrinal legal research method. The main sources used are the Constitution of India (especially Articles 15, 16, and 340), the key constitutional amendments (including the First Amendment of 1951 and the 103rd Amendment of 2019), five major Supreme Court judgments (Champakam Dorairajan, M R Balaji, Indra Sawhney, Ashoka Kumar Thakur, and Janhit Abhiyan), the Constituent Assembly Debates, and the reports of the Kaka Kalelkar Commission (1955) and the Mandal Commission (1980). All of these are read carefully, paying attention not just to the final decisions of courts, but also to what judges said in passing. This is done in order to understand how the meaning of 'backwardness' has changed over time.

VII. Literature Review

- a. *Gautam Kumar and Minaketan Behera, 'Affirmative Action in New India: Evaluation of Caste-Based Reservation Policy and Debate Around Economic Criteria' (2025) Social Change*

This is a recent research article that looks at how well caste-based reservation is working in India today, and whether shifting to economic criteria makes sense. The authors use real data and statistics to show that large gaps still exist between different caste groups in India, which means caste remains a strong marker of who is disadvantaged. They argue that the move toward economic criteria, as seen in the EWS Amendment, does not fully capture the depth of caste-based disadvantage, which cannot simply be measured in rupees. This article is important for this paper because it provides evidence that supports the legal argument that social and economic backwardness are not the same thing, and cannot simply be swapped for each other.⁵

- b. *Marc Galanter, Competing Equalities: Law and the Backward Classes in India (University of California Press 1984)*

This book is widely considered the gold standard on the legal history of backward class reservation in India. Galanter traces the idea of 'backward classes' all the way from the colonial era, showing how the term was used differently by different people and institutions over time. He points out a central contradiction in the reservation system: caste is both the problem (the source of disadvantage) and the tool used to identify who needs help. What makes this book useful for this paper is Galanter's careful analysis of the relationship between social backwardness and economic poverty. He argues that while caste and economic class are closely linked in India, they are not identical, which is exactly the issue at the heart of the EWS debate.⁶

- c. *S Thorat and K Newman (eds), Blocked by Caste: Economic Discrimination in Modern India (Oxford University Press 2010)*

This book brings together research from many scholars to show that caste-based discrimination still affects people's lives across different areas like jobs, housing,

⁵ Gautam Kumar and Minaketan Behera, 'Affirmative Action in New India: Evaluation of Caste-Based Reservation Policy and Debate Around Economic Criteria' (2025) Social Change.

⁶ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (University of California Press 1984).

education, and access to loans. The key finding is striking: even when two families have the same income, their outcomes in life still differ based on their caste. In other words, poverty and caste discrimination are separate problems that reinforce each other, but cannot be collapsed into one. This directly challenges the logic of EWS, which treats poverty as the only relevant criterion. The book helps explain why replacing social criteria with economic ones alone does not solve the deeper structural problem that reservation was meant to address.⁷

d. Sudhir Krishnaswamy, 'The Emerging Doctrine of Constitutional Reservation in India' (2009) 1 NUJS Law Review 1

This article carefully maps out how the Supreme Court has built up its reservation doctrine across many cases, starting from Champakam Dorairajan to Ashoka Kumar Thakur. Krishnaswamy notices something important, while the Court has always rejected the idea that poverty alone can define backwardness, it has also repeatedly acknowledged that economic hardship is one relevant factor in a multi-factor test. This middle ground, where economics matter but are not everything, is where Indian reservation law has long sat. Understanding this nuance is essential for this paper, because it shows that the EWS Amendment is not coming from nowhere. It is pushing at a door the Court had already left slightly open.⁸

e. Dhruva Gandhi, 'Janhit Abhiyan: Where does it lead us?' (2023) 19(1) Socio-Legal Review 75

This case comment, published in the NLS Socio-Legal Review, analyses the Supreme Court's majority and dissenting opinions in Janhit Abhiyan v Union of India (2022) and argues that the decision carries three distinct implications for Indian constitutional law. Firstly, Gandhi contended that the majority has quietly authorised without saying so. By unanimously accepting economic disadvantage as a self-standing basis for affirmative action, the Court has implicitly elevated poverty to the status of a cognisable marker of State classification. The logic is inescapable: if the State may extend special provision to the economically weak, it cannot, in the same breath, be permitted to discriminate against them. The power to protect and the prohibition on harm draw from

⁷ S Thorat and K Newman (eds), *Blocked by Caste: Economic Discrimination in Modern India* (Oxford University Press 2010).

⁸ Sudhir Krishnaswamy, 'The Emerging Doctrine of Constitutional Reservation in India' (2009) 1 NUJS Law Review 1.

the same doctrinal well. Gandhi sees in this an unacknowledged expansion of the equality code, one the Court chose not to theorise even as it set it in motion. The second fault line cuts between the majority and the dissent on the meaning of Article 15(1) itself. Pardiwala J reads the clause through the lens of reasonable classification, treating the exclusion of SC/ST/OBC communities from the EWS quota as mere under-inclusiveness, a permissible legislative choice rather than a constitutional violation. Bhat J refuses that detour entirely. For him, Article 15(1) is an absolute bar: once the State classifies on a proscribed ground, no amount of rational basis reasoning can rehabilitate the exercise. Gandhi sides with the dissent, and persuasively so. The Pardiwala approach does not merely soften Article 15(1), it makes Articles 15(3) and 15(4) largely redundant, since those clauses exist precisely because Article 15(1) was understood to be categorical. Bhat J's reading, by contrast, keeps the provision's teeth intact and gives recognition-based substantive equality room to breathe. The third problem is a precedent the majority needed to confront and never did. In *M Nagaraj v Union of India* (2006), a Constitution Bench described the 50 per cent ceiling on reservations not as a policy preference but as a structural requirement. Remove it, and the edifice of equal opportunity under Article 16 risks collapse. The majority in *Janhit Abhiyan* sidestepped this by classifying EWS as a category outside the architecture that Nagaraj addressed, thereby avoiding the ceiling rather than overruling it. Gandhi's objection is pointed: treating EWS as categorically distinct does not dissolve the tension, it merely defers it. A direct engagement with Nagaraj, either distinguishing it on principled grounds or acknowledging that the basic structure argument requires fresh consideration, was the intellectual work the majority declined to do.⁹

VIII. From Caste to Cash: The Shifting Concept of Backwardness in Indian Reservation Law

8.1 The History of Backwardness in Indian Law: From Colonial Times to the Constitution

The phrase 'backward classes' did not begin with the Indian Constitution. It has roots in the British colonial period, when state governments in places like Mysore began identifying certain communities as disadvantaged and tried to give them better representation in government jobs and education. The Dewan Sir M Visvesvaraya of Mysore introduced some of the earliest quota

⁹ Dhruva Gandhi, 'Janhit Abhiyan: Where does it lead us?' (2023) 19(1) *Socio-Legal Review* 75. <https://doi.org/10.55496/IHSF1223>.

type systems in the early twentieth century. The idea was straightforward: some communities had been left behind, and the State had a responsibility to help them.¹⁰

When India became independent and its Constitution was being written, the same question arose: which communities needed the State's special protection, and why? The context was impossible to ignore. The caste system had, for centuries, placed certain communities at the bottom of the social order, denied them education, barred them from temples and wells, forced them into degrading occupations, and treated them as less than fully human. This was not ordinary poverty. It was a systematic, socially enforced exclusion that left deep and lasting marks.

The original Constitution of 1950 allowed reservation in government jobs (under Article 16(4)) but did not have a matching provision for education. This gap became important almost immediately. In 1951, the Supreme Court struck down a Madras Government Order that reserved college seats for different communities on a caste basis, saying it violated Article 29(2), which talks about the right not to be discriminated against in admission to State educational institutions. The case was *State of Madras v Champakam Dorairajan*.¹¹ This judgment forced Parliament to act quickly, and the First Amendment to the Constitution was passed in 1951, adding Article 15(4), which allowed the State to make 'special provisions for the advancement of any socially and educationally backward classes of citizens.'

Notice the careful wording: 'socially and educationally backward.' Not just poor. Not just belonging to a certain caste. Both social disadvantage and educational disadvantage had to be present. This combination became the cornerstone of India's entire reservation architecture.

The government then set up the first Backward Classes Commission (the Kaka Kalelkar Commission) under Article 340 in 1953 to figure out which communities qualified. The Commission's report in 1955 listed 2,399 castes and communities. But the government rejected the report because it relied too heavily on caste as the deciding factor.¹² This rejection itself reveals the tension that would run through all of Indian reservation law: caste is the reality that produces backwardness, but using caste too openly as the selection criterion feels uncomfortable for a Constitution that also promises non-discrimination.

The second major commission, the Mandal Commission submitted its report in 1980. It

¹⁰ Ramachandra Guha, *India After Gandhi: The History of the World's Largest Democracy* (Macmillan 2007) ch 28; see also the Report of the Backward Classes Commission (Kaka Kalelkar Commission) (Government of India, 1955) vol I.

¹¹ *State of Madras v Champakam Dorairajan* AIR 1951 SC 226 (Supreme Court of India, 9 April 1951); Constitution (First Amendment) Act 1951, inserting Art 15(4) of the Constitution of India 1950.

¹² Report of the Backward Classes Commission (Kaka Kalelkar Commission) (Government of India, 1955); for the Government's rejection, see Lok Sabha Debates, vol V (1956) cols 2940–2942.

identified Other Backward Classes (OBCs) using eleven indicators: three measuring social backwardness, three measuring educational backwardness, and three measuring economic backwardness. Economic criteria were included, but only as one set of indicators among three sets.¹³ The Mandal Commission recommended 27% reservation for OBCs in central government services. When V P Singh's government acted on this recommendation in 1990, it triggered nationwide protests and a major legal challenge, the Indra Sawhney case.

8.2 What the Constituent Assembly Said About Backwardness

When Draft Article 301 (which became Article 340) was debated on 16 June 1949, one member raised a concern that would prove prophetic: the term 'backward classes' was not clearly defined and could be interpreted in many different ways.¹⁴ Despite this concern, Dr B R Ambedkar, who chaired the Drafting Committee, deliberately did not pin down an exact definition. He preferred to leave it to commissions and courts to figure out in practice.

But the debates make the general direction clear. When members spoke about who needed reservation, they spoke overwhelmingly about communities that had been kept out of education and government by the caste hierarchy. Communities whose poverty was a direct result of their social exclusion, not a coincidence. Ambedkar himself was very clear about the purpose of Article 16(4) i.e, it was to ensure that communities which had never had a 'look-in' to the administration, which had always been shut out of public power, should now have their place.¹⁵ When Article 15(4) was added in 1951 by the First Amendment, members in the debates once again raised the point that economic hardship was connected to backwardness and could not be completely ignored.¹⁶ But the words that were eventually chosen were 'socially and educationally backward' leaving the word 'economically' out. This was a deliberate choice. As Justice Kuldeep Singh later analysed in Indra Sawhney, the framers knew exactly what they were doing, they chose not to make economic criteria the primary basis for reservation.¹⁷

The picture that emerges from the Constituent Assembly debates is that, the framers understood that poverty and social backwardness were linked, but they treated them as different problems.

¹³ Report of the Backward Classes Commission (Mandal Commission) (Government of India, 1980) ch 12 (setting out 11 indicators of backwardness).

¹⁴ Constituent Assembly Debates, vol VIII (16 June 1949) 611–618 (debate on Draft Article 301, subsequently Article 340 of the Constitution of India 1950).

¹⁵ Parliamentary Debates (Constitution First Amendment Bill), Provisional Parliament Debates, vol XII (1951) (observations of members on Art 15(4)); see also the analysis in Indra Sawhney (n 2) per Kuldeep Singh J (minority opinion on Art 16(4) and economic criteria).

¹⁶ Indra Sawhney (n 2), Kuldeep Singh J minority opinion, para 355; see also TheLawmatics, 'Meaning of the Expression "The Backward Class" under Article 16(4) — Justice Kuldeep Singh in Indira Sawhney (1992)'

¹⁷ Constituent Assembly Debates, vol VII (1948–1949) 701–703 (Dr B R Ambedkar's reply to debate on Art 10(3), subsequently Art 16(4) of the Constitution of India 1950).

Poverty was seen as a symptom of social backwardness, not a definition of it. The Constitution was designed to address the root cause, which was the systematic social exclusion imposed by caste and not just the symptom of poverty.

8.3 Key Supreme Court Judgments on Backwardness

Case 1: State of Madras v Champakam Dorairajan (1951) AIR 1951 SC 226

What happened: The State of Madras reserved seats in medical colleges for different communities like Brahmins, non-Brahmins, Harijans, Anglo-Indians, Christians, and Muslims. A Brahmin woman named Champakam Dorairajan scored high enough to qualify but was denied admission because her community's quota was already full. She challenged the Government Order in court. The Supreme Court struck down the Order of the college, agreeing with the High Court that it violated Article 29(2) which talks about the right not to be discriminated against in State educational institutions on grounds of religion, race, or caste.¹⁸

How the Court understood backwardness: The Court did not explore the meaning of 'backwardness' in depth, because Article 15(4) did not yet exist. The key principle was simpler, the Directive Principles of State Policy, which directed the State to help backward classes, could not override the Fundamental Rights chapter. This judgment directly forced Parliament to pass the First Amendment and create Article 15(4), which gave the State the power to make special provisions for 'socially and educationally backward classes.'

“The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.” **Das J, State of Madras v Champakam Dorairajan AIR 1951 SC 226**

What it said about economic criteria: The judgment did not discuss economic criteria at all. Its importance is indirect. By striking down the community based quota, it forced Parliament to provide a clearer, constitutionally grounded basis for reservation, and that basis, when it came through Article 15(4), was social and educational backwardness, not economic poverty.

Case 2: M R Balaji and Others v State of Mysore (1963) AIR 1963 SC 649

What happened: The Mysore government had been trying for years to reserve seats in medical and engineering colleges for backward classes and SCs/STs. Its 1962 order reserved a massive 68% of seats, leaving only 32% open to general merit. It had also divided backward communities into two groups: 'Backward Classes' and 'More Backward Classes.' The

¹⁸ State of Madras v Champakam Dorairajan (n 10); Arts 29(2) and 46 of the Constitution of India 1950 as they then stood.

government had classified almost every community except Brahmins as backward. The Supreme Court struck down the entire order as a 'fraud on the Constitution.'¹⁹

How the Court understood backwardness: This is the case where the Supreme Court gave its most detailed early explanation of what 'socially and educationally backward' means. The Court, through Justice Gajendragadkar, held that both conditions, both social backwardness and educational backwardness, both had to be present together. Its not possible to have one without the other. The Court also said that caste could play a role in identifying backwardness among Hindu communities, but it could not be the only factor. After all, Christians, Muslims, and Jains do not organise themselves by caste, so caste alone could not be the universal test. And 68% reservation was far too much, it would damage the rest of society's interests and was beyond the limits of what Article 15(4) allowed.

“Backwardness must be both social and educational. In other words, the test is not merely social backwardness or merely educational backwardness, but it must be both. A caste is not necessarily a class, and what is required is identification of a class which is both socially and educationally backward.” **Gajendragadkar J, M R Balaji v State of Mysore AIR 1963 SC 649**

What the Court Said in Passing About Economic Criteria: The Court made some interesting comments that were not part of the final decision. It noted that poverty is 'largely linked' to social backwardness, that people in very poor economic conditions are 'inherently socially backward' in some sense. It also noted that a person's occupation and where they live can be relevant in judging their social standing. However, the Court was firm, that poverty as a standalone factor does not qualify a community for reservation. Economic hardship was relevant only as a result and indicator of social backwardness, but it cannot be considered as the test for it. The core requirement remained social and educational backwardness, together.

Case 3: Indra Sawhney and Others v Union of India (1992) AIR 1993 SC 477

What happened: The V P Singh government announced it would implement the Mandal Commission's recommendation of 27% reservation for OBCs in central government jobs, but the country erupted. Students protested, there were self-immolations, and legal challenges flooded the courts. The government also added a separate 10% reservation for 'economically backward' people from upper castes, especially for those who were poor but did not belong to SC/ST/OBC categories. This economic reservation was the direct forerunner of the 2019 EWS

¹⁹ M R Balaji (n 1); Art 15(4) of the Constitution of India 1950.

quota. A nine-judge Constitution Bench of the Supreme Court heard the challenge and gave its judgment in November 1992.²⁰ By a 6:3 majority, the Court upheld the 27% OBC reservation but struck down the 10% economic reservation. The Court also set a 50% limit on total reservations, introduced the 'creamy layer' rule (under which the well-off within OBCs would not benefit), and held that reservations could not apply to promotions.

How the Court understood backwardness: This is the most detailed and authoritative treatment of the concept of backwardness in Indian legal history. Justice Jeevan Reddy, writing the main opinion, was emphatic, he said that one cannot define a 'backward class' using only economic criteria. While caste was an acceptable indicator for Hindu communities, and while the Mandal Commission's multi-factor methodology (mixing social, educational, and economic indicators) was constitutional, money alone was not enough. The judgment also held that a caste, for constitutional purposes, could be treated as a social class, and the identification of OBCs did not need to be entirely caste-neutral.

“A backward class of citizens cannot be determined only and exclusively with reference to economic criteria. It may be one of the criteria but it cannot be the sole criterion. This is the mandate of Article 16(4) and so says Article 340 of the Constitution.” **Jeevan Reddy J, Indra Sawhney v Union of India AIR 1993 SC 477**

What the Court Said in Passing About Economic Criteria: Several judges made important comments on economic criteria. Justice Sawant said plainly that the Constitution recognises social and educational backwardness, 'but not economic backwardness.' Justice Reddy acknowledged that economic criteria are not entirely irrelevant, he notes that the Mandal Commission had used them as three of its eleven indicators, but they could never be the main or only criterion. The Court drew a clear line: using poverty as one element in a broader, multi-factor assessment of backwardness was fine. But using poverty as the sole defining criterion was not. This line was directly tested, and crossed by the EWS Amendment three decades later.

Case 4: Ashoka Kumar Thakur v Union of India (2008) 6 SCC 1

What happened: After the Indra Sawhney judgment, it still took many years for OBC reservation to actually reach higher educational institutions. In 2005, Parliament added Article 15(5) to the Constitution, and in 2006 it passed the Central Educational Institutions (Reservation in Admission) Act, giving OBCs a 27% quota in top institutions like IITs and IIMs. This was challenged as violating the right to equality and merit. The Supreme Court

²⁰ Indra Sawhney (n 2); Art 16(4) of the Constitution of India 1950; Office Memorandum No 36012/31/90-Estt(SCT) (Department of Personnel and Training, 13 August 1990).

upheld the law and the constitutional amendment in 2008, but with an important condition, according to which the 'creamy layer' meaning the more well-off among OBCs had to be excluded. The Court also held that reservation could not be extended to private unaided educational institutions, which had a constitutional right to run their institutions freely.²¹

How the Court understood backwardness: The Court built on the Indra Sawhney framework, reaffirming that identifying Socially and Educationally Backward Classes (SEBCs) could not be done on caste alone, and that the social and educational criteria remained mandatory. The Court also stressed that the identification process needed to be evidence-based and updated regularly, rather than frozen to old data like the 1931 census.

“The stress is on backwardness of the citizens and inadequate representation in the services under the State. Article 16(4) is an important provision which empowers the State, permitting the provision for the reservation of appointments and posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services of the State.” **Pasayat J, Ashoka Kumar Thakur v Union of India (2008) 6 SCC 1**

What the Court Said in Passing About Economic Criteria: Several judges in this case made passing observations which were not part of the formal decision, that look forward to the EWS debate. They noted that the concern for 'economically weaker' citizens was one of the important issues Indian law still needed to address. Some acknowledged that identifying people only by caste, without reference to their economic progress, can end up cementing caste divisions rather than dissolving them, and suggested that economic factors should gradually play a bigger role. These were not binding rulings. They were observations in passing. But they signal that even before 2019, the idea of economic-based reservation was already being discussed within the highest court.

8.4 The EWS Reservation and the Change in Meaning: Dilution, Coexistence, or Reinforcement?

The Constitution (103rd Amendment) Act, 2019 inserted new sub-clauses into Articles 15 and 16, authorising a 10% reservation for 'economically weaker sections.' EWS is defined by income (below ₹8 lakh per year) and by the absence of significant property, like any agricultural land, residential property, etc.²² People already in SC, ST, and OBC reservation

²¹ Ashoka Kumar Thakur v Union of India (2008) 6 SCC 1 (Supreme Court of India, 10 April 2008); Central Educational Institutions (Reservation in Admission) Act 2006; Constitution (Ninety-Third Amendment) Act 2005, inserting Art 15(5) of the Constitution of India 1950.

²² Constitution (One Hundred and Third Amendment) Act 2019 (n 3); Art 15(6) of the Constitution of India 1950 as amended.

categories are explicitly excluded. So the EWS system has two key features: it uses only economic criteria to qualify, and it bars existing reserved category beneficiaries from accessing it.

When challenged in *Janhit Abhiyan* (2022), the five-judge bench produced four separate opinions. The lead majority opinion by Justice Dinesh Maheshwari held that reservation is a tool for fighting disadvantage in all its forms, not just social and educational disadvantage. He said the old 50% ceiling from *Indra Sawhney* was not a rigid rule, and it applied only to reservations for socially and educationally backward classes. A new EWS category was simply not bound by that ceiling.²³

“Reservations for economically weaker sections of citizens up to 10% in addition to the existing reservations does not result in violation of any essential feature of the Constitution and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of 50%.” **Maheshwari J, *Janhit Abhiyan v Union of India* (2022)**

Justice Bela Trivedi said simply: 'just as equals cannot be treated unequally, unequals cannot be treated equally.' She reasoned that, the EWS poor are a distinct group with their own kind of disadvantage, deserving their own category. Justice Pardiwala pointed out that in a country of 1.4 billion people, economic hardship affects many people who are not covered by existing reservations.²⁴

The dissent by Justice Ravindra Bhat and then Chief Justice Lalit took a different view. While they agreed that reservation based on economic grounds is permissible in principle, they also found that barring SC/ST/OBC people from the EWS quota was unconstitutional. The poor among SC/ST/OBC communities are, statistically, among the most economically deprived people in India. Excluding them from an economic quota on the grounds that they already have a social quota is itself an act of discrimination. It creates a situation where the most backward are denied help that is being given to the less backward. Justice Bhat said that this, 'strikes at the heart of the equality code.'²⁵

“This court has for the first time in several decades of the republic avowed an expressly discriminatory principle...the Amendment's language of exclusion undermines...the fabric of social justice and the basic structure of the Constitution.” **Bhat J (dissenting), *Janhit Abhiyan v Union of India* (2022) So what has actually happened to the concept of 'backwardness'? There are three possibility.**

²³ *Janhit Abhiyan* (n 4), Maheshwari J (majority).

²⁴ *ibid*, Trivedi J (concurring); *ibid*, Pardiwala J (concurring).

²⁵ *ibid*, Bhat J (dissenting), para 118.

First is Dilution (Weakening): The strongest argument is that EWS has weakened the idea of social and educational backwardness as the foundation of reservation. Here is how.

First, the Amendment itself proves the point that if economic poverty was already covered by the existing constitutional framework, there would have been no need to insert new sub-clauses. The fact that new provisions had to be added shows that the old system did not accommodate purely economic backwardness.

Second, the exclusion of SC/ST/OBC from the EWS quota creates a strange situation. The most disadvantaged people in India, who are both socially and economically disadvantaged are blocked from the economic quota, while people who are only economically poor but who have no history of social exclusion get it. This turns the original logic of reservation on its head.

Third, by treating economic backwardness as an independent and parallel basis for reservation, the Amendment implicitly says that social and educational backwardness is just one type of disadvantage among several. This reduces its special status in the constitutional order.

Second is Coexistence (Living Side by Side): The majority in Janhit Abhiyan basically took this view, that the two systems simply exist alongside each other in separate constitutional spaces. On this reading, the new Articles 15(6) and 16(6) create a brand-new space for the EWS category that does not disturb or reduce the existing space for socially and educationally backward classes. The EWS reservation adds to what is available, it does not take anything away. The two frameworks cover different groups of people based on different criteria, and they simply coexist.

The problem with this view is that it sounds cleaner than it actually is in practice. Research by Thorat and Newman shows that poverty and caste-based backwardness are extremely closely linked in India. The 'gap' that EWS is supposed to fill i.e., people who are poor but not caste-backward is, in reality, quite small. And because the two systems are defined in opposition to each other, EWS explicitly excludes existing reserved categories. So it can be clearly said that they are not simply living in parallel. They are defined against each other.

Third is Reinforcement (Strengthening): Some people argue that recognising economic backwardness as a basis for reservation actually strengthens the overall social justice project. It shows that the State takes disadvantage seriously in all its forms, not just the caste-based form. It potentially builds broader support for affirmative action by including communities that have felt left out of the system.

This argument is very appealing at a political level, but it is practically weak. India's reservation system was never designed to be a general poverty-relief programme. It was designed to correct a specific historical injustice. It was meant to correct the damage done by the exclusion of

certain communities from social, educational, and public life because of the caste system. Extending reservation to people who have never experienced that specific injustice does not strengthen the correction of that injustice. It shifts the purpose of reservation from correcting a historical wrong to distributing opportunities more generally. These are fundamentally different missions.

On balance, this paper argues that the EWS reservation changes the old rule by giving reservation based on economic backwardness, not just social and educational backwardness. The old framework still exists, Articles 15(4) and 16(4) have not been repealed or changed. But the constitutional significance of social and educational backwardness has been reduced. It is no longer the only gate through which reservation is accessed. By placing economic backwardness in a separate but parallel constitutional compartment, the majority in Janhit Abhiyan has treated social backwardness as one type of reservation-worthy disadvantage rather than as the constitutional cornerstone of all reservation. That is a meaningful shift, even if Articles 15(4) and 16(4) remain on the books.

IX. Recommendations

Resolve the Exclusion Problem Fairly

Excluding SC/ST/OBC people from the EWS quota, despite many of them being among India's poorest citizens, creates a deep unfairness. A better approach would be to either: (a) allowing poor members of SC/ST/OBC communities to access EWS benefits in addition to their existing reservations, with rules to prevent double-counting, or (b) creating sub-quotas within the OBC category for the most economically distressed OBC sub-communities, so that economic hardship within backward classes is also addressed.

The Supreme Court Should Clarify the Overall Framework

The Janhit Abhiyan judgment left many questions unanswered. Four separate opinions with no unified position. Future cases will ask: can Parliament raise the EWS quota beyond 10%? Can States design their own economic criteria without any social criteria? Does the old 50% ceiling apply if you add the social and EWS quotas together? The Supreme Court needs to resolve these questions clearly in an appropriate future case.

Invest More in Education for All

Every court from Balaji to Ashoka Kumar Thakur has stressed that the long-term solution to educational backwardness is universal, high-quality schooling for everyone. The EWS

reservation debate has overshadowed this more fundamental need. India should gradually shift more focus and resources toward making good primary and secondary education available to all children, which would address the root causes of backwardness more effectively than an expanding system of quotas.

Set an End Date and Regular Review

Every reservation, including EWS, should have a built-in review mechanism. The State should be required to demonstrate, using real data, that the reservation is still needed and is actually working. The 103rd Amendment has no sunset clause or review requirement, which means it could continue indefinitely regardless of whether conditions have changed. This is a gap that Parliament should address.

X. Conclusion

When the framers of the Indian Constitution chose the phrase 'socially and educationally backward,' they were not being vague. They were making a deliberate choice about what the State owed to its most marginalised citizens. Their answer was rooted in a clear diagnosis. The caste system had created communities whose poverty, lack of education, and exclusion from public life were all products of the same structural injustice. To fix the problem, one had to name the cause, social discrimination enforced by caste, and not just measure its symptoms through income figures.

For over seventy five years, India's courts honoured this choice. From Champakam Dorairajan to Indra Sawhney, the Supreme Court repeatedly held the line that, poverty alone is not enough; backwardness in Indian constitutional law means social and educational disadvantage rooted in structural exclusion.

The Constitution (103rd Amendment) Act, 2019 and its upholding in *Janhit Abhiyan v Union of India* (2022) represent a genuine departure from this understanding. By recognising purely economic backwardness as an independent basis for reservation, the majority has opened a constitutional door that the framers and earlier courts had deliberately kept shut for seven decades. The old framework still exists in law. Articles 15(4) and 16(4) have not changed. But the EWS reservation has changed the landscape around those provisions, reducing social and educational backwardness from the foundation of all reservation to one type of reservation among others.

This paper has argued that the best characterisation of this change is a qualified dilution. The EWS reservation formally coexists with the old system, but conceptually weakens its claim to constitutional priority. The implications of this shift are still being worked out, but the Janhit Abhiyan majority produced four separate opinions and left many questions unanswered.

The challenge now facing the Supreme Court and Parliament is to build a principled framework that acknowledges both systems honestly. That means being clear about what social and educational backwardness means, what purely economic backwardness means, how the two relate to each other in Indian conditions, and what each type of reservation is supposed to achieve. Getting those answers right via evidence, history, and constitutional principle, will determine whether India's reservation system continues to serve the cause of justice, or becomes a collection of competing political claims dressed in constitutional language.

