# Sequence of Implementation of EWS Quota

## What is the issue?

*This article draws attention to a crucial impending implementation decision about the economically weaker sections (EWS) quota, and shows how the sequence of implementation would result to diverging outcomes.*

## What are the different forms of reservation system?

- The reservation system in India takes two forms,
    1. Vertical reservation (VR), which until 2019 was defined for stigmatised and marginalised social groups (SCs, STs and OBCs);
    2. Horizontal reservation (HR), applicable to cross-cutting categories such as women, people with disability (PWD), domicile, etc.
- As long as the VR system was social group-based, no individual was eligible for multiple VR categories, since no individual can belong to multiple caste or tribal groups.
- But the 103rd Constitution Amendment Act 2019 had fundamentally altered this original purpose of reservations.

## What did the 103rd Constitution Amendment Act do?

- The 103rd Constitution Amendment Act opened the VR to groups that are not defined in terms of hereditary social group identity (caste or tribe), by giving **10% quota for the EWS**.
- **EWS status is transient** (that individuals can fall into or escape out of), but social groups are permanent markers of identity.
- In principle, this meant that an individual could belong to two VR categories (say, SC and EWS).
- But, the 103rd amendment explicitly removed individuals who are already eligible for one VR (SC, ST, or OBC) from the scope of EWS reservations.
- As a result of this exclusion, an individual could still be only eligible for at most one vertical category.
- Exclusion of SCs, STs, OBCs from the scope of EWS reservation was immediately challenged in court on the grounds that it violated individual right to equality (Articles 14-18 of the Indian Constitution).
- The Supreme Court said not to revoke the amendment but to interpret the language of the amendment in a way that does not exclude SCs, STs, OBCs from the scope of EWS reservation.

## What is the ambiguity over the overlapping VR categories?

- Allowing for overlapping VR categories generates an ambiguity under the current legal framework, most notably stemming from the ruling of the **Indra Sawhney case** (1992).
- Under this, any member of a reserved category who is entitled to an open-category (OC) position based on "merit" score should be awarded an OC position, and not be slotted under a VR position.
- Technically, this implies that OC positions must be allocated based on merit in the first step, and VR positions should be allocated to eligible individuals in the second step.
- This procedure is called **"over-and-above" choice rule** in the literature.
- This is to be distinguished from the "**guaranteed minimum" rule**.
- The "guaranteed minimum" rule would guarantee a minimum number of positions to members of beneficiary groups, regardless of whether they enter through reserved or open ("merit") positions.
- When VR categories are mutually exclusive (no individual can be a member of multiple vertical categories), it is immaterial in what sequence vertical categories are processed in relation to each other.
- But, if individuals can belong to two vertical categories, the relative processing sequence of vertical categories becomes very important.

## How will sequencing matter?

- **EWS-first** - Consider the scenario where EWS positions before other VR categories, immediately after the open category seats.
- Under the current income limit for EWS reservation, more than 98% of the population qualifies for EWS reservation.
- If EWS quotas are filled first, the outcome would be the same as treating EWS positions as open positions. This makes the EWS reservation redundant.
- Since the richest applicants are not eligible for EWS, the actual outcome would be slightly different, but not a whole lot as the richest 2% may not apply to public institutions where quotas are applicable.
- **EWS-last** - If EWS positions are allocated after all other VR positions are filled, this issue will not arise.
- Now, while all individuals with incomes lower than the EWS limit are equally eligible for EWS positions, the system awards the EWS positions to eligible individuals who have highest merit scores.
- But since some of the higher score individuals from SCs, STs and OBCs would be admitted under their respective quotas, this sequencing will make EWS positions more accessible to members of forward castes.

## Which sequence is better?

- If the objective is to make EWS equally applicable to the current VR categories, then EWS-first should be adopted.
- But this should be adopted with the recognition that this sequencing will effectively convert EWS into what are currently OC positions.
- If the objective is to minimally interfere with the amendment, then EWS-last should be

adopted with the recognition that this sequencing will still tilt the EWS category in favour of forward castes.
- Since the impact of these two routes will be vastly different, it would be best if this subtle aspect of EWS reservation is carefully evaluated and integrated into the implementation of the policy.

## What if the current income limit of the EWS category is lowered?

- That would change the calculus somewhat since poorer individuals from all social groups (including non-SC-ST-OBC) would be eligible.
- In this scenario, the richer (above the presumed new income cut-off) SC-ST-OBC individuals will be eligible only for the social group-based VR positions.
- However, changing income limits is likely to open a whole new Pandora's box, especially in the absence of reliable income data.
- Therefore, the court would be well-advised to consider the implications of the implementation routes and to make sure there are no ambiguities, i.e., no loopholes.

**Reference**

The Hindu | Sequence of implementation, EWS quota outcomes

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