



## **RSTV Big Picture : Reservation: Reviewing 50% cap**

### **CONTEXT:**

- The Supreme Court decided to **examine whether the 1992 verdict by a nine-judge bench capping quota at 50% needed to be revisited** in view of subsequent constitutional amendments and changed social dynamics.
- The potential reconsideration of the 11-judge ruling, popularly referred to as the Mandal case, could alter the structure of reservations that has been in place for decades.

### **WHAT DO YOU MEAN BY RESERVATION?**

- Reservation in Indian law is a form of affirmative action whereby a percentage of seats are reserved in the public sector units, union and state civil services, union and state government departments and in all public and private educational institutions, except in the religious/ linguistic minority educational institutions, for the socially and educationally backward communities, Scheduled Castes and Tribes and economically weaker sections who are inadequately represented in these services and institutions.
- The reservation policy is also extended for the Scheduled Castes and Scheduled Tribes for representation in the Parliament of India.

### **WHAT IS THE HISTORICAL BACKGROUND?**

- The reservation system in India dates back to the **2nd century B.C. where the upper class enjoyed some added privileges.**
- The idea of a **caste-based reservation system was originally conceived by William Hunter and Jyotirao Phule in 1882.**
- The reservation that exists today was introduced in **1933 when British Prime Minister Ramsay Macdonald presented the Communal Award.**
- This made a provision for separate electorates for Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, and the Dalits.
- To address the situation, **Poona Pact** was signed. According to this, the country would have a single Hindu electorate, with seats reserved for Dalits.

### **THE EXTENT OF RESERVATION IN INDIA:**

- Government Educational Institutions (like IITs, IIMs etc) – as per Article 15 – (4), (5), and (6)
- Government Jobs (like IAS, IPS etc) – as per Article 16 – (4) and (6)
- Legislatures (Parliament, and State Legislature) – as per Article 334
- After the 103rd constitutional amendment in 2019, economic backwardness is also considered.
- Scheduled Castes (SC) are given 15% quota in jobs/higher educational institutions while Schedule Tribes (ST) are given 7.5% quota in jobs/higher educational institutions. There is no concept of ‘creamy layer’ with respect to SC/ST reservation.



- The quota for OBCs is 27% in government jobs and higher educational institutions. However, there is a concept of 'creamy layer' with respect to the OBC reservation.
- 10% quota is provided for the Economically Weaker Sections (EWS) among General Category candidates in government jobs and educational institutions.

### **JUDICIAL SCRUTINY OF RESERVATION:**

#### Evolution of cases

- The **State of Madras v. Smt. Champakam Dorairajan (1951)**: while in the case of employment under the State, Article 16(4) provides for reservations in favour of backward class of citizens, no such provision was made in Article 15. Pursuant to the Supreme Court's order in the case the Parliament amended Article 15 by inserting Clause (4).
- In **Indra Sawhney v. Union of India (1992)** case the court examined the scope and extent of Article 16(4). The Court has said that the creamy layer of OBCs should be excluded from the list of beneficiaries of reservation, there should not be reservation in promotions; and total reserved quota should not exceed 50%.
- The Parliament responded by enacting **77th Constitutional Amendment Act** which introduced Article 16(4A). The article confers power on the state to reserve seats in favour of SC and ST in promotions in Public Services if the communities are not adequately represented in public employment.
- The **Supreme Court in M. Nagaraj v. Union Of India 2006** case while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:
  - The SC and ST community should be socially and educationally backward.
  - The SC and ST communities are not adequately represented in Public employment.
  - Such reservation policy shall not affect the overall efficiency in the administration.
- In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018**, Supreme Court holds that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes.
- The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.
- In **May 2019 the Supreme Court upheld the Karnataka law** that allows reservations in promotions for SCs and STs with consequential seniority.

#### What is the Indra Sawhney case that the Bench has referred to?

- In 1979, the **Second Backward Classes Commission (Mandal Commission)** was set up to determine the criteria for defining the socially and educationally backward classes.
- The Mandal report identified 52% of the population at that time as "Socially and Economically Backward Classes" (SEBCs) and recommended 27% reservation for SEBCs in addition to the previously existing 22.5% reservation for SC/STs.
- In 1990, when the V P Singh led-government set out to implement the Mandal report, it was challenged in court amidst widespread protests against the move.
- The case came up before a nine-judge Bench and a 6:3 verdict was delivered in 1992.



- The majority opinion said the executive orders mandating 27% reservation for backward castes were valid and that the reservation was made not just on the basis of caste, even if it appears so, but on the basis of objective evaluation of social and educational backwardness of classes, which is the criteria previously laid down by the court.
- The landmark Indra Sawhney ruling set two important precedents.
  - First, it said that the criteria for a group to qualify for reservation is “social and educational backwardness”.
  - Additionally, the court also reiterated the 50% limit to vertical quotas it had set out in earlier judgements in 1963 (M R Balaji v State of Mysore) and in 1964 (Devadasan v Union of India), reasoning that it was needed to ensure “efficiency” in administration.
  - The court said this 50% limit will apply – unless in “exceptional circumstances”.

### What do past judgments say on a ceiling for quotas?

- It was in **M.R. Balaji vs State of Mysore (1962)** that the Supreme Court first ruled that reservation, being a special provision for backward classes, should not normally exceed 50%.
- The presumption behind the 50% rule was that equality of opportunity was the norm, and any special provision for socially and educationally backward classes or reservation for backward classes in public employment was an exception.
- However, in **State of Kerala vs. N.M. Thomas (1975)**, the majority of the Bench disagreed with the proposition. It said the special measures in favour of backward classes in Articles 15 and 16 were not exceptions to the rule.
- In **Indra Sawhney**, even though most judges agreed that reservation was not an exception to the equality norm, the court ultimately laid down the 50% limit.

### **States have breached the 50% ceiling before and intend to bring more reservation.**

- Tamil Nadu reserves 69% of the seats in colleges and jobs in the state government.
- However, this was done by amending the Constitution, to place the law in the Ninth Schedule after the Indra Sawhney judgment.
- The Ninth Schedule provides the law with a “safe harbour” from judicial review under Article 31A of the Constitution.

### **What are vertical and horizontal reservations?**

- Reservation for Scheduled Castes, Scheduled Tribes, and Other Backward Classes is referred to as vertical reservation. It applies separately for each of the groups specified under the law.
- Horizontal reservation refers to the equal



## Why is the Supreme Court considering revisiting the Mandal case?

- A Constitution Bench is currently hearing the challenge to the Maharashtra law providing quotas for Marathas in jobs and admissions in the state.
- There are two main constitutional questions for the court to consider in the challenge to the Maratha quota law.
  - First, is **whether states can declare a particular caste to be a socially and educationally backward class.**
  - The second is **whether states can breach the 50% ceiling for “vertical quotas” set by the Supreme Court.**
- Based on the 102nd Amendment to the Constitution, which gives the President powers to notify backward classes, the court will have to look into whether states have similar powers.
- The relevance of the Indra Sawhney criteria is also under question in another case in which the **validity of the 103rd Amendment** has been challenged which provides for 10% reservation in government jobs and educational institutions for the economically weaker section in the unreserved category.
- Similar to the Maratha issue are the cases of Patels in Gujarat, Jats in Haryana, and Kapus in Andhra Pradesh.
- Additionally, with the implementation of the Maharashtra law, the vertical quota in the state could go up to 68%. Since the Indra Sawhney verdict gives a pass to breach of the 50% quota rule only in exceptional circumstances, the court will have to test if the Maharashtra law qualifies to be an exception.

### **CONSTITUTIONAL PROVISIONS**

- **Article 15(4)** states that: “Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class or citizens, which, in the opinion of the State, is not adequately represented in the services under the State.”
- **Article 16(4 A)** states that: “Nothing in this article shall prevent the State from making any provisions for reservation in the matter of promotion to any class or classes of posts in the services under the State in favour of SCs and STs which in the opinion of the State are not adequately represented under the State” (Constitutional 77th Amendment, - Act, 1995).
- **Article 16 (4 B)** states that: “Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years” (Constitutional 81st Amendment, - Act, 2000).
- The Constitution prohibits discrimination (Article 15) of any citizen on grounds of religion, race, caste, etc.; untouchability (Article 17); and forced labour (Article 23).
- **Article 330, 332 & 335:** It provides for specific representation through reservation of seats for the SCs and the STs in the Parliament (Article 330) and in the State Legislative Assemblies (Article 332), as well as, in Government and public sector jobs, in both the federal and state Governments (Articles 16(4), 330(4) and 335).



### **POSITIVES OF RESERVATION POLICY:**

- Reservation has been one of the **tools against social oppression and injustice against certain classes and undone historical injustices.**
- It has helped many if not everyone from under-privileged and/or under-represented communities to grow and occupy top positions.
- Reservation provides a **level playing field** as it is difficult for the backward sections who were historically deprived of education, skills, and economic mobility to suddenly start competing with those who had access to those means for centuries.
- **Meritocracy is meaningless without equality.** Reservation has helped achieve this.

### **NEGATIVES OF RESERVATION POLICY:**

- It **builds walls** between people and is also against inter-caste and inter-faith marriages.
- Reservations are the **biggest enemy of meritocracy.**
- Caste Based Reservation only **perpetuates the notion of caste in society.**
- The benefits of reservation policy have largely been appropriated by the dominant class.
- **Poor people from "forward castes" do not have any social or economic advantage over rich people from backward caste.** The recent protests demanding quotas by some of the forward castes, in Gujarat and Rajasthan, is the testimony to this fact.
- The majority of lower castes have stepped up the social ladder and are now on an equal status compared to the general population. Hence, there is **no need for reservation anymore.**
- A reservation only **provides a limited and short-term solution** to the historical injustice issues.
- As the reservation grows larger, it **becomes a mechanism of exclusion rather than of inclusion.**
- Reservation **led to divisions and enmity among government employees, vitiating the atmosphere at workplace.**
- Reservation **destroys self-respect**, so much so that competition is no longer on to determine the best but the most backward.
- It has become a **tool to meet narrow political ends** through invoking class loyalties and primordial identities.

### **ISSUES RELATED TO IMPLEMENTATION OF RESERVATION:**

- **Problems of Access and Exclusion**
- **Discrimination and Atrocities:** The SCs also experience the fangs of violence and atrocity during their attempts to secure human rights and lawful entitlements.
- **Problems of Justice:** Studies indicate that SC/STs are generally faced with insurmountable obstacles in their efforts to hunt justice in event of discrimination: during registration of a legal case or while taking over matters at various levels of the institutional setup.

### **REASONS BEHIND INCREASING DEMANDS OF RESERVATION:**

- Reservation is increasingly seen as a **remedy for the adverse effects of ill-thought out development policies.**
- **Acute agrarian distress, Stagnation in employment growth and Distortions in the development trajectory.**



- Increasing reservation demands among upper castes also arising from the **fear of losing privilege and the inability to cope with change**

### **WAY FORWARD:**

- Opportunities for all disadvantaged children, equity, fairness and common sense should be the guiding principles in evolving a more rational model of reservations.
- The benefits should flow to the vast majority of underprivileged children from deprived castes; not to a few privileged children with a caste tag.
- It is necessary to bring about **revolutionary changes in our education system at the grass-root level.**
- **Additional factors such as gender, domicile, family education, family employment, family property, family income and if any disabilities and traumas should be considered.**
- **High ranks officials families, high income professionals and others above a certain income should not get the reservation benefits** especially in government jobs.
- Fair and practical ways to help needy person from each community through reservation is possible and necessary.
- The process of reservation should **filter the truly economically deprived individuals and bring them all to justice**
- The radical solutions like **excluding the entire creamy layer among all castes from reservation** and developing their capabilities instead of offering them reservation for admission to higher education or jobs on a platter.
- A **strong political will** is indispensable to find an equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system.

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### CONTEXT:

- **First Virtual Summit of QUAD leaders** was recently held.
- In March 2020, two rounds of talks between the **Quad-Plus countries**, on the continuing coronavirus pandemic were held.
- The seven countries – **India, US, Australia, Japan, South Korea, New Zealand and Vietnam** – explored ways to facilitate trade, sharing technologies and movement of people and also to look forward to see how to put the global economies back on their feet.

### HIGHLIGHTS OF QUAD LEADERS' JOINT STATEMENT- "THE SPIRIT OF THE QUAD":

- Leaders reaffirmed their commitment to quadrilateral cooperation between Australia, India, Japan, and the United States.
- Leaders are united in a **shared vision for the free and open Indo-Pacific**.
- They strive for a **region that is free, open, inclusive, healthy, anchored by democratic values, and unconstrained by coercion**.
- They pledged to strengthen cooperation on the **global devastation wrought by COVID-19, the threat of climate change, and security challenges** facing the region.
- They committed to promote a free, open rules-based order, rooted in international law to advance security and prosperity and counter threats to both in the Indo-Pacific and beyond.
- They reaffirmed to address shared challenges, including in **cyber space, critical technologies, counterterrorism, quality infrastructure investment, and humanitarian-assistance and disaster-relief as well as maritime domains**.
- They support the rule of law, freedom of navigation and overflight, peaceful resolution of disputes, democratic values, and territorial integrity.
- They also reaffirmed **strong support for ASEAN's unity and centrality as well as the ASEAN Outlook on the Indo-Pacific**.
- They took pledge to **join forces to expand safe, affordable, and effective vaccine production and equitable access, to speed economic recovery and benefit global health**.
- They called for:
  - transparent and results-oriented **reform at the World Health Organization**.
  - keep a **Paris-aligned temperature limit within reach**.
  - **complete denuclearization of North Korea**
  - urgent need to **restore democracy in Myanmar**.

### BACKGROUND:

- In the aftermath of Indian Ocean tsunami of 2004, Australia, Japan, India, and America formed a **Regional Core Group in 2004**.
- The quadrilateral template gained an ideological component when Japanese PM Shinzo Abe proposed an **"Arc of Freedom and Prosperity"** in 2006.



- The **first meeting of the initial Quad was held in May 2007** as officials gathered for the ASEAN Regional Forum meeting.
- Japanes PM Shinzo Abe after returning to office called for a “**democratic security diamond,**” a Quad 2.0 in all but name.
- The **momentum came to a head in October 2017** with then US Secretary of State and Japanese Foreign Minister proposing a resumption of the quadrilateral dialogue format.

### THE QUAD 2.0:

- The move to set up the quadrilateral also comes in the backdrop of growing Chinese assertiveness in the South China Sea and China’s aggressive posturing.
- Since its revival in late 2017, the Quad met twice a year in 2018 and 2019.
- At the January 2018 Raisina Dialogue in Delhi, top naval chiefs from the four countries were assembled on stage together.
- In New York in September 2019, the four countries held the first ministerial-level meeting of the Quad “to discuss collective efforts in shared commitments and close cooperation on counter terrorism, mentoring, assistance in disaster relief, airtime security, cooperation, development, finance and cybersecurity efforts.”
- In November 2019, the first Quad counterterrorism (CT) exercise was held in India.
- In March 2020, representatives from the Quad assembled again for a videoconference to discuss the COVID-19 pandemic.

### SIGNIFICANCE OF QUAD- GROUPING:

- First, all four nations share a deep interest in maintaining a **stable balance of power in the Indo-Pacific and preventing a regional state from becoming dominant.**
- Second, all four states share an interest in **detering the use of forceful or coercive practices to resolve political and territorial disputes** in the region.
- Third, as trading nations all Quad members share a deep interest **in maintaining a maritime order based on the free movement of goods and services across the world’s oceans.**
- Fourth, all four states are committed to the current **rules-based economic order in the Indo-Pacific.** This is based on free trade, open investment environments, open competitive tendering, the rule of law, and standards of good governance from which all continue to benefit.
- Fifth, a less emphasised common interest of all four nations is that of **supporting and strengthening liberal democratic governance within the Indo-Pacific.** The region has not been immune to the global decline in observance of political rights and civil liberties.

### HOW IS CHINA RESPONDING TO QUAD?

- China’s endeavour is to conflate the Quad with the Indo-Pacific vision, and link both to the so-called **China Containment Theory.**
- In 2016, China itself established a **Quadrilateral Cooperation and Coordination Mechanism with Afghanistan, Pakistan and Tajikistan.**
- More recently, China has established Quadrilateral Cooperation with Pakistan, Afghanistan and Nepal.
- The strategic community in China, nevertheless, had branded it **an emerging “Asian NATO”.**



## Quad Nations and China

- **USA** had followed a policy to contain China's increasing influence in East Asia. Therefore, USA sees the coalition as an opportunity to regain its influence in the Indo-Pacific region.
- **Australia** is concerned about China's growing interest in its land, infrastructure and politics, and influence on its universities.
- **Japan** has expressed concerns related to China's territorial transgression in the region.
- China's violation of international norms, particularly its construction of military facilities on reclaimed islands in the South China Sea, and its growing military and economic power, pose a strategic challenge to **India**.

## **INDIA AND QUAD:**

### Significance for India:

- **Act East Policy:** It gives a powerful platform to advance its interests in East Asia, coordinate strategies with powerful friends and add more strength to its Act East initiative.
- It will deepen India's ties with US, Australia and Japan and will provide New Delhi significant leverage in shaping US policies in Afghanistan-Pakistan to the benefit of India.
- Through QUAD India seeks to reassert rule based world order to counter China's growing power and assertion.
- India has held that the Quad was more about sharing democratic experiences than a security arrangement directed at China.
- **Defence-related spending:** In this time of COVID pandemic and fund crunch associated with lockdowns, Quad will provide heavyweight to India's interests.
- **Challenges on the continental sphere:**
  - China is neither keen on ending the ongoing border stalemate nor reinstating the status quo with India as of March 2020.
  - The situation has been aggravated by geopolitical collusion between Pakistan and China.
  - India relations with Taliban, US withdrawal from Afghanistan and deteriorating Iran-India relations.
- **Sustainable Development in the Indian Ocean Region:** India holds the responsibility to act as the net security provider in the Indian Ocean region.
- **Issue-based alliance or minilateralism:** India has moved beyond non-alignment towards an issue-based alliance with no formal agreements. Therefore, joining Quad will be in line with the present foreign policies of the government.

## **CHALLENGES:**

- Translating intent into action will require a **strengthening of ties in existing fields, as well as non-traditional areas** such as cyber/information security, energy and climate change, disaster management, etc.
- The growing **divergences between US political and military opinion on their regional priorities** could stymie Quad aspirations.
- Further, **poor Indian and Japanese financial and logistical bandwidth** to competitively invest in the IPR compounds the Quad's shortcomings.
- Any significant commitment by India to the Indo-Pacific poses the **risk of overextending critical military assets** and de-prioritising existing undertakings in the Indian Ocean Region.
- Primary hurdle that remains is the **complex economic relationships between the Core Quad and China** – for all Quad members, China is either the first or the second largest trading partner, or a key import/export partner.
- If the Quad begins a Quad-plus initiative, it will not only be confronting these challenges, but will also have to contend with other issues such as **disputes even amongst members, and differing dispositions towards China**.



### CHALLENGES FOR INDIA:

- **Non-alignment:** India is abandoning its “sacred” tradition of non-alignment.
- **Trustworthiness of US:** US military alliances with Japan and the Philippines has not provided any challenge to Chinese aggression in the region.
- **No clarity on objectives:** India wants advancing the security and economic interests of all countries having legitimate and vital interests in the Asia-Pacific region whereas US is pitching for mutating the Indo-Pacific Quad into a more formal security grouping modelled on NATO.
- **Individual visions of the Indo-Pacific:** It would be difficult to align the combined vision of the grouping with that of their individual visions regarding Indo-Pacific.
- **Internal economic changes:** If India wants to engage the Quad partners on reforming the China-centred economic globalisation, it also requires to engineer many changes on trade-related aspects, which might prove to be difficult, given India’s drive for self-reliance

### CRITICISM:

- Experts claim that the Quad was one of the **most poorly explained concepts** in recent strategic memory and it stands as little more than a diplomatic carcass hastily exhumed from the graveyard of Asian regional architecture.
- Questions remain not only about the **Quad’s credibility as a counterweight to China**, but **how it overcomes a complex array of competing national interests among the four: over border disputes, trade and maritime tensions.**
- Russia criticized Quad by saying that **sustainable security architecture in the Asia Pacific region cannot be achieved through a bloc arrangement.**
- Further there is **ambiguity surrounding the group and its purpose.**
- Another source of criticism stems from the **occasional mixed messages from the four governments.**

### RECOMMENDATIONS FOR GREATER COLLABORATION AMONG QUAD MEMBER GOVERNMENTS IN THE YEARS TO COME:

- ❖ **Establish Working Groups On Defense And Infrastructure:** Broadening the current Quad format of foreign ministry senior official-level meetings to include representatives from defense ministries would be a necessary first step toward creating a whole-of-Quad “working 2+2.”
- ❖ **Develop An Indo-Pacific Infrastructure And Development Coordination Working Group:**
  - it would ensure that all four Quad nations are committed to creating a roadmap to sustainable, high-quality infrastructure for developing countries.
  - It would further permit the streamlining of various inter- Quad infrastructure initiatives, including the Japan-India sponsored Asia-Africa growth corridor.
- ❖ **Pursue An Annual Meeting Of Joint Operational Commands And Encouragement Of Exchanges:**
  - Attaching a meeting of joint operational commands would be a natural extension to a civilian working group on humanitarian assistance and disaster relief.
  - The promotion of personnel exchanges would be a further outgrowth of the above activity on joint operational command exchanges and the development of Quad working groups.
- ❖ **Add Crisis Response, Humanitarian Aid, And Disaster Relief** to the Quad’s Agenda.
- ❖ The Quad should consider issuing not just joint statements after their meetings, but also joint vision statements on a range of relevant and important topics that affect Indo-Pacific security.
- ❖ **Appeal To ASEAN:** The Quad should seek to harness consensus with ASEAN as a whole, promoting cooperation in the shared interests among the two.
- ❖ **Close The Loop With India And Australia: 2+2 And Malabar:** Three of the four Quad countries enjoy ministerial-level “2+2” defense and foreign ministers dialogues with one another. India and Australia should upgrade their “2+2” to the ministerial level to close the loop and complete the square.
- ❖ **Boost Non-Traditional Security Cooperation:** elevating collaboration on mine-sweeping technologies, anti-piracy operations, pollution control, pandemic responses, joint escorts of international shipping, force structuring, coast guard collaboration, counter-proliferation initiatives, and exchange of information on white shipping.



- ❖ Expand Cooperation On Space And Maritime Domain Awareness.

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