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Premium

# Expert Explains: The Muslim quota question

What is the history of 'religion-based' reservation? How have various states tried to include Muslims within reserved categories, and how have the courts ruled on quotas for Muslim communities?

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The Constitution of India moved away from equality, which refers to equal treatment for all, to equity, which ensures fairness and may require differential treatment or special measures for some groups.

In election season, India is debating fundamental **constitutional questions around reservation.**

Can a secular country like India have religion-based reservation? Have Muslims ever been given reservation by reducing the quota for Scheduled Castes (SCs), Scheduled Tribes (STs), or Other Backward Classes (OBCs)? Does reservation for SCs that is limited to only certain religious denominations amount to reservation based on religion?

### Reservation & Constitution

The Constitution of India moved away from equality, which refers to equal treatment for all, to equity, which ensures fairness and may require differential treatment or special measures for some groups. The Supreme Court has held that equality is a dynamic concept with many aspects and dimensions, and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits (E P Royappa vs State Of [Tamil Nadu](#), 1973).

Formal equality is concerned with equality of treatment — treating everyone the same, regardless of outcomes — which can at times lead to serious inequalities for historically disadvantaged groups. **Substantive equality, on the other hand, is concerned with equality of outcomes.** **Affirmative action promotes this idea of substantive equality.**

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The Constitution of 1949 dropped the word 'minorities' from Article 296 of the draft constitution (Article 335 of the present Constitution), but included Article 16(4) that enabled the state to make "any provision for ...reservation...in favour of any backward class of citizens which...is not adequately represented in the services under the state".

The first constitutional amendment inserted Article 15(4), which empowered the state to make "any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes".



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Article 15 specifically prohibits the state from discriminating against citizens on grounds only of both religion and caste (along with sex, race, and place of birth). After the Supreme Court's judgment in State of Kerala vs N M Thomas (1975), reservation is considered not an exception to the equality/ non-discrimination clauses of Articles 15(1) and 16(1), but as an extension of equality. The crucial word in Articles 15 and 16 is 'only' — which implies that if a religious, racial, or caste group constitutes a "weaker section" under Article 46, or constitutes a backward class, it would be entitled to special provisions for its advancement.

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Some Muslim castes were given reservation not because they were Muslims, but because these castes were included within the backward class, and reservation was given without reducing the quota for SCs, STs, and OBCs by creating a sub-quota within the OBCs.

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The Mandal Commission, following the example set by several states, included a number of Muslim castes in the list of OBCs. The Supreme Court in Indra Sawhney (1992) laid down that any social group, whatever its mark of identity, if found to be backward under the same criteria as others, will be entitled to be treated as a backward class.

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### **Kerala: Muslim sub-quota**

Religion-based reservation was first introduced in 1936 in Travancore-Cochin state. In 1952, this was replaced by communal reservation. Muslims, who constituted 22% of the population, were included within the OBCs.

After the state of Kerala was formed in 1956, all Muslims were included in one of eight sub-quota categories, and a sub-quota of 10% (now 12%) was created within the OBC quota. Unlike the faulty report of the Mandal Commission which concluded, on the pattern of Hindus, that only 52% Muslims were OBCs, in Kerala and [Karnataka](#), from the times of the Hindu maharajas, Muslims were seen as having been drawn overwhelmingly from the “untouchable” and other “low” castes, and were thus included among the backward classes.

### **Karnataka: JD(S) decision**

The Third Backward Classes Commission of Karnataka headed by Justice O Chinnappa Reddy (1990) found, like the Havanur (1975) and Venkataswami (1983) Commissions, that Muslims fulfilled the requirements for being considered among the backward classes.

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In 1995, the government of Chief Minister H D Deve Gowda, who is currently an ally of the [BJP](#), implemented 4% Muslim reservation within the OBC quota. Thirty-six Muslim castes which are part of the central list of OBCs were included in the quota.

Deve Gowda's JD(S) had criticised the decision of the [Basavaraj Bommai](#) government to scrap the Muslim quota before the Assembly polls of 2023. The Supreme Court subsequently stayed the Bommai government's decision.

### **TN: Backward Muslims**

The government of M [Karunanidhi](#) passed a law in 2007 based on the recommendations of the Second Backward Classes Commission headed by J A Ambasankar (1985), that provided within the 30% OBC quota, a sub-category of Muslims with 3.5% reservation. This did not include upper-caste Muslims. The Act gave reservation to some Christian castes, but this provision was subsequently removed on the demand of Christians themselves.

### **Andhra Pradesh & Telangana**

The question of giving Muslims reservation along with 112 other communities/ castes was referred to the Andhra Pradesh Backward Classes Commission in 1994. In 2004, based on a report by the Commissioner of Minority Welfare on the social, economic, and educational backwardness of Muslims, the government provided 5% reservation, treating the entire community as backward. The High Court struck down the quota on the technical ground that the mandatory consultation with the AP Commission for Backward Classes was not done. It also held that the minority welfare report was bad in law because it laid down no criteria for determining backwardness.

*(T Muralidhar Rao vs State of AP, 2004)*

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However, the court held that “reservations for Muslims or sections/ groups among them, in no manner militate against secularism, which is part of the [basic structure](#) of the constitution”. Relying on *M R Balaji vs State of Mysore (1962)*, the court noted that “Muslims or for that matter Christians and Sikhs etc., are not excluded for the purpose of conferring the benefits under Articles 15(4) or 16(4)”.

In *M R Balaji*, the Supreme Court observed: “It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why...though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf.”

In *Indra Sawhney (1992)*, the Supreme Court held that “in a particular state, Muslim community as a whole may be found socially backward. (As a matter of fact, they are so treated in...Karnataka as

well as...Kerala...)'".

Following the 2004 HC decision, the AP government referred the issue to the Backward Classes Commission. In 2005, based on the Commission's report, the state promulgated an ordinance declaring the entire Muslim community as backward, and providing 5% quota.

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But the HC struck down the ordinance in *B Archana Reddy vs State of AP (2005)* on the ground that the benefit could not be extended to the whole community without proper identification of social backwardness of Muslims by the Commission. The five-judge Bench of the HC reiterated that there is no prohibition on declaring Muslims as a community socially and educationally backward, provided they satisfy the test of social backwardness. Thus, the failure of the Commission to recognise the heterogeneity of Muslims became the basis for the rejection of its report, and of the ordinance based on it.

The state again referred the matter to the Backward Classes Commission and, based on its report, enacted a law in 2007 giving reservation to only 14 Muslim castes such as washermen, butcher, carpenter, gardener, barber, etc. Similar occupational castes of Hindus were already in the list of backwards, and enjoying reservation. The schedule of the Act explicitly excluded 10 'higher' castes among Muslims such as Saiyed, Mushaik, Mughal, Pathan, Irani, Arab, Bhora, Khoja, Cutchi-Memon, etc.

But this Act too was struck down by the HC. The final word on its constitutionality is awaited from the Supreme Court.

After the bifurcation of Andhra Pradesh in 2014, the TRS government in [Telangana](#) passed a law in 2017 proposing 12% reservation for OBC Muslims on the basis of the reports of the G Sudhir Commission and the Backward Classes Commission.

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The Sudhir Commission found that in educational attainment, work participation, and household-level possession of land, Muslims were behind SCs, STs and Hindus in general. Since the proposal would take reservation beyond the 50% mandated by the Supreme Court in its *Indra Sawhney* judgment (1992), it was referred to the central government for inclusion in the Ninth Schedule. But the Centre did not bring the proposal to Parliament.

### **Sachar, Misra panels**

The Justice Rajinder Sachar Committee (2006) found that the Muslim community as a whole was almost as backward as SCs and STs, and more backward than non-Muslim OBCs. The Justice Ranganath Misra Committee (2007) suggested 15% reservation for minorities, including 10% for Muslims.

Based on these two reports, the UPA government in 2012 issued an executive order providing 4.5% reservation of minorities — not just Muslims — within the existing OBC quota of 27%. Since the order was issued only a few days before the Assembly elections in UP, Uttarakhand, Punjab, [Goa](#), and Manipur, the Election Commission asked the government not to implement it. The AP High Court quashed the order, and the Supreme Court refused to stay the HC's order.

Article 341 of the Constitution and the 1950 Presidential Order state that only Hindus are entitled to inclusion within SCs. However, Sikhs were included within SCs in 1956, and Buddhists in 1990. Muslims and Christians remain excluded. It could be argued that this too, is 'religion-based' reservation.

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