

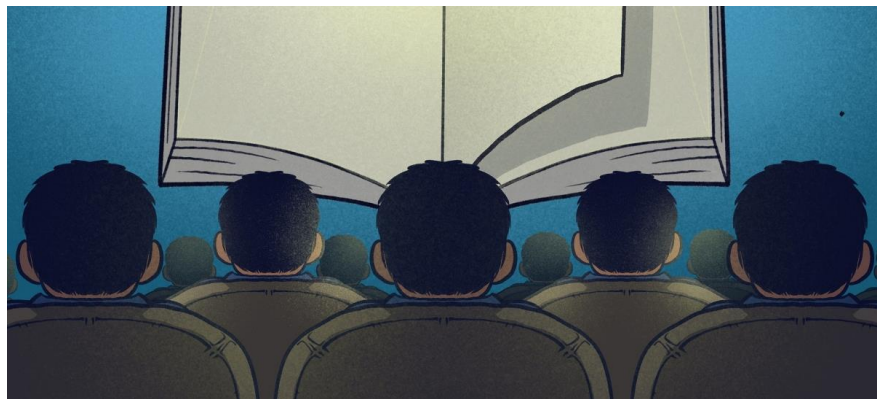


## Interrogating the false merit-reservation binary

The Supreme Court's recent order advances an interpretation that is consistent with the ideals of equality, social justice.

### Context:

1. The Supreme Court of India's recent ruling on an all India quota deserves closer attention for a reason other than its impact on postgraduate medical admissions. This judgment has the potential to settle a long, fractious and futile debate in our country: merit versus reservations.
2. The order of the two-judge bench comprising Justice D.Y. Chandrachud and Justice A.S. Bopanna lays to rest a popular misconception of merit while advancing an interpretation that is consistent with our constitutional ideals of equality and social justice.
3. The judgment should have far-reaching consequences for judicial orders, public policy, and, hopefully, public discourse.



## NEET case

1. The case before the Court was very limited: an expeditious resolution of the issues around the implementation of Other Backward Classes (OBC) and economically weaker sections (EWS) quotas in the National Eligibility cum Entrance Test (NEET)-All India Quota (AIQ) admissions to medical colleges.
2. AIQ refers to a judicially created category where 15% of undergraduate seats and 50% of postgraduate seats are filled on a domicile-free, all-India basis.
3. The Government had recently decided to extend the existing Scheduled Caste and Scheduled Tribe reservations within this category to provide for OBC reservations as well.
4. Writ petitions had challenged this order on the grounds that the implementation of OBC reservation would affect professional merit and cause reverse discrimination against general category candidates.
5. Another set of writ petitions had challenged the notification of EWS reservation even as the hearings on the 103rd Constitutional Amendment Act were pending. Another set of writ petitions had challenged the tenability of ₹8 lakh as the income limit for EWS reservation.
6. The Court, in view of the public health implications of the delay in medical admissions, upheld the admissions notice and listed for March the hearing on the validity of the ₹8 lakh limit.





## **Merit versus reservations: Substantive equality in society**

1. The Court took this opportunity to directly address the issue of merit versus reservations at some length. For the longest time, critics of affirmative action have argued that reservations violate merit.
2. The defenders of reservation too often concede this but argue that affirmative actions serve other goals such as social representation.
3. The judgment begins by recalling and reaffirming the principle of substantive equality, rather than formal equality, that underlies our constitutional promise of equality of opportunity.
4. Relying on the debates in the Constituent Assembly, the Court reminds us that the intent of the framers was to remedy real structural barriers that prevented the realisation of equality of opportunity.
5. The Court builds on landmark cases such as *State of Kerala vs N.M. Thomas, K.C. Vasanth Kumar* (1985), and *Indra Sawhney vs Union of India* (1992) to reiterate sharply that the provision of reservations in Article 16(4) of the Constitution is not an exception to but an extension of the principle of equality enunciated in Article 16(1).
6. Reservations are crucial to achieving the aspirational goal of genuine equality of opportunity and status amongst all citizens. 'Reservation is one of the measures that is employed to overcome these barriers.

## **Social privileges and cultural capital of dominant section masquerading as Merit:**

1. The individual difference may be a result of privilege, fortune, or circumstances but it cannot be used to negate the role of reservation in remedying the structural disadvantage that certain groups suffer'.
2. Second, the judgment contributes to the specification of the mechanisms through which social privileges work. Justice Chinnappa Reddy in *K.C. Vasanth Kumar vs State of Karnataka* (1985) had critiqued the purely economic understanding of claims for reservation by emphasising the embedded and rigid nature of the socio-cultural institution of caste.
3. The present order notes Marc Galanter's insight that processes of resource accumulation impact the performance of candidates in examinations. Taking

this understanding forward, it draws upon the work of K.V. Shyamprasad to recognise, perhaps for the first time, the role of cultural capital.

4. The order holds: 'The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in the open examination...'
5. The judgment is also attentive to the exclusionary implications of this process as meritocratic discourse legitimises consolidation of 'family habitus, community linkages, and inherited skills'.
6. In addition to 'reaffirming social hierarchies', this obsession with scores in an examination 'serves to denigrate the dignity of those who face barriers in their advancement which are not of their own making.



### **Stereotypes and skills: Falsity of efficiency of administration argument**

1. Third, it exposes social prejudices that masquerade as concerns about 'efficiency of administration' and the anxieties about the dilution of merit. It recognises that there is a need to rectify prejudicial stereotypes about the skills of persons belonging to weaker sections.



2. It relies on the 2019 decision in B.K. Pavitra vs the State of Karnataka, also authored by Justice Chandruchud, held, 'The benchmark for the efficiency of the administration is not some disembodied, abstract ideal measured by the performance of a qualified open category candidate.
3. The efficiency of administration in the affairs of the Union or of a State must be defined in an inclusive sense, where diverse segments of society find representation as a true aspiration of governance by and for the people.'

### **Examinations as a measure of merit: Limitations**

1. Finally, the judgment goes to the heart of the matter and questions examinations as a measure of merit. It cites Ashwini Deshpande's study highlighting a stark separation between what examinations claim to measure, and what they actually do.
2. It elaborates by citing Satish Deshpande's research that shows that often what examinations measure have an indirect and weak link to the tasks the candidate is supposed to perform.
3. He argues that the prestige of competitive entrance examinations and the unimpeachability of its evaluator standards is a manufactured construct.
4. Satish Deshpande calls these examinations 'traumatic bloodbaths' that are administered to jealously guard the social prestige of the professional class.
5. Drawing upon this, the judgment opines that exams can 'only reflect the current competence of an individual but not the gamut of their potential, capabilities or excellence'.
6. Foregrounding the importance of individual character, lived experiences, and subsequent training, the judgment emphasises that examinations are exclusionary, though convenient, methods of resource allocation and that our constitutional ideals should inform our cautious appreciation of these processes.

This critique of the widespread misconception about merit — the common sense of the upper caste elite — can have far-reaching consequences.



## Consequences of the judgement:

### A. Reverse discrimination and substantive equality:

Claims of reverse discrimination by candidates from the unreserved category would have to be justified under the paradigm of substantive equality. This implies that a crude disparity in cut-off marks would not be construed in isolation of the structural inequalities perpetuated by a competitive examination.

### B. Cultural Capital of EWS

This invites a stringent judicial review of the constitutionality of EWS reservations since it overlooks the role of cultural capital for general category EWS candidates and fixes the same income limits for 'creamy layer' OBC and EWS.

### Need an unbiased system of examination

1. In the policy realm, this judgment opens the way for designing examinations that are free of linguistic, class, school boards, and regional bias.
2. Justice A.K. Rajan's report on NEET, cited in this judgment, could be a potential blueprint for democratising access to higher education.

### Caste census needed to expose cultural capital and its pervasive dominance:

The recognition of social privileges that hide behind merit also buttresses the demand for caste census that can document the dynamics of privilege accumulation.

Is it too much to hope that this reasoning — written in the language and style preferred by our elite — coming from the highest court of the land would open the eyes of our upper-caste opinion-makers to the reality of inherited caste privileges that masquerade as merit? Would this reshape the complacent and condescending drawing-room conversations about "reserved category"?