

## **RESERVATION POLICY UNDER INDIAN CONSTITUTION: A TOOL OF POLITICAL TRICK**

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### **ABSTRACT**

The issue of the reservation has always been contentious in relation to the concept of equality enshrined in the Constitution. The attempt made by the study is to bring to light the issue of reservation policy in the spheres of educational institutions and in public employment. The significance and controversy attached with the reservation policy can be seen through various Constitutional amendments and judicial pronouncements. But unfortunately, the existing reservation policy has not resolved many issues such as non-applicability of the creamy layer in the case of SCs and STs, casteism, reservation in the promotion in the case of employment, wealthiest persons within SCs, STs and OBCs, and to include more and more castes in backward classes category under political pressure. This article intends to analyse the provisions of the Constitution of India vis-à-vis reservation policy; to analyse the judicial pronouncements on the reservation policy; to analyse the implementation of the judicial pronouncements through Government Policies and to suggest the modifications in the reservation policy and thereby ensuring equality.

**Keywords:** Reservation Policy, Constitutional Provisions, Judicial Pronouncements, Political Trick.

## **INTRODUCTION**

In the annals of India history, it is evident that some classes of people are backward due to the historical injustice and exploitation.<sup>1</sup> Therefore, the notion of ‘reservation’ has been enshrined in the Constitution of India specifically in Article 15 (4) and Article 16 (4). The Constitution incorporated the provisions of the reservation in order to secure socio-economic justice to the vulnerable and downtrodden sections of the society to bring them to equality in the society. After the enforcement of the constitution, the Government of India started its initiatives for providing reservation to the backward classes of the country in light of the constitutional commitment. Therefore, in the fulfilment of the constitutional commitments and mandates for the protective discrimination embodied in Article 14, 15(4), 16 (4), 338 (10) and 340 (1) read with Article 46 of the Constitution of India, the reservation was granted to the backward classes on the recommendation of the Second Backward Classes Commission headed by B. P. Mandal. In the present time, the reservations of seats are available to scheduled castes and scheduled tribes and backward classes in admission to several undergraduates and postgraduate general, technical, medical and other professional courses as well as in public employment. Accordingly, the government has provided 15%, 7.5% and 27 % reservation to SCs, STs and OBCs respectively in the educational institutions and in public employment. The policy of preferential treatment or adventitious aids is provided in order to enable them to participate in the mainstream of nation life. The framers of the Constitution, judicial efforts and Constitution aimed at a reasonable reservation policy but unfortunately the protective discrimination policy failed to attain its goal in some spheres in consonance with constitutional provisions. The existing reservation policy has not resolved many issues such as non-applicability of the creamy layer in the case of SCs and STs, casteism, reservation in the promotion in the case of employment, wealthiest persons within SCs, STs and OBCs, and to include more and more castes in backward classes category under political pressure.

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<sup>1</sup> Dr. P. S. N. Murthy, “The Three Cardinal Principles for Identifying Backward Classes for the Sake of Reservation”, *All India Reporter*, 2009, Vol. 96, p. 42.

The first case related to the reservation came to the Supreme Court of India in 1951 was *State of Madras v. Champakam Dorairajan*<sup>2</sup>, where the Court Struck down the communal government order of the Madras Government which had fixed the proportion of students of each community of the backward classes that will be admitted into the medical and engineering colleges run by the state government, and the Court held that the reservation of seats for the backward classes in the professional schools is violative of the equality principle enshrined in Article 14. This judgment was followed by the First Constitutional Amendment of the Constitution in 1951 which resulted in insertion of clause (4) to Article 15 which reads as “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.” This first amendment to the Constitution of India was upheld by the Supreme Court in the landmark case of *M. R. Balaji v. State of Masore*<sup>3</sup>.

In the case of *Indra Sawhney v. Union of India*<sup>4</sup>, the position was once and for all settled in the instant case, where with respect to Article 16 (4), the Court posed with question as to whether a caste based classification would be valid for determining “socially backward classes.” The implementation of the Mandal Commission’s report and the methodology used by the Commission were questioned and one among many contentions raised was that caste could not a basis of the classification. The Commission must first lay down the criteria, followed by the identification of various groups and then the decision on which group can be classified as backward. If it so happens that the group is that classified as backward happens to be a caste, it would be acceptable; however classification could not start with a division into castes. The arguments put forth to state that classification cannot be based on caste because a secular casteless society is a basic feature of the constitution and this cannot be achieved if caste based classification is permitted. It was further contended that classification must be individual based and not caste based.

The above stated contention was rejected and the Court went into deep analysis of the caste-class relation. The Court observed in this case as “the caste is nothing but a social class a socially homogenous class. It is also an occupational grouping with this difference that its membership is

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<sup>2</sup> AIR 1951 SC 226.

<sup>3</sup> AIR 1963 SC 649.

<sup>4</sup> AIR 1993 SC 477.

hereditary. One is born into it. Its membership is involuntary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. An occupation results not only in low social status but also in poverty. Caste-occupation poverty cycle is thus an ever present reality in the society. We are not saying it ought to be encouraged, it should not be. It must be eradicated or eliminated. But any schemes for the betterment of these sections of people of the society and policy or programme adopted to eradicate this evil must recognize this hard ground reality and attune its schemes accordingly.”<sup>5</sup>

The Supreme Court further observed that “a caste should be excluded from consideration altogether while identifying the Backward Class of Citizens for the purpose of Article 16 (4) is Clause (2) of Article 16. This argument, however, overlooks and ignores the true purport of Clause (2). It prohibits discrimination on any or all of the grounds mentioned therein. The significance of the word "any" cannot be minimized. Reservation is not being made under Clause (4) in favor of a 'caste' but a 'backward class'. Once a caste satisfies the conditions or criteria of backwardness, it becomes a backward class for the purposes of Article 16 (4). Even that is not enough. It must be further found that that backward class is not adequately represented in the services of the State. In such a situation, the restriction imposed under clause (2) of Article 16 has no application whatsoever.”<sup>6</sup> It was also observed by the Court that “a caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16 (4). Since caste represents an existing, identifiable social group/class encompassing an overwhelming majority of the country's population, one can well begin with it and then go to other groups, sections and classes. The test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression "backward class of citizens." The accent in Article 16 (4) appears to be on social backwardness. In fact social, educational and economic backwardness are closely inter-twined in the context of Indian society. The classes contemplated by Article 16 (4) may be wider than those envisaged by Article 15 (4).”<sup>7</sup> Further, the Court held that if any reservation in promotions is provided, such reservation shall continue for a period of five years from the day of judgment and

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<sup>5</sup> *Id.*, at para. 82.

<sup>6</sup> *Id.*, at para. 83.

<sup>7</sup> *Id.*, at para. 88A.

also directed to constitute a committee for the identifying the advanced person among the backward classes with a aim to exclude them from the benefits of the reservation

The Court further held that “Article 16 (4) spoke of adequate and not the proportional representation as provided by Article 300 and 302 of the Constitutions. A provision that was betterment of certain sections of the society must also be reconciled with the interest of the remaining citizens and keeping this in mind 50% would be reasonable. This fifty percent limit would not apply to reservations under Article 16 but would not cover exemptions, concessions, relaxations, if any provided to the backward classes of citizens.”<sup>8</sup> In the instant case the Supreme Court also defined the concept of the ‘horizontal and vertical reservation.’ While “vertical reservations includes reservation in the favour of scheduled castes, scheduled tribes and other backward classes in pursuance of Article 15 (4) and 16 (4), reservation that were made for the physically handicapped under Article 16 (1) or Article 14 would be horizontal reservations. Vertical reservations imply that a certain percentage would be set aside for the specified category. Horizontal reservations would cut across vertical reservations and it is termed by the Court as ‘inter-lock reservation’. The persons selected against such reservation will be placed in the appropriate category; if he belongs to scheduled caste category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same.”<sup>9</sup> The Supreme Court also clarified on the issues of reservation involved admitting students of less merit and observed that reservations overall are not anti-meritarian as the reserved category students are meritorious enough to improve and compete with the general category candidates in some times.<sup>10</sup>

The Court observed that caste could not be ignored completely as it had resulted in so much discrimination in the past and formed the very basis of society. Thud it can inferred that classification can be made on the basis of caste so long as a caste constitutes educationally and

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<sup>8</sup> *Id.*, at para. 94A.

<sup>9</sup> *Id.*, at para. 95.

<sup>10</sup> *Id.*, at para. 121.

socially backwardness for the purpose of Article 15 (4). The exclusion of the creamy layers from the purview of reservation is one of the important aspects of this landmark judgment.

*Indra Sawhney case* reflected a sense of deep frustration among non backward class students on account of the implementation of the report of the Mandal Commission. The question is delicate one and the leaders of the society have to strike a balance between the need of doing justice to these classes who have been ignored up to now and the consequence of frustration among the qualified and competent students from non backward classes. Even among the backward classes, only certain sections are benefited. That is why in *Indra Sawhney*, the Court decided to exclude 'creamy layers'. The exercise of identifying these creamy layers is still in progress. Equity demands that a just balance is struck between the needs of the backward and the national interest in providing proper opportunities to the talented candidates. There should be an honest non-political assessment undertaken periodically of the actual benefits that have accrued to the backward classes as a result of the reservation policies, the extent to which this has removed or reduced backwardness and how long and for whom such a benefit should continue.<sup>11</sup> The makers of the Constitution of India did not envisage reservations in perpetuity. It is therefore essential to review the reservation policy to ensure that the backwardness is eliminated effectively in as short a span as possible. This is the most effective way of eradicating frustration and a sense of injustice among those adversely affected by the policy of reservation, and to bring about an egalitarian social order.<sup>12</sup>

A question was raised in the case of *Ashok Kumar Thakur case*<sup>13</sup> before the Supreme Court regarding no time limit prescribed for the continuance of the reservation under the Central Education Institution Act, 2005 which provided the reservation in the educational institutions. But the Court did not consider the contention of the petitioner with regard to the time limit of the affirmative action seriously and it only recommended the Central Government to review the policy of reservation after ten years. However, the government did not consider this observation of the Court till the date and the government is just extending the reservation policy from time to time

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<sup>11</sup> Sujata V. Manohar, *T. K. Tope's Constitutional Law of India*, 3<sup>rd</sup> Edn., Eastern Book Company, Lucknow, 2010, p. 106.

<sup>12</sup> *Id.*, at p.107.

<sup>13</sup> (2008) 6 SCC 1.

without any efforts made to review the reservation. Since the reservation of seats or posts in the educational institutions and in public employment for the backward classes, scheduled tribes and scheduled castes are considered to be the constitutional remedy to ward off the backwardness, the State is invested with a duty to ensure that the benefits of the reservation policy is given to the most deserving incumbents of the class to whom it is intended for in pursuit of their upliftment.<sup>14</sup>

But now the device of reservation has become a tool of aggrandisement in the hands of politically dominant castes, who always try to strike political bargains to retain the privileges of being classified as backward even at the cost of deserving.<sup>15</sup> They have never put earnest efforts to ascertain whether reservation hitherto benefitted the community as a whole or only profited a chosen few with the result that the lists of those who are to be treated preferentially is becoming voluminous instead of shrinking.<sup>16</sup>

The political trend with respect to the reservation policies present just an opposite view as what has been embodied in the Constitution. The principles of secularism, nationalism and high ideals of national interest have gone into background and ‘caste and caste alone’ has started playing its dubious role and has much more affected the national equilibrium and marred the social achievement of the national struggle for independence.<sup>17</sup>

The present reservation policy has not been pursued with any serious intention of improving the conditions of the downtrodden sections of the society. It only papers a vote bank. The lists of the backward classes have been lengthening from one election to another. Every political party vies with the other to woo scheduled castes, and scheduled tribes. At every election these sections function as political vote bank. The existing reservation policy has created a small elite among the reserved categories who exploit the sentiments of these people perpetuate their own advantages.

It is matter of grave concern that no government has so far conducted any analytical study of real impact of reservation. It is the duty of every successive government to justify the extension of the

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<sup>14</sup> V. K. Babu Prakash, “Reservation and its Inner Scenes”, *Kerala Law Times*, Vol. 1, 2007, p. 17.

<sup>15</sup> P. L. Mehta and Chitkara M. G., “Need to Revamp Reservation Policy”, *Civil and Military Law Journal*, Vol. 26, 1990, p. 172.

<sup>16</sup> *Ibid.*

<sup>17</sup> Jitendra Mishra, *Equality versus Justice: The Problem of Reservation for Backward Classes*, Deep and Deep Publications, New Delhi, 1996, p. 90.

reservation benefits on the basis of the facts and provided data with regard to their backwardness in the society. The present reservation policy stems from the fact that only a handful of those who have already benefitted are, are again and again and at every stage drawing the benefits and thereby hampering or preventing the chances of others who really deserve it. Therefore, mere extension of the policy of reservation is detrimental to the larger interests of society and moreover discriminatory against the reserved categories itself, the reason being that the benefits of reservation are being usurped by persons who already stand benefitted and it will never percolate down to those who really need such protection. Moreover, the lists of the beneficiaries are swelling under political pressure.

The recent Jat reservation controversy, reservation given to Marathi and Muslim by the Maharashtra government and the striking down of 10% reservation in Gujarat for underprivileged upper-caste by the Supreme Court are the reflection of the usage of the reservation policy as a political trick. This kind of reservation policy may suit the political interest of a political party but it will bring the nation on the shore of disaster. Therefore, the reservation policy requires an immediate restructuring or modification so that the downtrodden sections of the society get assimilated in the national mainstream. There is a dire need for rethinking and for understanding the constitutional limits of the reservation policy. Now the time has come to do away with the reservation step by step instead of making it unwieldy and iniquitous and rather than giving it political patronage.

## **SUGGESTIONS- A WAY-OUT TO PRESENT SITUATION**

To enable the reservation policy to meet its desired goals this paper proposes the following suggestions:-

- The affirmative action i.e. reservation policy should be based on the quantitative data of backwardness and sociological (social, educational and economic conditions) researches and only those classes should be benefitted who really deserve it. The efficiency which is the national property should not be allowed to be compromised in any case and at any level.



- The criteria for providing reservation should be modified without any political interferences so that only those sections of the society who have economic, social, environmental and educational handicaps may be entitled to it but subject to the review of their status and conditions periodically. Such classes or castes may be designated as ‘underdeveloped group’ or ‘developing group’ of the society instead of the controversial nomenclature based on the caste division. This may lead to a casteless society and also lessen the ugly feeling and discrimination of caste hatred.
- If in case, the whole of a caste is backward, the declaration to that effect should come from the President by including such caste under the category of scheduled castes within the meaning of Article 341. This will reduce the politics of reservation policies.
- The reservation policy must not be extended to the promotions in employment and Clause 4A of Article 16 should be omitted in order to end reservation in promotional matters. A proper balance must be maintained between the safeguards given to the backward classes and general social good. An improper balance leads to the violation of the constitutional provisions.
- The policy of the reservation should not be solely based on caste as it inevitably perpetuates the caste system in the society and it defeats the very objective of ultimate eradication of caste discrimination from the society. The grounds of providing reservation might be caste but it must be coupled with some social, educational and economic criteria and therefore, neither caste alone nor poverty alone should be the determining factors in the case of reservation. The economic conditions, occupation pursued, habitation, cast and educational backwardness etc. must be taken into consideration to enact an all India policy to determine and identify the backward classes.
- A detailed survey should be conducted at the national level for the study and analysis of the economic, social and educational standards of the backward classes and other sections

of the society. The information collected by the survey should provide the basis for a time bound programme to bring the backward sections of the society at par with others.

- The policy of the reservation should not be for indefinite period and a time limit should be fixed. A reservation policy without any definite period would be defeating the equality principle envisaged in the Constitution. One should not forget that the very purpose of such type of discrimination is to bring them mainstream, with an aim to achieve the equality among all sections of the society. Therefore the reservation laws should be made against the background of this fundamental principle. The reservation policy should be used as an instrument of achieving the social equality and not as a charity device to keep certain favoured groups satisfied without any further satisfaction. As a welfare State reservation policy cannot be considered as a permanent feature but only as a short term measure. If it continues indefinitely, it may lead to institutionalized reservation causing more social unrest and tension.
- The government should organize appropriate sensitisation programmes and active propagation of correct thinking through social workers and activists in order to improve the image and the status of backward classes or castes which may reduce the discrimination of the backward classes by the advanced sections of the society.
- The wealthiest persons (creamy layer) among the scheduled castes, scheduled tribes, backward classes and any other classes irrespective of their caste and community should not be given the benefit of the reservation. If persons in such groups are considered fit to deserve to claim reservations for themselves and their children simply by the virtue of their caste or affiliation irrespective of their social and economic position, it will make mockery of the policy of reservation, especially when the Indian society is just at its take off stage in the programme of uplifting its genuinely backward sections.

- If a substantial number of candidates belonging to the category of the backward classes, scheduled castes and scheduled tribes are able to obtain jobs in the government services and seats in the educational institutions on the basis of their own merit, it is the constitutional duty of the State to review the question of further reservation of seats in the educational institutions and in public employment for such classes or castes. The State should not act on the basis that once caste is considered as backward, it should continue to be backward for all time without any review of the reservation policy.

Now the time has come that the government should formulate a reservation policy with clear cut criteria along with the time period for the continuance of such policy. The government must make an appropriate policy based on the proper planning and research which will provide the future actions and efforts of the government in respect of reservation within such time period. The government should devise machinery for effective analysis of such reservation after the expiry of the prescribed period. If the desired goals in respect of reservation are not achieved within time period, then it will be viewed as a failure of the government. Thus the government should keep under constant review the question of the reservation of the backward classes, scheduled caste and scheduled tribes.

- The reservation policy should be within the reasonable and justified limits, and it should not transgress the constitutional limitations. It should not go in any case beyond the fifty percent of the total seats including the carry forward seats.
- One of the important suggestions is that students belonging to the scheduled castes, scheduled tribes and backward classes should be given all facilities so that they can study and live with dignity with an aim to make them competent enough to be able to face an open competition. The State should adopt a ‘policy of reservation facility’ to build up human potency and capability, and thereafter let the best be selected to give their best in the service of the nation. Therefore we should have ‘reservation in amenities’ at the effective level and privileges to the backward or any class economically weak, right from the very beginning of its economically weak, right from the very beginning of its

educational pursuits, through the grants of scholarships, book aids, free ships, free residential or hostel facilities, better fooding etc. But after giving these kinds of special treatments to them, they should not be given any reservations in the public employments and in the educational institutions. Justice Gajendragadkar observed that “if any State adopts such measures, it may afford relief to and assist the advancement of the backward classes in the State because backwardness is ultimately and primarily due to poverty.”<sup>18</sup> In order to bring equality in real sense, it is good thing to give them all the facilities which they need rather than giving the reservation in the education and public employment, and no one would object for the same.

- Reservation must always operate as guaranteed minimum.<sup>19</sup> If the members of the backward classes secure more seats by merit than are reserved for them, then reservation cannot be construed as the maximum number. The other principle is that the members of backward classes are free to secure additional seats by merit but they cannot insist that the reservation should operate as a guarantee of seats over and above those acquired by merit. This principle helps in estimating the need of reservations, if it is found that the candidates belonging to the backward classes are able to obtain more posts on their own merit, it would be evidence of the increased capabilities of the members of that class to stand on their own feet. Thereafter the State might decide to reduce the percentage of reservation assigned to the advanced backward group and divert more benefits to those classes who are lagging behind.<sup>20</sup>

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<sup>18</sup> *M. R. Balaji v. State of Mysore*, AIR 1963 SC 649.

<sup>19</sup> Dr. Parmanand Singh, *Equality, Reservation and Discrimination in India: A Constitutional Study of SCs, STs and OBCs*, Deep Publications, New Delhi, 1985, p. 206.

<sup>20</sup> *Ibid.*

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