

## Reservation for equal justice under Indian Constitution

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**ABSTRACT:** Since the establishment and the enforcement of Indian Constitution there has been a vast discussion regarding reservation till now. The purpose of the reservation in India has been to bring about an improvement in the welfare who, historically, has been economically and socially weaker. But, in arriving at this judgement about who should be eligible for reservation, the criterion has been a person's caste rather than his income or wealth. Consequently, groups belonging to what Article 15 of the Indian Constitution calls "socially and educationally backward classes" have benefited from reservation even though, in practice, many of these groups could not be regarded as "backward". This has meant that the benefits of reservation have been captured by well to do groups of other classes and itself among the depressed classes like SCs and STs while poorer groups among these caste have failed to take the proper benefit of reservation and to some extent had been uplifted.

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### **1.Introduction-The meaning of reservation:**

The concept of reservation was enshrined in the Constitution to allow the so-called deprived classes to come at par with the so-called privileged ones. The Constitution of India allows this kind of positive discrimination in order to bring about equality of opportunity and status in the society. The founding fathers had never intended Reservation to be a temporary phenomenon. Reservations to the underprivileged were to be extended until they were uplifted socially and stabilized economically. Reservations with the view of helping the deprived classes to gain a better footing and avail equal benefits of an independent and free nation was introduced in the system. But various governments ruled in India have failed to truly uplift the backward sections of the society and failed to provide them with equal opportunities even after 60 years of independence. Freedom and application of a reservation policy, has changed nothing. In reality, reservation has failed at all fronts. Not only has it failed to achieve the desired aim of bringing the non-privileged classes into mainstream, it has marginalized them all the more and deepened the caste system even more. Moreover, reservations are now used not as an effective means of eliminating discrimination but as a vile instrument of increasing the vote-bank. Presently, as per the government policy, 15% of the government jobs and 15% of the students admitted to universities must be from Scheduled castes and for the Scheduled tribes there is a reservation of about 7.5 %. Other than this, the state governments also follow their own reservation policies respectively based upon the population

constitution of each state. So nearly 50% seats are reserved. The Mandal Commission was established in 1979 by the central government to identify the socially or educationally backward people. It was also set up to consider the question of seat reservations and quotas for people to redress caste discrimination. It used social, economic, and educational indicators to determine backwardness. But today are these reservations actually being utilized on the above mentioned factors? The answer is prima facie 'NO' because the benefits are being stolen away by the creamy layer.

The 93rd amendment and the recent declaration of the government for reservation in institutions of higher education have once again stirred the anger of the youth in general all over the country. The moral ground in favour of reservations still holds good. What is needed is to formulate a well-balanced policy of reservation, which opens equal doors of opportunity to all. Development of one section of the society should not be at the cost of the other section. Development of the society can be possible only if all the sections of the society are given equal opportunities. Opportunity for development should be judiciously distributed among all the sections of society. Opportunity in education, jobs and other fields of life should be equally distributed.

The present decision of the government regarding the reservation policy has angered the youth because it triggers the development of one section of the society while pushing another into oblivion. Moreover, as the Supreme Court has put a stay on the implementation, the controversy has deepened. The country seems to be divided into two

bi-polar thought streams— one supporting reservations and another dead against it.

If one takes a look at the issue objectively one will realize that the intention behind reservations is not faulty at all but it is the implication and the application of it that has proved ineffective. The way reservation has been implemented all these years has deepened and aggravated the caste distinctions in the society, marginalized the poor and the needy and has benefited only the topmost layer of the so called Backward classes. The benefit of reservation has failed to trickle down to the lowest section of the society. Moreover, it has killed the spirit of brotherhood and healthy competition, the desire to surge forward and to work hard. Reservations based on the narrow concept of caste are thus, fundamentally wrong and hence has proved to be a failure.

Thus, it is time to introspect, while keeping aside the greed of political mileage and think objectively about where things have gone wrong. It seems that nobody really cares about the welfare of the underdog but wants to gain a bit of the large chunk of political boost for the next elections. Reservation should not be forsaken because, in fact, everyone wants that society should develop as a whole and everyone should reap the benefits of development. But reservations instead of being caste-based to meet the political needs of our power hungry politicians should be based on more acceptable criteria through which every section of the society is benefited. For instance, it can be based on economic status or anything else that can work truly for our society and state. We should take a lesson from the United States in this regard. It is the most market-oriented country and has a policy of affirmative action. US universities and the government give preference to Black and Hispanic applicants in admission as well as jobs. Yet the US economy remains among the most competitive in the world. The trick lies in undertaking affirmative action by providing incentives rather than quota-based restrictions.

The US has long abandoned the quota system for affirmative action. They have put in place a point system under which candidates from among the Blacks, backward regions, immigrants, etc., are given a few extra points in admission and appointment procedures. This leads to nominal increase in the cost of production. The additional points only lead to nominal lowering of standards. In contrast, the quota system can lead to a heavy lowering of standards. Similar, is the case in South Africa where the new constitution envisages a programmed of affirmative action.

In view of the present scenario, it is needed to keep aside the narrow vote bank politics and think truly for the betterment of the under-privileged and honestly pursue! Policies and programmes for their upliftment<sup>1</sup>.

Seats in educational institutions and jobs are reserved based on a variety of criteria. The quota system sets aside a proportion of all possible positions for members of a specific group. Those not belonging to the designated communities can compete only for the remaining positions, while members of the designated communities can compete for all positions (reserved and open). For example, when 2 out of 10 clerical positions in railways are reserved for ex-servicemen, those who have served in the Army can compete both in the General Category as well as in the specific quota.

## 2. Constitutional Provisions:

The basic approach was specified in Articles 14, 15(1), 16(1) and 16(2). *Article 14* guaranteed equality to all: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” That was the fundamental guarantee.

*Article 15(1)* made that guarantee specific in one particular: “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

*Article 15(2)* guaranteed equal access for everyone to public facilities like wells, restaurants etc.

*Article 15(3)* contained a proviso provided: “Nothing in this article shall prevent the State from making any special provision for women and children.” Notice again: the only categories for which special provisions were envisaged were women and children. In particular, notice that no exceptions were envisaged on the basis of castes.

*Article 16(1)* made the fundamental guarantee of equality. “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

*Article 16(2)* did for governmental employment what Article 15(1) did for a citizen’s living in general: “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

*Article 16(4)* contained a proviso, “Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts

<sup>1</sup> <http://www.publishyourarticles.net/knowledge-hub/essay/essay-on-reservation-system-in-india.html>

in favour of any backward 5 class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

Therefore to sum up what the Constitutional framers provided we may say:

(a) The fundamental guarantee in every provision was of equality, of non-discrimination.

(b) Caste was most consciously eschewed: the proviso to Article 15(1) spoke only of women and children; Article 16(4) spoke only of “any backward class of citizens.”

(c) Where caste was mentioned, it was only to prohibit discrimination on grounds of caste.

(d) Where ‘equality’ was made specific in Article 16(1) in regard to employment under the State, for instance the expression that was used was ‘equality of opportunity’, an expression that has been buried deep under the rhetorical flourishes of progressives.

### 3. Types of Reservations:

All reservations are not of the same nature. There are two types of reservations, namely, ‘**vertical reservations**’ and ‘**horizontal reservations**’. Social Reservation in favour of SCs, STs and OBCs under Article 16(4) of the Constitution of India are “vertical reservations”. Special Reservations in favour of Physically handicapped, Women etc. under Articles 16 (1) or 15 (3) of the Constitution of India are “horizontal reservations”.

Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relating to Article 16 (1). The person selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) 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 the particular category, that is, BC, SC, ST remains – and should remain – the same.

The Hon’ble Supreme Court of India has repeatedly pointed out that the proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied no further question arises. But if it is not so satisfied, the requisite

number of special reservation candidates shall have to be taken and adjusted / accommodated against their respective social reservation categories by deleting the corresponding number of candidates from that category. For example, if 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains 4 SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted so as to ensure that the final 19 selected SC candidates contain 4 woman SC candidates. But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that “SC women” have been selected in excess of the prescribed internal quota of four.

Where a vertical reservation is made in favour of a Backward Class under Article 16 (4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of BC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for BC candidates, it cannot be said that the reservation quota for BCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category.

But, the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure, as explained above, is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of ‘Scheduled Caste Women’. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste Women shall have to be taken by deleting the corresponding number of candidates

from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.<sup>2</sup>

#### 4. Reservations and Judiciary:

Lot of judgments regarding reservations have been modified subsequently by Indian parliament through constitutional amendments. Some judgments of Indian judiciary have been flouted by state and central Governments. Given below are the major judgments given by Indian courts and its implementation status. *In, M R Balaji v Mysore (1963)* Court has put 50% cap on reservations in Almost all states except Tamil Nadu (69%, Under 9th schedule) and Rajasthan (68% quota including 14% for forward castes, post gujjar violence 2008) has not exceeded 50% limit. Tamil Nadu exceeded limit in 1980. Andhra Pradesh tried to exceed limit in 2005 which was again stalled by high court. In 1992, Supreme court in *Indira Sawhney & Ors v. Union of India* upheld Implementation of separate reservation for other backward classes in central government job and this was judgment implemented. Its landmark case regarding Indian reservation policy. In this case SC held following decision:-

- Implementation of separate reservation for other backward classes in central government job;
- Ordered to exclude Creamy layer of other backward classes from enjoying reservation facilities. All states except Tamil Nadu implemented. Recent Reservation bill for providing reservations to other backward classes in educational institutions also has not excluded Creamy layer in some states. (Still under the consideration of Standing committee);
- Ordered to restrict reservations within 50% limit. All states except Tamil Nadu followed;
- Declared separate reservations for economically poor among forward castes as invalid. Judgment implemented.

*In Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors.* it was held that right to establish educational institutions can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g), but this was overruled

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[http://newcenturyindianlaw.blogspot.in/2012/08/communal-reservation\\_17.html](http://newcenturyindianlaw.blogspot.in/2012/08/communal-reservation_17.html)

in *T.M.A. Pai Foundation v. State of Karnataka* and in *P.A. Inamdar v. State of Maharashtra* Supreme court ruled that reservations cannot be enforced on Private Unaided educational institutions.

#### 5. Positive Aspect of Reservation

1. Reservations are a political necessity in India because vast influential sections of voting population see reservations as beneficial to themselves. All governments have supported maintaining and/or increasing reservations. Reservations are legal and binding. As shown by Gujjar agitations (Rajasthan, 2007–2008), increasing reservations is also essential for peacekeeping in India.

2. Although Reservation schemes do undermine the quality of education but still affirmative Action schemes are in place in many countries including USA, South Africa, Malaysia, Brazil etc. It was researched in Harvard University that Affirmative Action programmes are beneficial to the underprivileged the studies said that Blacks who enter elite institutions with lower test scores and grades than those of whites achieve notable success after graduation. They earn advanced degrees at rates identical to those of their white classmates. They become more active than their white classmates in civic and community activities.

3. Although Reservation schemes do undermine the quality of education but still they are needed to provide social justice to the most marginalized and underprivileged is our duty and their human right. Reservation will really help these marginalized people to lead successful lives, thus eliminating caste-based discrimination which is still widely prevalent in India especially in the rural areas. (About 60% of Indian population stays in Villages).

#### 6. Negative Aspect of Reservation

1. Caste Based Reservation only perpetuates the notion of caste in society, rather than weakening it as a factor of social consideration, as envisaged by the constitution. Reservation is a tool to meet narrow political ends.
2. Allocating quotas is a form of discrimination which is contrary to the right to equality.
3. The policy of reservation has never been subject to a widespread social or political audit. Before extending reservation to more groups, the entire policy needs to be properly examined, and its benefits over a span of nearly 60 years have to be gauged.

To sum up followings are the questions, raised after analysis of reservation policies implementing in India. These all are unsolved questions for which the responsibility lies

directly on the legislature and judiciary of India and indirectly public at large, residing in India and have right to vote to elect the members of legislature of his own choice.

- a. Whether society has been uplifted through implementation of the reservation policies in India or some extend reservation policies effectively required to be implemented.
- b. Whether reservation policies implementing, are need to modify as the present scenario.
- c. The question is always before the society that whether reservation should based on the economic position of person or it should be based on caste system.
- d. Whether there is a need to apply to creamy layer procedure to the scheduled caste and scheduled tribes in providing reservation.
- e. Whether Indian judiciary are playing an important role for the proper implementation of reservation policies in India to secure equal justice to all.

#### Conclusion & Suggestion:

We need to identify the ones who are really needy, downtrodden and under privileged. Then, we need to provide them with proper incentives such as education, opportunities and financial backing. After that real talent and hard-work should be awarded and accepted instead of blindly guaranteeing anyone a secure future merely on the basis of caste even though he/she is least deserving. Merit should be the criteria because the country needs the best of its people in order to develop and not those who are harnessing the unmerited and undeserved benefits just because they belong to a section of society which has been luckily marked in the Constitution as under-developed. It is so disheartening to see a well deserving candidate with a promising future to lose out to another less deserving candidate because he happens to be from a reserved section of the society- fortunately or unfortunately. Why should a deserving individual suffer only because he happens to be a part of the so-called privileged class of society- unfortunately or merely because of the faulty policy of the state?

Nothing much has changed since the past 60 years proving that we have misdirected our energies in the wrong direction. We have failed utterly in bringing the under-privileged at an equal footing with the rest of the society. Rather, many a times, it seems that the reservation policy tries to avenge the wrong done to the non-privileged all these years. We have

successfully paralyzed a section of the society permanently and blocked their upward mobility by killing their zeal to work hard and be rewarded. Who will want to work hard if one gets an opportunity and other incentives without burning the midnight oil? Instead of encouraging this kind of lethargy, the policy should be formulated in such a way as to harness the real cream of every section of the society regardless of their caste or community for the betterment of the society.

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