

**“Reservation Policy In India: Problems And Solutions”**

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**Abstract:** The object of this paper is to find out the problems and to give some tentative solutions for the reservation policy in India. The author has concentrated his study on Articles 15 (4), 16 (4), 46, 340, 341, 342 of the Constitution of India. The careful interpretation of Article 15 (4), 16 (4) of the constitution of India is to see that whether reservation policy is satisfactory and fulfills its objects as mandated by our Constitution of India. The paper is limited to analyze the provisions of Article 15 (4), 16 (4) of the Constitution of India and case laws on the point. The author has formulated the following questions and has tried to find out the answer- What is the concept of reservation policy in India and is its purpose? Who are the weaker sections of society for which regarding reservation? What are the problems and the solutions regarding reservation?

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**1. Introduction:**

In the Indian context, reservations were introduced during the last decades of the 19<sup>th</sup> century at the time when the subcontinent could be broadly divided according to two main forms of governance – British India and 600 Princely states. Some of these states were progressive and eager to modernize through the promotion of education and industry and by maintaining the unity among their own people. South and Western India took considerable interest in awakening and advancement of the minorities and deprived sections of the society. One of the aims and objects of the Constitution is to secure to all citizens, equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation<sup>1</sup>. It is to be noted here that as the right to equality and prohibition of discrimination on grounds of religion, race, caste, sex or place of birth against any citizen were not enough to make the basic human right meaningful to the weaker sections, the framers made additional provisions<sup>2</sup>, viz., Articles 41, 45 and 46 of

the constitution requiring positive state action and permitted reservations in admissions to educational institutions<sup>3</sup> and in posts and appointments<sup>4</sup> consistently with the maintenance of efficiency of the administration. Article 334 initially provided for the reservation of seats for the scheduled castes and the scheduled tribes in the House of the People and the legislative assemblies of the states for a period of ten years. However by the successive amendments in the constitution, this reservation has been extended for from time to time up to 2010 AD. Article 340 provides for the appointment of a commission to investigate the conditions of socially and educationally backward classes and to make recommendations as to the steps that should be taken to improve their conditions. All these provisions are aimed at speedy uplift of weaker sections in order to secure equality of status and of opportunity, which in turn will promote fraternity, unity and the integrity of the nation. In constituent assembly debate, Dr B.R. Ambedkar had underlined the need to promote social and economic equality in order to make democracy meaningful and workable.<sup>5</sup> Under the Indian Constitution, there are provisions in respect of following types of reservation-

a) Reservation in admissions to educational institutions,

<sup>1</sup> Preamble of the Constitution of India, 1950.

<sup>2</sup> Article 41: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

<sup>3</sup> Article 15(4): 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.

<sup>4</sup> Article 16(4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

<sup>5</sup> Constituent Assembly Debate, Vol. 11, pp. 979 and 980.

b) Reservation in posts and appointments in public offices.

The majority of the population of India was socially, educationally and politically backward. The backward classes have been classified as Scheduled Castes, Scheduled Tribes and Other Backward Classes. The Government of India, through law, has made a quota system whereby a percentage of posts are reserved for the Backward Classes in the employment in Government and in the public sector units, and in all public and private educational institutions but not in minority run educational institutions. This system has been made for the purpose of mitigating the backwardness of the socially and educationally backward communities and the scheduled castes and scheduled tribes who do not have adequate representations in the government services and the educational institutions. The reservation policy is also extended to the Scheduled Castes and Scheduled tribes for the representations in the Parliament of India.

## 2. Brief History of Reservation Policy in India:

Today's India has become a permanent machinery to provide reservation to its people on the basis of castes and religion and on social and educational backwardness to get maximum votes. There are some historical important events regarding the reservation policy in India-

- When India was ruled by the Britishers, reservation was there at that time.

- In 1882 Hunter Commission was appointed in which Mahatma Jyotirao Phule demanded a free and compulsory education and government job for the people.

- In 1902 a notification made 50% reservation in services for backward people in the state of Kolhapur. This was the first notification providing for the reservation for the welfare of the backward people in India.

- In 1908 the castes and the communities which had some part in the administration in the British rule, reservation was introduced in that favour.

- In 1909 provisions were made in the Government of India Act, 1909 which was known as Morley Minto Reforms.

- In 1919 the provisions for the reservation were made in the Government of India Act, 1919.

- In 1921 Madras Presidency made a GO providing 44% reservation to non Brahmins, 16% reservation for Muslims, 16% reservation for Anglo Indian Christians and 8% reservation for the Scheduled Castes.

- In 1935 provisions for the reservation in the Government of India Act, 1935.

- On 26<sup>th</sup> Jan, 1950 our Constitution of India came into force.

- In 1951 In the case of State of Madras v. Smt. Champcam Dorairajan<sup>6</sup> the court held that caste based reservation violates Article 15 (1) of the constitution of India.

- The 1<sup>st</sup> Constitutional amendment was made to invalidate the above judgment and clause (4) was added in Article 15.

- In 1953 Kalelkar Commission was established to see the situation of the socially and educationally backward classes.

- In 1963 the SC put 50% cap on reservation in the case of Balaji v. Mysore<sup>7</sup>

- The Rajasthan exceeds its limit giving 68% reservation while Tamil Nadu 69%(under 9<sup>th</sup> Schedule)

- In 1979 the Mandal Commission was established to see the situation of socially and educationally backward classes. Submitting its report in 1980, the Commission recommended the changes in the existing quota system.

- In 1990 the recommendation of Mandal Commission was implemented by the Vishwanath Pratap Singh in Government jobs.

- In 1991 Narsimha Rao Government introduced 10% special reservation for the poor

- In 1995 the Parliament by 77<sup>th</sup> Constitutional Amendment added clause (4) (A) In Article 16 providing reservation in promotions to SCs and STs.

- In 2005 the SC in P. A. Inamdar & Ors. v. State of Maharashtra & Ors case held that the State cannot make reservation on minority and unaided private colleges including private professional colleges.

- In 2005 the 93<sup>rd</sup> Constitution Amendment was brought to ensure the reservation policy.

## 3. Special Provision for the Advancement of the Backward Classes:

Article 15 (4) of the constitution of India makes provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and scheduled Tribes. This clause (4) has been added by the 1<sup>st</sup> Constitutional Amendment Act, 1951 as a result of the decision in the case of *State of Madras v. Champakam Dorairajan*<sup>8</sup>. In this case the Madras Government had reserved seats in State medical and engineering colleges in different communities on the basis of religion, race and castes. This was challenged before court as it violates Article 15 (1) of the Constitution. State defended the law on the ground that it was enacted with a view to promote the social justice for all sections of the community as

<sup>6</sup> AIR, 1951,SC, p 226

<sup>7</sup> AIR, 1963,SC, p 649

<sup>8</sup> AIR, 1951, SC, 226

required by Article 46 of the DPSP. The SC held the law reserving the seats on the ground of religion, race and castes as void because it classified the student on the ground of castes, religion etc. and not on the merit basis. To modify the effect of the above ruling of the SC, Article 15 was amended and clause (4) was added in it. By this clause the STATE is empowered to make special provision for advancement of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. Article 15 (4) is only an enabling provision and does not impose any obligation on the state to take any special action under it. State has discretion to make reservation if necessary.

For making reservation under clause (4) of Article 15 two things are to be determined-

1) Who are socially and educationally backward classes?

2) What is the limit of reservation?

The Constitution of India nowhere defined the 'backward classes'. Article 46 uses another expression 'the weaker sections of the people' which has been interpreted by the SC to include all sections of the people rendered weaker due to reasons, including poverty and physical and natural handicaps<sup>9</sup>. Further Article 16 (4) uses 'backward class of citizen'

#### **First backward classes commission**

Article 340, however, empower the President to appoint a Commission to investigate conditions of socially and educationally backward classes. In pursuance of Article 340 of the constitution, the President of India appointed the 1<sup>st</sup> Backward Classes Commission in 1953 under the chairmanship of Kaka Kalelkar. The commission may recommend the steps that should be taken by the central and the state governments to remove the difficulties of the socially and educationally backward classes people. It was created for the following purposes-

- For determining the criteria which shall be adopted in considering whether any section of the people in India in addition to SC and ST as socially and educationally backward classes.

- For investigating the conditions of such classes and the differences under which they work.

- For making recommendations to the Union or any state to take steps to remove the difficulties and to improve their economic conditions

The Commission adopted following criteria for identifying socially and educationally backward classes:

The social position of Hindu society in the traditional caste.

**I.** The lower general educational advancement among the major section of a caste or community.

2. Inadequacy of representation in government services.

3. Inadequacy of representation in the field of trade, commerce and industry

The Kaka Kalelkar commission submitted its report on March 30, 1955. It had made a list of some of the recommendation of the commission were as follows:

- Undertaking caste-wise record of population in the census of 1961.

- Treating all women as a class as 'backward'.

- Reserving seats for backward classes @ 70% in all professional institutions.

- Reservation of vacancies in all government services and local bodies for OBC

Mr. Kaka Kalelkar, the chairman was himself not satisfied with the recommendation of the commission because the report was not free from ambiguity. By writing a letter to the President he opposed the recommendation of the commission. But the report of the commission was not accepted by the Central government on the ground that it had not applied any objective tests for identifying the Backward Class.

In *Balaji v. State of Mysore*,<sup>10</sup> the Mysore Government issued an order under Article 15 (4) reserving seats in the Medical and Engineering colleges in the state as follows:

i. Backward and More backward classes 50%

ii. Scheduled castes 15%, and

iii. Scheduled tribes 3%.

Thus total 68% seats were reserved. The validity of order was challenged by the candidate not getting admission. Court held that sub classification made by order between backward and more backward was not justified under Article 15 (4). It was also held that the 'caste' shall not be the sole basis for determining the backwardness. 'Backwardness' must be social and educational and not either social or educational. Thus, the government came to the conclusion that further investigation was necessary with a view to devise some workable criteria to specify the socially and educationally backward classes so as to give them assistance in all suitable way.

#### **Second Backward Classes Commission**

In 1979, the Janata Party Government (Morarji Desai, PM) decided to set up a second backward classes commission. The commission was popularly known as Mandal Commission as its chairman being Mr. B.P. Mandal.

The Commission adopted the following criteria for identifying the socially and educationally backward classes:

- Social criteria,

- Educational criteria, and

<sup>9</sup> Indra Sawhney v. UOI, AIR 1993 SC 477.

<sup>10</sup> AIR, 1963 SC p. 649.

- Economic criteria.

The commission submitted its report in December, 1980. It stated that the OBC population was around 52% of total population of India including Hindus and non-Hindus. 27% reservation for the OBC was recommended by the commission. No action was taken on the basis of mandal report for long after it was submitted. The commission by and large identified castes with backward classes and more or less entirely ignored the economic test<sup>11</sup>. After the report of backward class commission, the question of characterizing backward classes again came before the SC in case of *Vasant Kumar*<sup>12</sup>. All the judges of the SC agreed on the point that 'caste' shall not be the sole determinant of backwardness.

*Indira Sawhney v. UOI*<sup>13</sup> popularly known as Mandal Commission case, is the significant pronouncement of the SC on the question of reservation of posts for the backward classes. In 1990 the V.P. Singh government at centre issued an official memorandum accepting the mandal commission recommendation and announcing 27% reservation for the socially and educationally backward classes in vacancies in civil posts and the services under the government of India. The memorandum was challenged before the SC and it was considered by the 9 judges bench. The main positive aspect of the SC can be highlighted here-

- Over all reservation is limited to a maximum of 50% in a year.
- Creamy layer should be excluded from the backward class.

#### **What are the Scheduled Castes and Scheduled Tribes**

The Scheduled Castes and Scheduled Tribes have been the considered the most underprivileged class of the Indian society. The constitution of India, for compensating them, provided special provision in their favour. There are special provisions for SC/ST in services, legislative bodies and special favour is given to them for preferential entry into the educational institution. Now the question is that who comes under the SC/ST category. The constitution of India does not define as to who are the persons who belong to SC and ST. Article 341 and 342, however empowers the President to draw up a list of these castes and tribes. Under Article 341 the President after consultation with the Governor with respect to the State, specify the castes, races or tribes or of groups within castes, races or tribes for the purpose of their constitution. Any inclusion or exclusion from the presidential notification of any caste, race or tribes can be done by Parliament by law.

<sup>11</sup> Report of the Backward Classes Commission, Chapters IV, V and VII (1980).

<sup>12</sup> K. C. Vasant Kumar v. State of Karnataka, AIR 1985 SC 1495

<sup>13</sup> AIR, 1993 SC 477.

#### **Reservation in Admissions**

Under Article 15, reservation in educational institution can be made for 'Women' under article 15 (3), 'Socially and educationally backward classes and the Scheduled castes and the Scheduled Tribes' under Article 15 (4), and Other grounds not falling under Articles 15 (3) and 15 (4).

As a result of the decision in *State of Madras v. Champakam Dorairajan*,<sup>14</sup> the 1<sup>st</sup> Constitutional Amendment Act, 1951 was made by the Parliament to remove the difficulties in the above case and clause (4) has been added in Article 15. In the above case the State of Madras reserved the seats in the educational institution on the basis of castes, religion race etc. which was declared unconstitutional as it violated Article 15 (1). Now the new clause (4) empowers the state to make special provisions for the socially and educationally backward classes of people. Now the State is free to reserve the seats in the educational institutes.

#### **Whether State can reserve seats in privately run educational institutions**

In T. M. Pai Foundation case<sup>15</sup>, Islamic Academy case<sup>16</sup>, P. A. Inamdar case<sup>17</sup> the SC held that the State cannot make reservation of seats in admissions in privately run educational institutions. To nullify the effect of all the above cases the Parliament added a new clause<sup>18</sup> (5) in Article 15 and thereby empowered the State to fix the reservation in privately run educational institutions also. But this clause does not touch the institutions run by minority under Article 30 (1) of the constitution of India. Now it has been clear that the State is free to make reservation in private educational institutions also. Now the question is that what would be limitation for the reservation, it has been cleared by the SC in Balaji case<sup>19</sup>. In this case the SC held that the state can make reservation up to 50% seats only.

#### **Reservation in Services**

Article 16 (4) of the constitution of India makes provision for the reservation of appointments or posts in favour of any 'backward classes' of citizens which, in the opinion of the State, is not adequately

<sup>14</sup> AIR 1951 SC 226

<sup>15</sup> AIR 2003 SC 355

<sup>16</sup> AIR 2003 SC 3724

<sup>17</sup> AIR 2005 SC 3226

<sup>18</sup> Article 15 (5), it provides that nothing in this Article or in Article 19 (1) (g) shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled castes or the Scheduled tribes in so far as such special provisions relate to admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Article 30 of the constitution of India.

<sup>19</sup> M. R. Balaji v. State of Mysore, AIR 1963 SC p. 649.

represented in the public services under the State. Here the term 'State' includes Central as well as State Government and their instrumentalities. Article 16 (4) is applied only if two conditions are fulfilled:

1. The class of citizens is backward, and
2. The said class is not adequately represented in the services of the state.

Explaining the nature of Article 16 (4) the SC held<sup>20</sup> that it is an enabling provision conferring a discretionary power on the state for making any reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in the services of the state. Article 16 (4) neither impose any constitutional duty nor confers any fundamental rights on any one for claiming reservation.<sup>21</sup>

The scope of Article 16 (4) was considered by the SC in *Devadasan v. UOI*<sup>22</sup>. In this case the constitutional validity of the 'carry forward rule' framed by the government to regulate appointment of persons of backward classes in government services was involved. This rule provided that if sufficient number of candidates belonging to SC/ST were not available for the appointment of reserved quota, the vacancies that remained unfilled would be treated as unreserved and filled by the fresh available candidates, but a corresponding number of posts would be reserved in the next year for SC/ST in addition to their reserved quota of the next year.

The court held the 'carry forward rule' as unconstitutional. But in Mandal Commission case<sup>23</sup> the SC overruled the Devadasan case and held that the 'carry forward rule' is valid so long as it does not in a particular year exceeds 50% of vacancies. In this case the SC gave the following judgments-

- a) Creamy layer must be excluded from the backward classes,
- b) Unlike in *Balaji* case Classification of backward classes into backward and more backward is permissible,
- c) Reservation shall not exceed 50%
- d) No reservation in promotion

To nullify the point 'no reservation in promotion' the government enacted the Constitution 77<sup>th</sup> Amendment Act, 1995 and thereby new clause (4A)<sup>24</sup> has been added in Article 16.

<sup>20</sup> Mohan Kumar Singhania v. UOI, AIR 1992 SC 1, 26.

<sup>21</sup> Indra Sawhney v. UOI, 1993 SC

<sup>22</sup> AIR 1964 SC p. 179

<sup>23</sup> Indra Sawhney v. UOI, AIR 1993 SC p. 477.

<sup>24</sup> Article 16 (4A): nothing in this Article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in services of the state in favour of the SC/ST which in the opinion of the state, are not adequately represented in the services under the state.

#### 4. Problems of Reservation in India:

- 1) The reservation policy in India shall never go.
- 2) The reservation in India is generally bases on caste and religion<sup>25</sup>.
- 3) There is no data available to identify who are getting the advantages of reservation.
- 4) The families who become rich also get the reservation benefits.
- 5) The real needy people many times don't know their right to get reservation benefit.
- 6) There is division of Indian society on the basis of caste, religion and gender.
- 7) Well qualified candidates are left from going to the important administration places.
- 8) There is lot of corruption in the name of reservation policy.
- 9) Reservation benefits are reached to the proper beneficiaries through the mediator; the mediators are misusing the scheme of Government very easily, it is not a best way.
- 10) There is no proper observation on the reservation policy.
- 11) Reservation is given from the seats of general one and not a new creation of seats for socially and educationally backward classes of people.

#### 5. Solutions

- 1) First of all a database must be maintained by the government that who are the persons actually getting the benefits from reservation. Such database should be accessible to the public generally.
- 2) Backlog provision must be deleted and the vacancies left must be fulfilled by the qualified candidates in the same year.
- 3) Reservation shall not be based on castes basis. It must be on the economic, social and physically handicap basis.
- 4) Yearly observation on the reservation policy must be done and
- 5) The Government should create special and separate post for the weaker section of the society and not to interfere with the general seats.
- 6) Reservation should be based on the collective salary of the family, i.e. salary of the husband and wife and the income coming from all other sources.
- 7) The reservation benefits to be given only a limited children in a family
- 8) The reservation should not be in the matter of promotion, it should be one time aid.
- 9) The creamy layer concept should be applied to SC/ST categories also.

<sup>25</sup> P.P. Rao, 'right to equality and the reservation policy', journal of the Indian law institute,(2000), vol. 42, p. 194

10) Some economic aid must be given first before giving the reservation to the weaker section of the society.

**Conclusion:**

The backward classes cannot be allowed to remain backward forever. The Constitution of India does not permit it. The reservation policy is the first aid and not the permanent cure to the problem of backwardness. For the proper implementation of reservation policy, the government should take steps to see that whether needy people are getting the benefits. The concept of creamy layer should be applied in case of SC/ST also. The weaker sections should be given special economic aid first to survive in the society and then to reserve their seats. It must be kept in mind here that the reservation can be given only if the government has efficiency in the administration as Article 335 states that the claim of SC/ST shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to the services and posts in connection with the affairs of the Union and the States. There are some problems with the reservation policy in India which need to be removed soon. The writer has revealed such problem and also the tentative solutions. For the proper implementation of reservation the government should relook on it and should take steps accordingly.

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