

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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“AN ANALYSIS OF RESERVATION CEILING IN PUBLIC EMPLOYMENT IN INDIA”

AUTHORED BY - SUJATA LATHER

ABSTRACT

The jurisprudence of reservation is based on the harmonious coexistence of Article 16 clause 1 of the Indian Constitution, especially Articles 16(4) and 16(4A), which are enabling clauses that provide the government the flexibility to think about granting reservations to those who are socially and educationally disabled, are classifications made under different clauses of the same article that guarantee equality of opportunity in public employment. Originally, there was no provision for any type of caste- or social- or educational-based discrimination under India's constitution's fundamental rights. The Constitution's Articles 15 and 16 were modified by the Act by adding clauses 6 to each. On January 12th, 2019, it obtained presidential assent and was simultaneously published in the Gazette. The State may establish arrangements for reservations in appointments under Article 16(6). However, Articles 330 and 332 guarantee seats for the Scheduled Castes and Scheduled Tribes in the state and federal legislatures. According to the recommendations of the newly formed 2nd Backward Class Commission, led by B.P. Mandal, the employment reservation that was previously only available to members of the Scheduled Castes and Scheduled Tribes was expanded to include members of the Other Backward Classes. The V.P. Singh government tried to implement the Mandal Commission's (1980) recommendation to add 27% Other Backward Classes' reservation to the existing 22.5% for Scheduled Castes and Scheduled Tribes in central services and PSUs. India's Parliament passed the Constitution (One Hundred and Third Amendment) Act, 2019 on January 9th, which allowed the State to make decisions about public employment and higher education on the sole basis of economic factors. Again, in addition to the current reservations, these provisions will be capped at 10%.

Key words: Mandal commission, Scheduled Caste and Scheduled Tribe, Reservation, Fundamental Rights, Backward Class Commission.

Introduction

In accordance with none of the Indian Constitution's Articles, reservations are not a basic right. Instead, it is stated that the Indian Constitution's Articles 15 and 16 only enable reservations when necessary. William Hunter and Jyoti Rao Phule came up with the concept of an Indian reservation policy in 1882. India's caste system and untouchability practice served as a fundamental justification for the reservation policy. However, British Prime Minister Ramsay Macdonald created the current Indian reservation system in 1933 under the name "Communal Award." Commission Required: The Supreme Court rejected the Mandal Commission's (1980) recommendation to provide Other Backward Classes a 27% quota in central services and public-sector companies, leading to the famous "Indra Sawhney Judgement (1992)". The 27% reserve was established at 50% legality to ensure that, absent extraordinary circumstances necessitating a violation, the right to equality provided by Article 14 would be upheld.¹

Why reservations are made in India

Reservation in India, often referred to as affirmative action or quotas, is a policy implemented by the India govt. to address historical and social injustices, especially related to caste-based discrimination and socio-economics disparities. The primary reasons for reservations in India are:

- 1. Historical Discrimination:** India has a long history of caste-based discrimination, where certain groups were considered "untouchable" and were subjected to social, economic, and educational discrimination for centuries. Reservations are intended to rectify these historical injustices.
- 2. Social Equality:** The Indian Constitution, adopted in 1950, seeks to establish a more democratic society where all citizens have equal rights and opportunities. Reservation policies aim to bridge the gap between historically disadvantaged groups and others.
- 3. Scheduled castes (SCs) and Scheduled Tribes (STs):** A significant part of the reservation system is reserved for the SCs and STs. These groups have been historically marginalized, and reservations provide them with better access to education, employment, and political representation.
- 4. OBC (Other Backward Class):** Apart from SCs and STs, there is also a reservation

¹ Insights editor; editorial analysis: reservation in public employment; June 3, 2022 available at: <https://www.insightsonindia.com/2022/06/03/insights-editorial-analysis-reservation-in-public-employment/>

for OBCs. This group includes a wide range of communities that have faced social and economic disadvantages.

5. **Political Representation:** Reservations also exist in political bodies like the Lok Sabha and state legislatures to ensure that these historically marginalized groups are adequately represented in the decision-making process.
6. **Economic and Educational Disparities:** Reservations are not limited to government jobs and political seats. They are also applied in educational institutions to provide opportunities to underprivileged students. The aim is to reduce educational gap and uplift disadvantaged communities.

It is important to note that while reservation have made significant progress in improving the lives of marginalized communities, they are also a subject of debate and criticism. The reservation system in India has evolved over the years and includes both quotas for government jobs and educational institutions. The specific percentages and categories may vary by state and type of institution, but the underlying goal remains to promote social justice and reduce inequalities.

Origin of reservation in Public employment

In India in 1882, William Hunter and Jyoti rao Phule developed the idea of the reservation policy. The underlying rationale for the reservation policy was the caste system and untouchability prevalent in India.

Ramsay Macdonald, the British prime minister, introduced the current reservation policy in India in 1933 under the name "Communal Award."

In Indra sawhney landmark case held in 1992 was the result of the SC rejecting the Mandal Commission's suggestion from 1980 to provide Other Backward Classes a 27% reservation in central services and public-sector dealings.

To ensure that the constitutionally given right to equality is upheld, the constitutionality of the 27% reserve was limited to 50% unless exceptional circumstances justified the breach.

Constitutional Provisions for Promotion in Reservation

The Indian Constitution provides for certain constitutional provisions for promotions in reservation, which are as follows:

1. The Constitution's Article 16(4A) reserves promotion possibilities for SC and ST personnel. In terms of promotion to any class or classes of jobs in the state's services,

it allows the state to make provisions for reservations for SCs and STs, who are underrepresented in the workforce.

2. The Supreme Court decided that the reservation in promotions clause of Article 16(4A) is not automatic and that the state must provide evidence of the Scheduled Castes' and Scheduled Tribes' underrepresentation in the workforce and backwardness in order to justify such reservations.
3. In *M. Nagaraj v. Union of India*, the Supreme Court decided that the state must first get quantifiable proof of the Scheduled Castes' and Scheduled Tribes' underrepresentation in the workforce before providing reservations for promotions.
4. A new clause (6) to Article 16 of the Constitution (One Hundred and Third Amendment) Act of 2019 permits the state to create reservations for EWSs who are underrepresented in the workforce when it comes to promotions to any class or classes of positions within the state's services.

In order to advance their social and economic well-being and guarantee their representation in the services, the Indian Constitution, in general, allows for reservations for economic weaker sections, Scheduled Castes, and Scheduled Tribes in public job promotions. The state must, however, provide evidence of their backwardness and insufficient representation in the services in order to support such reservations.

Pros of Reservation

- It guarantees variety in higher education, promotes equality in employment, and provides safety from prejudice.
- By aiding in the emancipation of those who are oppressed, it fosters equality for all.
- It disproves racial, religious, and ethnic stereotypes.
- The social mobility is increased.
- It is required to offer level playing fields and make up for decades of injustice and prejudice.

Cons of Reservation

- There are worries that the meritocracy may deteriorate.
- As it minimises the accomplishments of marginalised parts, it might nevertheless propagate prejudices.
- People who fall under the purview of reservations are stigmatised as successful because of reservations rather than their skills and labour.
- Reservations being used as a vehicle for reverse discrimination is a source of worry.

Reservation policy in India for Government Jobs

Reservation Category	Reservation Quota (%)
ST	7.5
SC	15
OBC	27
EWS	10
Total	59.50%

Indian government jobs and higher education institutions have a reservation policy.²

No candidate other than a candidate who falls under the relevant category—Scheduled Caste, Scheduled Tribe, or Other Backward Caste—may fill a vacancy designated for one of those groups.

In India, posts in the government and higher education institutions are reserved for a number of groups, including Scheduled Tribe, Scheduled Caste, Other Backward Caste, and Economically Weaker Section, as shown in the table above. In all categories, 3% of the seats are reserved for guests with impairments.

Additionally, data shows that only 40% of seats are awarded based on merit. All candidates may apply for merit seats, including those from the general category, Scheduled Caste, Scheduled Tribe, Other Backwardness Caste, and Economically Weaker Section.³

50% maximum for reservations based on caste⁴

Indra Sawhney v. Union of India, The Supreme Court of India's 1992 decision to limit caste-based preferences stated that "no provision of preference or reservation can be so vigorously pursued as to destroy the very concept of equality."

² Alex Andrews George- Reservation in India – Explained in Layman’s Terms; 3 Feb,2020; <https://www.clearias.com/reservation-in-india/#:~:text=In%20simple%20terms%2C%20reservation%20in%20India%20is%20all,reservation%20can%20also%20be%20seen%20as%20positive%20discrimination.>

³ Ibid

⁴ Ibid

"It should be maintained that any reservation beyond 50% would be subject to being thrown down," the court said in its ruling. The States and the Union have mainly agreed with this Court's repeated ruling that the reservation under Articles 15(4) and 16(4) should not exceed 50%.

Arun Jaitley, the Finance Minister, argued that the Supreme Court's 50% cap on reservations only applied to caste-based reservations when he introduced the bill for Economic Reservation in 2019.

Why Should India need reservation (now)?

In India, the government is in charge of guaranteeing equality of status and opportunity. One tactic used to counteract injustice and social oppression against certain classes is reservation. Affirmative action, also referred to as reservation, aids in the advancement of underprivileged classes. Reservations, however, are only one strategy for advancing society. Other tactics include providing coaching, grants, scholarships, and other welfare initiatives. In India, the implementation and enforcement of reservations are heavily influenced by vote-bank politics. The Indian Constitution stated that only those who were socially and intellectually inferior were eligible for reservations. In India, caste-based reservations took the role of class-based ones. Initially, only SC/ST tribes were intended to benefit from the reservation, and that was only for ten years. (1951-1961).

Judicial Review

State of Uttarakhand & Ors. v. Mukesh Kumar and Others, 2020:⁵

In this case, the Supreme Court decided that Article 16(4) and Article 16(4A) of the Constitution are not a fundamental right to promotion or a reservation, but rather enabling provisions that provide reservation when needed.

These considerations do not lessen the significance of Article 46 of the Constitution, which requires the state to take exceptional care to advance the economic and educational interests of the less fortunate elements of society, particularly Scheduled Castes and Scheduled Tribes. Due to the welfare state's concern for the weaker groups, the reservation system really grew slowly over decades, taking the form of more and more classes under Article 16.

⁵ Justice Rohinton Nariman; Reservation in Public Employment; available at <https://unacademy.com/content/daily-news-analysis/reservation-in-public-employment/>

1992's Indra Sawhney Decision:⁶

In the verdict, a nine-judge bench led by Chief Justice M.H. Kania upheld the validity of the 27% reservation but established a 50% cap unless there were exceptional circumstances that necessitated a violation to safeguard the Article 14 right to equality guaranteed by the constitution. The Court highlighted how Article 16 Clause 1 and Article 16 Clause 4 are related, coming to the conclusion that the latter establishes the classification that Article 16 Clause 1 aims to achieve rather than providing an exception to the former. Article 16's Clause 1 is a fundamental right, while Clause 4 is an enabling clause. The Court also mandated that classes on a creamy layer be given priority over non-creamy layer classes and that backward classes on a creamy layer be eliminated after separation.

77th Constitutional Amendment Act⁷

In response, the Parliament passed the **77th Constitutional Amendment Act**, which amended the Constitution by adding Article 16(4A). Two more adjustments were then made: the first was the addition of Article 16(4A) to guarantee consequential seniority, and the second was the insertion of Article 16 to guarantee the carryover of open jobs for a year Article 16(4B).

In the M Nagaraj Case (2006), In the **Indra Sawhney Case (1992)**, The SC changed its mind about its earlier attitude and applied the "creamy layer" concept to reservations for SCs and STs in promotions (which also applied to OBCs). Since these amendments logically follow from provision 16(4) and do not modify the structure of that provision, the SC supported them. There are two versions of Article 16 (4A and 4B) in the Constitution. Three requirements were also listed for SC and ST promotion in government positions. It's believed that the SC and ST community would remain illiterate and socially disadvantaged. In terms of public employment, the SC and ST groups are not fairly represented.⁸

Jarnail Singh Case 2018: As per the Nagaraj verdict, the State is no longer required to provide quantifiable proof of the "backwardness" of a Scheduled Caste or Scheduled Tribe group in order to grant a quota in promotions within the public sector. This modification was made by the Supreme Court in the Jarnail Singh case, which was resolved later in 2018.⁹

⁶ Ibid

⁷ Supra note

⁸ Supra note

⁹ Supra note

The 103rd Amendment to the Constitution Act of 2019: The Supreme Court is now considering a constitutional petition against the 10% quota for government jobs and school admission for Economically Weaker Sections (EWS), other Scheduled Castes, Scheduled Tribes, and backward classes. Since the traditional definition of backwardness is being expanded to expressly include economic backwardness without social backwardness, as is widely accepted, the anticipated decision in this case may likewise signal a significant change in the law of reservations.¹⁰

Chief Minister v. Dr. Jayshree Laxman Rao Patel (2021): Many States have attempted to get around the Indra Sawhney ruling by broadening the scope of their reservation regulations. The Supreme Court received an appeal on the **Maharashtra Socially and Educationally Backward Classes Act of 2018** (also known as the Maratha Reservation Law), and it referred the case to a bench of five justices with the following inquiry: Is the 1992 ruling still valid? It's interesting to note that the Supreme Court rejected Sections 4(1)(a) and (b) of the Act, which called for 12% and 13% Maratha reservations in public employment, respectively, in addition to upholding the Indra Sawhney decision, citing the breach of the ceiling.¹⁰

Need To Revisit the ceiling of Reservation

First, in over 80% of the states and uts, the total reservation has already above the 50% ceiling restriction. For instance, the total reservation, including the EWS quota, is 82% in Chhattisgarh; 73% in Madhya Pradesh; 80% in Nagaland; 80% in Mizoram; etc. The majority of States have between 60 and 65 percent of their population under reservation. The parliament should be aware of the potential repercussions for the citizens of these states should the court invalidate the reservations made for their communities due to the 50% threshold.

The 103rd Constitutional Amendment Act 2019, which offers the Economically Weaker Sections of society a 10% quota, was also passed by the Indian government on January 7, 2019. The 2019 Amendment Act, which violates the ruling from the Indra Sawhney case, is the one that initially allows reservations that are higher than the 50% cap.

Another example is Rajasthan, where the overall cap on reservations has already been met. In

¹⁰ Reservation in Promotion; 30 may, 2022available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/reservation-in-promotion-5>

Rajasthan, there was initially a 12% ST reservation, a 16% SC reservation, and a 21% OBC reservation. Additionally, after deducting the 5% reserve for the Most Backward Classes and the 10% reserve for the EWS group, the overall reservation in the State was 64%. Similar to this, when the 10% EWS quota is taken into consideration, Bihar and Haryana's total reservation is 60%.

The roughly 30-year-old Indra Sawhney ruling established that this restriction could be lowered in certain unusual or exceptional circumstances. Therefore, given the obvious necessity for an increase, why won't the SC budge?

The 1992 decision should be reviewed by Parliament or the Supreme Court so that the other marginalised groups that are barred from taking use of the reservation because of the 50% cap can.

The Indian Constitution is a dynamic and adaptable set of laws. The drafters of the Indian Constitution included a provision allowing for periodic legislation revisions in response to the nation's changing needs and circumstances. The 1992 ruling must therefore be reviewed in light of the current circumstances because a court's decision cannot be constant and irrevocable.

After Indra Sawhney's verdict was handed down, Parliament altered a number of Constitutional provisions in an effort to overturn the 1992 decision. For instance, the 77th Constitutional Amendment Act Inserted Article 16(4)(A) allowing for reservation in promotion.

Another example is the 81st Constitutional Amendment Act, which contained Article 16(4)(B), which specifies that the 50% rule only applies to new vacancies and that any vacancies resulting from the carry-forward clause must be treated separately. Both of these changes thus rendered Indra Sawhney's judgement largely invalid. Therefore, it is necessary to evaluate the 50% reservation cap as well. We routinely witness state laws granting privileges to various underprivileged groups being struck down by the courts because they exceed the 50% maximum restriction. For instance, the Rajasthan government granted the Gujjar as a "Special Backward Class" 5% of the available seats. The Rajasthan High Court, however, overturned it, pointing to the 50% cap on the reservation. As a result, numerous state legislation has either been ruled unconstitutional or are being challenged in court.

Conclusion

In **Janhit Abhiyan vs. Union of India**,¹¹ One may be able to conclude that India still experiences widespread poverty and requires strong measures to extend the social and economic benefits to every stratum of society after understanding and analyzing the nuances of the 103rd amendment to the constitution, which introduces reservation to the economically weaker sections of society under Articles 15(6) and 16(6). To make society more homogeneous and lessen the gap in income, the state must promote social mobility. The Supreme Court's interpretation of the amendment may enable it to achieve the preambular objective of ensuring economic equity for everyone. Additionally, CJI UU Lalit and J.

Ravindra Bhat's opposing viewpoint describes the historical basis for reservations as a kind of restitution for those who are routinely the targets of caste prejudice. Despite the fact that this decision clearly shows the community's social and economic backwardness, they cannot be comprehended separately since they are interdependent and must be taken into account as a whole for the benefit of society as a whole. The trend in recent years has been to adopt legislation without fully considering them, which has led to turmoil and confusion. Therefore, it's more important than ever to carefully review every bill before the majority government monopolizes its passage. Additionally, both Houses' debates and deliberations should be productive and free of partisan bias. The legislators should be informed of the true motivation, purpose, and ostensible consequences of the law being staged for passage. Unfortunately, the judiciary is unable to understand the legislative intent and purpose underlying the recently approved laws because there were no such in-depth debates and discussions in the House. On the basis of the aforementioned justifications, the Supreme Court should also investigate the question of the 50% reservation cap. Many social affirmative activities designed to address unemployment, prejudice, and other inequalities may fail if we remain fixated on a single judgement. Therefore, it is necessary to reevaluate the limitation or limit placed on each State. But it's also important to explain why the limit must be exceeded. The same ought to be done, considering the social structures that reimpose disparities, which could be different for different states.

¹¹ Janhit Abhiyan v. Union of India 2022 SCC Online SC 1540.