

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIAL TEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# A CRITICAL NOTE ON CONCEPT OF TIME LIMIT ON RESERVATION POLICIES

AUTHORED BY - RISHABH GUPTA<sup>1</sup>

## ABSTRACT

The paper “A Critical Note on the Concept of Time Limit on Reservation Policies” seeks to delve into the complex questions of the life span and the continuing existence of affirmative actions policies, in particular, caste based reservations in India. Article 334 and its frequent prolongations are accounted for its critical assessment of the theory, court decisions, legal norms, and expert opinions concerning the time limits imposed for reservations. Important cases such as Ashok Kumar Thakur v Union of India and Indra Sawhney v Union of India are analyzed to appreciate the stand of the judiciary towards the need and the persistence of reservation policies. The discussion also revolves around the issue of reservations as redundant because what was originally designed to address historical wrongs, has been turned by some into a caste system. Furthermore, the article distinguishes India’s reservation system from the race-conscious measures employed in the USA judiciary explaining that there are needs for time to time evaluation to determine whether the measures still serve their purpose. The author emphasizes different judges’ views pertaining to the question of applying a cutoff date on the reservations, versus an ongoing analysis based on socio-economic advancement. Further Policies of this nature have also been defended and opposed raising the issue about their contribution in a caste and class free society. The paper wraps up by asking whether the Indian society has reached a level that makes the end of reservations necessary and whether such provisions, if overused, work against the constitutional principle of equality.

**Keywords:** Reservation policies, affirmative action, Article 334, caste-based reservations, Indian judiciary, Indra Sawhney, Ashok Kumar Thakur, time limits, social justice, constitutional law.

---

<sup>1</sup>The author is a graduate LL.M, B.A.LL.B(Hons.) graduate, from National Law University Jabalpur and practicing advocate at Hon’ble High court of Madhya Pradesh.

## INTRODUCTION

There has been a heated debate among legal luminaries, honorable Justices, politicians and different sections of society as to the duration of the preferential treatment measures. Some think it is a self-liquidating process, others think that its perpetuation is unavoidable in view of the lack of honest implementation of preferential treatment policies. The fate of the 10 years limit of Article 334(2) is a clear example.<sup>2</sup>

In his dissenting opinion **Dalveer Bhandari J.** pointed out in **Ashok Kumar Thakur V. Union of India**<sup>3</sup> that ‘it is consistent with our constitutional goal of achieving a classless/casteless society that a time-limit to be set’.<sup>4</sup> But he expressed his helplessness to do so.<sup>5</sup> In his own words, “I am bound by Sawhney<sup>6</sup> and believe that only a larger bench could make such a ruling.” There was unanimity on the point that an “act is not invalid merely because no time-limit is prescribed for caste-based reservation”. **Raveendran J.** in his concurring decision preferred periodic review and no unnecessary prolongation. To quote him, ‘Preferably there should be a review after ten years to make note of the change of circumstances. A genuine measure of reservation may not be open to challenge when made. But during a period of time, if the reservation is continued in spite of achieving the object of reservation, the law which was valid when made, may become invalid’<sup>7</sup> **Raveendran J.** further made clear that any provision for reservation is a temporary crutch. ‘Such crutches by unnecessary prolonged use, should not become a permanent liability’.<sup>8</sup>

Judiciary has expressed opinion about the continuance or otherwise compensatory discrimination/preferential measures adopted by the government. In **Mandal** Case justice R.M.Sahai pointed out that- the Constitution makers did not ‘restrict the period of its continuance as was done for Anglo- Indian by Article 336 as an enlightened and progressive State a responsible government of a welfare country must decide itself periodically on

---

<sup>2</sup>[Reservation of seats and special representation to cease after a certain period]. —Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of definite number of years.

<sup>3</sup> Ashok kumar Thakur v. Union of India (2008) 6 SCC 1.

<sup>4</sup> Anirudh Pratap, *Reservation: Policy, practice and its Impact on Society*, Vol.1, 2016

<sup>5</sup> Ashok Supra Note 3 at p.704

<sup>6</sup> (1992) Supp. (3) SCC 217

<sup>7</sup> Ashok *Supra* Note 3 at p.711

<sup>8</sup> *Ibid.* p.717

prevalent social and economic conditions and not on political consideration or extraneous compulsion if the protective umbrella has to be kept opened, for whom and for how long<sup>9</sup>

The problem of continuing the affirmative action/preferential treatment has agitated even the judicial mind.<sup>10</sup> In **Grutter v. University of Michigan**<sup>11</sup> Justice O'Connor wished to put a time-limit on race-conscious action. She suggested 25 years.<sup>12</sup> The Indian Judiciary has also sparked some thinking on that line. In **Akhil Bhartiya Soshit Karamachari Sangh V. Union of India**<sup>13</sup> Justice **V.R. Krishna Iyer** hinted at non-perpetuation of a reservational way to do justice with the backward segment of the society. He appeared to disfavor reservation for long for backwards other than SC and STs "To lend immortality to the reservation policy", said Iyer J., 'is to defeat its *raison d'être*, to politicize this provision for communal support and party ends is to subvert the solemn undertaking under Article 16(1), to castify reservation even beyond the dismal groups of backward most people, euphemistically described as SC and ST is to run a grave constitutional risk'.<sup>14</sup>

**Justice S. Rangnathan** in one of extra judicial writings disfavoured continuation of reservation for long. Justice Rangnathan said, 'while certain types of reservation are necessary in principle, in some cases and for some time, there cannot be reservation of all types, for all cases and for all times'.<sup>15</sup> Some of the judges of the Supreme Court in **K.C. Vasanth kumar v. State of Karnataka**<sup>16</sup> hinted at the necessity of removing the reservation scheme by the end of the twentieth century.

**Chief Justice Chandrachud** conceded 15 years concession to SCs and STs and suggested that reservation to them should continue up to 2000 without means test. In his opinion 50 years would be good enough time for the lower strata to overcome the historical discrimination that they have faced, thus economic tests can be applicable to them. He also suggested periodic review of five years or so of the policy of reservation in employment, education and legislative institutions.<sup>17</sup>

---

<sup>9</sup> Indra Sawhney v. Union of India 1992 SCC (L&S) Supp.1. P.286 (para 564)

<sup>10</sup> Anirudh *Supra* note 4.

<sup>11</sup> 539 U.S. 306 (2003)

<sup>12</sup> *Ibid* at PP. 342-43

<sup>13</sup> (1981) 1 SCC 246

<sup>14</sup> *Ibid.* at p. 264

<sup>15</sup> S. Ranganathan, Constitution of India- Five Decades, Bharat Law House, 1999 at p.312.

<sup>16</sup> K.C. Vasanth Kumar v. State of Karnataka AIR 1985 S.C. 1495 at p.1499.

<sup>17</sup> *Ibid.*

The issue regarding continuation of affirmative action is getting swifter in both India and U.S.A although the method of giving reservation is different in both the countries. In the U.S.A preference system works for promoting cultural diversity, while in India quota system works to remedy the past discrimination. Those who support abolition of the reservation system vehemently argue that the objective of the constitution is to establish classless/casteless society. But the question is: Has the social fabric of India changed enough to accommodate depressed classes without discrimination?

### **INTRODUCTION OF “TIME” FACTOR IN VIEW OF ARTICLE 16(4-B)**

Whether a year should be taken as the unit or the total strength of the cadre for the purpose of applying the 50% rule. Balaji<sup>18</sup> does not deal with this aspect but Devdasan<sup>19</sup> (majority opinion) does. Mudholkar J. speaking for the majority says: -

**‘In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities’.**<sup>20</sup>

Reliance was also placed on the judgment of nine Judges Bench in the case of Indra Sawhney vs. Union of India<sup>21</sup>, where it was said:

‘Take a unit/service/cadre comprising 1000 posts. The reservation for backward class is 50% i.e., 500 posts will be held by them. Suppose there is 280 seats for OBC, 140 seats for SC, 80 seats for ST, then if backlog vacancy is sought to be made up then the open competition channel has to be stopped altogether until and unless 500 backward class people are there holding those posts. This can take a number of years because seats in competitive exams are not more, in the time being the open category candidates will become ineligible for the examination which would be detrimental to their rights. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be’.<sup>22</sup>

**In M. Nagaraj**<sup>23</sup> case it was observed that ‘Article 16(4-B) lifts the 50% cap on carry-over vacancies (backlog vacancies). The ceiling limit of 50% on current vacancies continues to remain. In analyzing the carry forward rule two things must be taken care of, one is unfilled

<sup>18</sup> M. R. Balaji and Others vs State of Mysore 1962 SCR Supl. (1) 439

<sup>19</sup> T. Devadasan v. The Union of India and another 1964 SCR (4) 680

<sup>20</sup> *Ibid* at pp.694-95

<sup>21</sup> 1992 Supp. (3) SCC 217 at page 737 para 814

<sup>22</sup> *Ibid*.

<sup>23</sup> M. Nagaraj v. Union of India, (2006) 8 SCC 212.

vacancies and other the time factor. If filling the unfilled vacancies takes years then it would be very disturbing to the administration thereby destroying the efficiency as intended by Article 335. Therefore, in each case, the appropriate government will now have to introduce the time- cap depending upon the fact situation.<sup>24</sup>

Implementation of Post based Roster in reference to the Supreme Court judgment in the case of **R. K. Sabharwal Vs. State of Punjab**<sup>25</sup> 'Reservation till 01.07.1997 was computed on the basis of the number of vacancies to be filled'. The Supreme Court in the case, R. K. Sabharwal held that in ensuring the reservation the circle of appointments will be kept in mind. This was done to ensure that reservation would not exceed 50%. This was also reflected in the DOPT circular.<sup>26</sup>

## CONCLUSION

The warning of **Justice Ratnavel Pandian** in his concurring judgment in Mandal case is a very pertinent reminder; 'No one can be permitted to invoke, the Constitution either as a sword for an offense or as a shield for anticipatory defense, in the sense that no one under the guise of interpreting the constitution can cause irreversible injustice and irredeemable inequalities to any section of the people or can protect, those unethically claiming unquestionable dynastic monopoly over the constitutional benefits.'<sup>27</sup>

**Shri S. Nagappa** speaking for political reservation told that 'My intention in moving this amendment is not to extend the period of reservation, but to see that Government takes effective care that, within this ten years' period, the people for whom seats have been reserved are brought to the level of other advanced classes'<sup>28</sup> 'Another most important thing is this. In the Constitution we have provided that equal opportunity should be given to all irrespective of caste, creed and color, religion or race.'<sup>29</sup> Well, it sounds good, so far as we read it. But we must see that it is translated into action. While making appointments to responsible jobs like Governors, Ambassadors, High Commissioners, Trade Commissioners and other like cases, you must take into consideration the claims of these people.'<sup>30</sup>

---

<sup>24</sup> *Ibid* at Para 100.

<sup>25</sup> AIR 1995 SC 1371

<sup>26</sup> No. 36012/2/96-Estt. (Res.), Government of India, Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training)

<sup>27</sup> *Indra Sawhney v. Union of India* 1992 SCC (L&S) Supp.1 at p.70

<sup>28</sup> Constituent Assembly of India Debates (Proceedings) - VOLUME IX Thursday, 25<sup>th</sup> August, 1949

<sup>29</sup> The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 14 of Indian Constitution.

<sup>30</sup> *Ibid*.

What is more disturbing is that personal preferences, hunches and ideologies overshadow the constitutional reality.<sup>31</sup> Even many anti-reservationists and well-red men, argue that reservation was made only as a temporary measure, that is to say, for 10 years.<sup>32</sup> Even some of the Hon'ble justices express the similar view and work on that line. To quote Justice **Dalveer Bhandari**, "Caste-based reservation was initially a temporary measure that was to last 10 years."<sup>33</sup> The original framers considered caste-based reservation a necessary evil. Thus, they limited it in time. Extending this time-limit has only exacerbated casteism.<sup>34</sup> This conclusion is based on the major premise that the framers intended to establish a casteless and classless society and then the conclusion is derived that reservation perpetuates, rather encourages casteism and delays the achievement of the mission of casteless and classless Indian society.<sup>35</sup> The fact is otherwise. Only representation of SCs and STs in the representative bodies- Parliament and State legislatures was aimed to be for 10 years duration vide Article 334 (which itself is being extended every 10 years, at present up to 70).<sup>36</sup> Neither Article 16(4) says anything about time limit nor Article 15(4) inserted in 1951 by the provisional Parliament i.e., the Constituent Assembly itself promoting that function. Article 15(4) specifically mentions SEBCs in addition to SCs and STs and Article 16(4) intends to cover all SCs, STs and SEBCs within the purview of backward classes.

It is also doubtful if farmers intended to establish casteless society or a plural society? Can remedy be removed even if discrimination, deprivation, persecution etc. persist? Will appointments be honestly done according to merit, if reservation is done away and the five first class division holder OBCs or SCs will find berth in General Category in preference to mediocre caste persons?<sup>37</sup>

---

<sup>31</sup> Anirudh Pratap *Supra* Note 4.

<sup>32</sup> Indira Hirway *Rethinking Reservations and Development*' The Hindu, 31.8.2015, p.10

<sup>33</sup> Article 334, Constitution of India

<sup>34</sup> Ashok kumar Thakur v. Union of India (2008) 6 SCC 1 at p.684 (para 558).

<sup>35</sup> *Ibid.*

<sup>36</sup> Anirudh Pratap *Supra* Note 4.

<sup>37</sup> Anirudh *Supra* note 4.