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# **TITLE: RESERVATION IN INDIA**

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## **ABSTRACT**

After independence ,India committed itself to a socially just and an egalitarian social order . The constitution promulgated in 1950s recognised the SC and ST as two of the most backward social groups that needs special provision and protection to obtain there basic requirements and needs both economically ,educationally and socially . Our constitution was drafted with lots of inspirations from other countries and it also encompasses the value of human dignity and guarantees fundamental rights to each citizens of the country . Indian leaders preferred special treatment to groups dealing with economic and social discrimination as a result of the process of segregation. The Constitution of India of 1951 (1st Amendment) authorized the representation of Organized Castles and Organized Nations by quoting them from Educational Institutions and government jobs. The motive of reservation is to make the citizens to have a representation in education , employment and politics . This is the study to analyse the concept , origin of reservation policy in India and also to discuss the contrary to the case laws from which had been originated into .

## INTRODUCTION

India got independence from the British rule in the year 1947, now India is a country with 28 States and 9 Union Territories . In the year 1950s the Indian constitution was framed and drafted with some unique provision or article called “reservation”

According to Oxford dictionary , the meaning of **reserve** is something you keep back, store up or set aside for later purpose or for some special purpose . The meaning of reservation in India is reserving seats for government jobs, reserving for educational opportunity and even in politics and legislature for the **weaker section** of the society .Based on the provision in the Indian constitution , it allows the Union and the States of India to set out a quota ,which lower the qualification needs in exams ,jobs opening and etc for the” **socially and educationally backward citizens** ”

With the introduction of the concept called reservation ,it has become an affirmative action ,with an opportunity of providing and ensuring an equal opportunity to all and adequate representation of backward classes in every state .

**HISTORY :** In the Hindu Religion , the caste system is divided into four categories . namely Brahmins – there are considered to be <sup>1</sup>

At Brahma ,second is the Kshatriyas-there are considered to be originated from arms of Brahma , the third was Vaishyas are considered to be originated from the thigh of Brahma . and lastly Shudras – they are considered to be from the foot of the Brahma so they were allotted to do all the inferior works . So the caste system was still prevailing in India and it creates a need for reservation in India. This was the main cause for the reservation provision in India.1

### **IN THE YEAR 1882:**

The quota system favouring certain caste existed before independence in India . RAJARSHI SHABU , the Maharaja of princely state of Kolhapur ,

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<sup>1</sup> History of caste system in India ,available at: <http://WWW.hindustantimes.com> (last visited on feb7,2022)

introduced reservation system in India for the non-Brahmins and backward classes. The basic principle behind this was to stop the malpractice of Untouchability in India, Also educated lots of backward peoples and build hostels for them to receive many things easier .

But the educated peoples many was suffering from unemployment even though there were many non-Brahmin organisations , the Brahmins had a domination in the administration sector.<sup>2</sup>

### **In THE YEAR 1918 :**

The Mysore Maharaja Nalvadi Krishnaraja Wadiyar implemented reservation for non-Brahmins in the government jobs and education institution. <sup>2</sup>

### **IN THE YEAR 1933:**

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The Prime Minister Ramsay Macdonald introduced the prevailing reservation system in India by the form of “**COMMUNAL AWARD**”

Under this provision of the communal award , there were separate electorates for Europeans ,Indian Christian , Anglo- Indians ,Muslims and Sikhs and Dalits.

In the year 1932, the depressed classes roughly the SC AND ST were given the opportunity and where also assigned a number of seats which should be filled by the election in constituencies in which they can only vote, although they can vote in other seats also.

This proposal was controversial: Mahatma Gandhi fasted against it but many among the oppressed classes, including B. R. Ambedkar, they liked the scheme . After negotiations, Gandhi reached an agreement with Ambedkar for a single Hindu vote, with the Dalits having seats reserved for them. Voters of other religions, such as Islam and Sikhism, remain divided. This is known as the Poona Pact.<sup>3</sup>

### **AFTER INDEPENDENCE :**

After the independence in the year 1947 , India was divided into Pakistan and India where majority of Muslims went to Pakistan And Hindus were considered to be main domination in India .

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<sup>2</sup> [https://web.archive.org/web/20120425081633/http://www.ili.ac.in/pdf/article\\_2.pdf](https://web.archive.org/web/20120425081633/http://www.ili.ac.in/pdf/article_2.pdf)

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<sup>3</sup> "Untouchability in the Far East". *Monumenta Nipponica*. Pg : 247–267.

In the year 1950 , the constitution was drafted in the sense of creating a society without caste discrimination and abolishment of untouchability was a big hindrance behind to reach equality in the society .

So reservation provision was introduced in Indian by the constitution. Reservation was only given to the people of SC And ST communities with 10% but it keep on increasing and changing according to the changes .<sup>4</sup>

### **IN THE YEAR 1978:**

In the exercise of the powers conferred by article 340 of the Constitution , the President appointed a backward class commission in December 1978 under the chairmanship of B.P.MANDAL

This commission was formed to determine the criteria of all India’s ‘socially and educationally backward classes’

Mandal commission concluded with a developing indicator for social, educational and economic backwardness including Hindus and non –Hindus also . It has generated an all India backward classes list of 3,743 caste and more underprivileged “ depressed backward classes” list of 2,108 castes

So in 1991 ,OBC were also included after the recommendation of MANDAL Commission .

### **IN THE YEAR 2007:**

Reservation was implemented in the All India Quota Seats in which 15% was reserved for SC and 7.5% seats was reserved for ST

### **IN THE YEAR 2019 :**

On Jan 14, 2019- when the 103<sup>rd</sup> constitutional amendment was enforced 10% reservation was given to economically weaker section (EWS) in the general category under Article 15(6) and article 16(6) of the constitution of India .

Reservation for EWS category was given over and above 50%

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<sup>4</sup> <http://goimonitor.com> –year wise reservation by amendments available at; (LAST visited on feb7,2022)

reservation of SC/ST/OBC. 4

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### **IN THE YEAR 2021:**

On July 29,2021 THE GOVERNMENT OF INDIA decided to provide 27% reservation for OBC and 10% reservation for the EWS in the All India Quota Scheme for undergraduate and post-graduate in the educational years from the year 2021-22 . 4

### **ARTICLES FROM THE INDIAN CONSTITUTION :**

THE Constitutions provides equality for all citizens without any discrimination on the grounds of sex, caste , religion, place . Now it also provides special reservation protection to the economically backward or weaker sections in the society.

#### **Under article 15(4): RELATED TO GOVERNMENT JOBS:**

**“ nothing shall prevent the state from making any special provision fro the advancement of any socially and educationally backward classes of citizens or for the scheduled caste and the scheduled tribes.”<sup>5</sup>**

This Article enables special provisons or policies to the backward classes like SC,ST,OBC’S in educational institutions ,government jobs and legislature.

In the case **Andhra Pradesh vs Nalla Raja Reddy** , it was held that equality will be violated not only when the equals are treated unequally but also when unequal are treated equally .

Our government has this principle ,so there is a provision for the reservation for the people who are treated unequally in the society to treat them with an principle of equality. By following the two important points in the Article 14 – which is equality before law and equal protection of law.<sup>6</sup>

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#### **ARTICLE 16(4):**

**“nothing in this article shall prevent the state from making any provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state ,os not adequate represented in the services under the state ”<sup>7</sup>**

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<sup>5</sup> THE INDIAN CONSTITUTION BAREACT – ARTICLE 15(4)- AS amended by the constitution (103) act,2019(w.e.f.14-01-2019),pg-11

<sup>6</sup> <http://Indian kannnon.com>

Articles 15(4) and 16(4) provides reservation to the socially and educationally backward section of the society . it enables the State and Central levels to reserve a fixed number of seats to SC and STs in the government services .

### **RESERVATION IN EDUCATIONAL ASPECT :**

In the year 2005, 93<sup>rd</sup> amendment act has been amended . Which included article 15(5) in the constitution of India

**ARTICLE 15 (5) SAYS** , “Nothing in this article or sub clause(g) of clause 1 of article 19 shall prevent the state from making any special provision ,by law , for the advancement of any socially backward classes of citizens or from the Scheduled Caste or the Schedules Tribes in so far as such special provisions relate to their admission to educational institution including private educational institutions , whether aided or unaided by the state , other than the minority educational institution referred to clause (1) of the Article 30.<sup>7</sup>

This amendment was challenged on the grounds that it is against the principle of equality and violative to the basic structure of the constitution

#### **Case law : Ashoka kumar Thakur Vs Union Of India**

In this case the basic doctrine of equality was challenged

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Held :

93<sup>rd</sup> constitutional amendment act does not violate the basic structure of the constitution as it only alters the principle of equality . Reservation in educational institution is a part of affirmative action . Social and financial status must be studied for the identification of backward classes. Caste or economic backwardness should not be the sole criteria of the reservation social, economic and educational backwardness should be considered together .Creamy layer exclusion principle should not be extended to SCs and STs.<sup>8</sup>

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<sup>7</sup> THE INDIAN CONSTITUTION BAREACT – ARTICLE 15(5)- AS amended by the constitution (93rd) act,2005(w.e.f.14-01-2005),pg-11

<sup>8</sup> <https://indiankanoon.org/doc/385387/>

In the allocation, the most important given the booking category which includes 33% for Women, the best of the best is given to Other Young Women, ST women, SC women, ST Men, SC Men, OBC women, OBC Men, EWC Women, EWC Men and then after the Open category will be considered. Public Universities will be allocated based on priorities: Other Young Women, ST Women, SC Women, ST Men, SC Men, OBC Women, OBC Men, EWC Women, EWC Men and it is the Standard and the percentage of booking that is considered for examination fees, for marking, allocation of seats and applicable to other government programs.

In India student resources are available — SC, STs, BC, OBCs, women, Muslims, and a few others. Only about 0.7% of India's profit-based student resources, given the limited representation of the above categories in employment and education for historical, social and cultural reasons.<sup>9</sup>

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## RESERVATION IN PROMOTION :

Reservation for SC and STs in the matter of promotion in the public employment was a matter of continuous conflict between parliament and supreme court

### CASE LAW : **Indra Sawhney VS. Union Of India**

Supreme court held that article 16(4) does not allow the reservation in promotion .

Against it , the parliament amended the 77<sup>th</sup> Constitutional amendment act,1995 and inserted a new clause (4A) Under Article 16 , which empowers the state to make provisions to SCs and ST in the public employment.<sup>10</sup>

**Article 16(4A)** Says “nothing in this article shall prevent the state from making any provision for the reservation in matters of promotion, with consequential seniority or classes of posts in the service under the Scheduled Caste and Scheduled Tribes which in the opinion of the state ,are not adequately represented in the services under the state”<sup>11</sup>

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<sup>9</sup> <https://www.rediff.com/news/report/rediff-labs-can-you-guess-how-many-indians-get-merit-based-scholarships/20140901.htm>. Rediff. 1 September 2014. Retrieved 8 May 2016.

<sup>10</sup> [https://en.wikipedia.org/wiki/Indra\\_Sawhney\\_v.\\_Others\\_v.\\_Union\\_of\\_India](https://en.wikipedia.org/wiki/Indra_Sawhney_v._Others_v._Union_of_India)

<sup>11</sup> THE INDIAN CONSTITUTION BAREACT – ARTICLE 16(4A)- AS amended by the constitution (77<sup>th</sup>) act,1995(w.e.f.17-06-1995),pg-12

**Article 335 :**

It was amended in the year 2000, with the amendment of 82<sup>nd</sup> constitutional amendment.

This amendment empowers the state to make provisions regarding relaxation of qualifying marks or standard of evaluation , for the member of SC and ST , in the matter of the reservation in promotion in public employment .

ARTICLE 335 SAYS “Nothing is this article shall prevent in making any provision in favour of the member of the Schedules Caste and Scheduled Tribe for relaxation in qualifying mark in examination or lowering standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or a State .<sup>12</sup>

**CASE LAW : M. Nagaraj VS. Union of India**

In this case the Supreme court held that there should be a exclusion of the creamy layer for the SC AND ST people . It laid down three conditions in the order the person should get promotion in the public employment for SC and ST persons

The conditions are:

- ✓ The government has to show the backwardness of the particular caste before introducing the quota.
- ✓ There should be an adequate representation of the community and it should be based on quantifiable data.
- ✓ Overall efficiency of public employment should not be affected.

Later the courts in this case stated the promotion can be granted depending upon the discretion of the state.<sup>13</sup>

**RESERVATION TO ECONOMICALLY WEAKER SECTIONS:**

IN the 103<sup>rd</sup> constitutional amendment act,2019 the new reservation was introduced to the economical weaker section people with a 10% of reservation in all India quota for both educational and employment opportunities .

**In Indra Sawhney VS. Union of India** , stated that there should be 50% ceiling limit over reservation should not be exceeded/.

<sup>12</sup> THE INDIAN CONSTITUTION BAREACT – ARTICLE 335- AS amended by the constitution (82<sup>nd</sup> ) act,2000(w.e.f.08-09-2000).pg-148

<sup>13</sup> <https://indiankanoon.org/doc/102852/->

Before the 103th amendment, there was a ceiling limit of 50% on reservation. In which, 22.5% of available seats were reserved for the SC and ST (15% for SC, 7.5% for ST). In addition to that, 27% of seats are given to OBCs. The total reservation provided in the 103<sup>rd</sup> amendment act was given 49.5% which was in conformity of 50% ceiling limits on reservation. But in addition to it, 10% reservation has been provided to EWS. It now leads to the total reservation of 60% which contradicts the existing rule of ceiling limit of reservation of 50%.<sup>14</sup>

In the case **Balaji vs. State of Mysore**, it has ruled out that it would not be possible to predict the exact permissible percentage of reservation.

And how much less than 50% would depend upon the relevant prevailing circumstances in each case.

Held :

Caste of a person cannot be sole criteria for ascertaining whether a particular caste is backward or not, the main factors should also be considered such as occupation, education, place of living should also be considered. The court further declared that once a caste is considered to be a backward class it cannot be considered always as the same.

The government should conduct a test of review whether the caste reaches any level of progress, whether the reservation process is necessary and should delete the caste from the backward list 15

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**In contrary to this case :**

**Indra Sawhney Vs Union of India**

Held :

The court can review from year to year the eligibility of socially and backward class of citizens. Further, it has been held that Article 15(4) does not mean that it should be in proportion to the percentage of the total population. The state has the total discretion to decide the reservation ceiling limit or to change it depending upon the cases or claims which is legitimate.

In favour of the 103<sup>rd</sup> amendment, the finance minister Arun Jaitley said “if two individuals are not equal due to birth or for economic reasons, then they cannot be treated equally, and in the same case the unequals should not be treated equally.”

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<sup>14</sup> <https://blog.ipleaders.in/the-reservation-debate-in-balaji-v-state-of-mysore/>

- case law of Balaji vs State of Mysore judgement – (last visited on Feb 7, 2021)

The 50% ceiling reservation limit is only for the SC and ST caste and the EWS won't be impacted in it. In the year 2021, the judiciary approved 27% reservation for OBC AND 10% reservation for EWS for the undergraduate and post graduate of educational institutions.<sup>15</sup>

### **RESERVATION BASED ON GENDER :**

The Women's Reservation bill was passed by the Rajya Sabha on 9 March 2010 by a majority vote of 186 members and 1 against. From the year 2013 the election for the bills has not been votes. The criticism which is now prevailing on the bill now is the reservation should not only be based on gender but it should also be based on the economical, educational and social conditions of a woman especially when she is educated and applies for a job.

In India about 32% posts are reserved for the females in the state Gujarat and Andhra Pradesh in the fields of both education and general administration. From 2015 Kerala had been implemented 55% for all post in the local body reservation. On July 2021, Karnataka was the first government to give 1% reservation for the transgender community after amending Karnataka civil service. If there is not transgender candidate then those seats can be given to men or women<sup>16</sup>

### **The Creamy Layer Exclusion Principle :**

The concept of Creamy layer was firstly introduced in the year 1992

In the case Indra Sawhney VS, UOI (also known as Mandal Commission case)

The creamy layer, this principle should not be applicable to SC AND ST. And the advanced OBC people should be excluded from the reservation.

Because some backward class person who are socially, economically and educationally advanced will also people will get this benefit restricting from the truly backward people.

In the year 1993, they asked the government to fix a certain criteria for the identification of the creamy layer. In 1993, government ceiling limit was 1 lakh. It was subsequently increased to 2.5 Lakh in 2004, 4.5 lakh in 2008 and 8 lakh in 2017.<sup>17</sup>

<sup>15</sup> [https://en.wikipedia.org/wiki/Indra\\_Sawhney\\_v.\\_Union\\_of\\_India-judgement](https://en.wikipedia.org/wiki/Indra_Sawhney_v._Union_of_India-judgement) para 2 –(last visited on Feb 7, 2022)

<sup>16</sup> [https://en.wikipedia.org/wiki/Reservation\\_in\\_India\\_-\\_gender\\_reservation](https://en.wikipedia.org/wiki/Reservation_in_India_-_gender_reservation) –(last visited on Feb 7, 2022)

<sup>17</sup> <https://www.thehindu.com/news/national/why-does-government-wants-supreme-court-to-reconsider-stand-on-scut-creamy-layer/article30233041.ece>

JUSTICE K,G,BALAKRISHNAN, said that the creamy layer is inapplicable to sc and because it a merely a principle of identification of the backward class and not applies the principle

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But in **M.Nagarj VS.UOI** supreme court approved the decision that it should extend even to SC and ST

Held : that the socially, educationally , advanced creamy layer SC AND ST people should be excluded from the benefit and should be given to the weaker section of people .

In **Jarnail Singh Judgement** ,

**This** case was about questioning the right to equality.

Held : this should go to the people of the weakest of the weak and not to the top creamy layer people . In 2018, Justice Rohinton. F. Nariman , wrote a judgment , **That the creamy layer concept is ensured only to the genuinely deserving members in the SC and ST community gets reservation benefits.**

The 2018 judgment said that when the court applied creamy layer to SC and ST in the nagaraj case, it did not think with the presidential list under article 341 and 342 of the constitution. The caste ,group,sub-group remained the same

This case also referred on the international basis like in other countries like east Europe, soviet union , Japan ,Cuba all countries implemented the reservation as affirmative action and use it as a tool to minimize inequality based on race, colour, caste and geographical distinction in the society .

So the main objective of this principle is to see whether the backward class citizens move forward so that they can march hand in hand with other citizens of India on a equal basis . Its objective is to provide the citizens an extra protection. 17

## EXCLUSIONS :

There are no exclusion for SC/ST people

For OBCs people the following categories are not entitles to take advantage of the reservation system:

- ✓ Children of official in high office as per the constitution
- ✓ Children of civil servants in high positions
- ✓ Children of armed forces of high ranks
- ✓ Children of professionals and those engaged in trade and industry .

- ✓ Children of property owners
- ✓ Children of people with annual income exceeding 8,00,000 (regarded as the creamy layer )

On oct 27, 2015, the supreme court directed the state and the central government to end the regional quota and to ensure the super-specialty medical courses are kept “unreserved ,open and free” from any domicile status after the court and allowed petitions files by some MBBS doctors .

### **Conclusion :**

The reservation policy was framed by the chairman of the constitutional drafting committee Dr. B.R.Ambedkar .

The intension was to provide reservation as a form of affirmative action

So that the backward classes groups can match up with the society equally.

The policy was enacted only for a period of ten years, but its continuing

Till today because the aim of reservation is not achieved .

To ensure adequate representation of all and to ensure equality among all ,the caste system and other discriminations must be completely abolished. But until the final aim is achieved, it is very important that the roots of the reservation policy must reach the people who

Truly require it.

The policy of the reservation can be fair and effective if it acts as affirmative action for the benefit of the educationally, Socially and economically backward section of society. The classes of people who are relatively forward in the term of education, finance and Social status should not enjoy the benefit of reservation. To met the aim of the policy it should reach to the majority of underprivileged classes of the society.

Exclusion of the creamy layer principle among all caste tribal groups and other beneficiaries of the reservation can be helpful in making the reservation policy very effective .Reservation should not be provided to perpetually generations after generations.

Along with this equal importance should be Given for the abolishment of caste system, malpractice of untouchability And other sorts of discrimination from our society .

**SO THAT “EQUALITY IN SOCIETY CAN BE ENSURED”**

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