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# **RESERVATION AS PROTECTIVE DISCRIMINATION IN INDIA**

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## **ABSTRACT**

The article explains the present situation of the caste system and job reservations in the Republic of India in the context of affirmative action and the achievement of workplace equality. Its goal is to draw attention to the sharp disagreements among people on what constitutes social acceptance, namely caste. A significant tool for comprehending prejudice and the necessity of affirmative action measures is also created since it gives the reader an idea of why affirmative action in India was needed in the first place. Giving advice and information that will be helpful to everyone engaged in putting affirmative action programmes into practise is another objective. It serves to demonstrate how affirmative action may become burdensome and even more discriminatory if it is not properly thought out, rather than being a way to achieve equality and right past wrongs. In the development of human civilisation, equality has been a powerful driving factor. The concept appears to have essentially developed from discussions on how to handle disparities between members of the same group or between groups. Early responses consisted of subjection, exclusion, extermination, and segregation, which caused wars, slavery, and institutionalised discrimination against one class by another. The attitude to equality changed for the better with rationality and minimal utilitarianism. The dominant class favoured the explanation of inequities in ways that favoured the division of labour, peaceful coexistence, and social cultural justifications. The Indian constitution's adoption of this equality model has as its central goal the destruction of long-standing obstacles that denied some groups of citizens equality of status and opportunity based on caste and sex. One strategy for positive social change is to empower the most disadvantaged members of society. Since the idea of equal citizenship and equal liberty for all is a fundamental principle of the constitution, the division of benefits and burdens based on community, caste, or gender becomes outmoded and must be justified by a balanced application of "formal equality" and "proportional equality."

However, absolute equality is impractical for the Indian society is diverse with culture, language, religion, and geography, and so forth. Applying similar laws to all in all circumstances would only instigate inequality. Thus, the makers of the Constitution applied their judicial mind for an affirmative action that would potentially accomplish the desired object. It was the idea of Protective Discrimination that added a new dimension to a great socio-economic maneuver.

**Keywords** – Equality, Affirmative action, Social change, Society, Protective Discrimination,

## INTRODUCTION

The Equality as an ideal has been a strong force in the evolution of human civilization. Essentially the idea seems to have arisen from consideration on how to deal with differences in people within the same group or outside it. The early response was one of subjugation, exclusion, elimination, and segregation, which led to wars, slavery and institutional discrimination of one class by the other class. With rationality and small utilitarianism, the approach towards equality changed for better. The emphasis was on rationalization of inequalities in a manner that promoted division of labour, mutual co-existence and socio-cultural legitimisations, which suited the dominant class. It is out of this historical process that one sees today several conceptions of equality competing for dominance in the legal systems of the world. The most popular model is the “equality of status and of opportunity and of non-discrimination on the basis of religion, sex, race, caste and so on. The essence of this model of equality, which the Indian constitution has adopted, has been to demolish age-old barriers, which denied equality of status and of opportunity to group of citizens on the basis of caste and sex. Empowerment<sup>2</sup> of the vulnerable section of the society is a method of benevolent social transformation. Since the idea of equal citizenship and equal liberty for all is a fundamental principle of the constitution, the division of benefits and burdens based on community, caste, or gender becomes outmoded and must be justified by a balanced application of "formal equality" and "proportional equality." The founding fathers of our Constitution felt that the inequitable forces in the socio-economic system and political organisations had created imbalance in the society and placed certain people particularly the SCs / STs in the disadvantageous position. The members of particular group of people experience multiple socio economic disadvantages that limit their access to the basic needs of life. Issues of sustainable livelihood, social and political participation of the vulnerable groups exists as the major problem in developing India. In spite of legislative measures and

enforcement mechanism, there exist a wide gap between administration of justice and equity. This gap shows that they are susceptible for all kinds of exploitation. In such case justice is capable of reaching only those who can afford and deprives those who cannot afford economically.

Education, wages, living conditions, social status was dictated by the whims of upper strata of society, reducing them to destitution. The economic backwardness brought social awkwardness which consequently made them downtrodden and thus depriving them even of the dignity of life. In a society compartmentalised on caste basis, upper castes controlled the levers of power enabling them to run their whips, prejudicial to the interests of lower segments of the society.

Lower castes had to serve the upper castes without having any say and grievance redressal mechanism. This inhumane and barbaric condition perpetuated for centuries, till "we the people" realised the malady impelling the framers of our constitution to think. In India large numbers of people have experienced social discrimination through centuries on account of its peculiar institution called the caste system, efforts have been made to provide redress for these under-privileged sections, through the policy of reservations or quotas for them in jobs, seats in educational institutions and legislatures, and in governmental aid, loans and other developmental assistance.

## MEANING CONCEPT OF PROTECTIVE DISCRIMINATION AND ITS NEED IN INDIA

**Protective Discrimination** - The policy of protective discrimination is an endeavor to achieve social justice in India. It aims at granting special privileges to the socially awkward and underprivileged section of the society, most commonly the scheduled castes, scheduled tribes, other backward classes, and women. These are the sections of people who often face racial or caste-based discrimination through centuries by the privileged classes on account of their differences based on sex, religion, place of birth, race, and most prominently based on the institution called the caste system. Efforts had been made by the founding fathers of the Constitution to address the malady through affirmative action. These actions are justifiably enshrined in the Constitution of India as "*Protective Discrimination*". Protective Discrimination as an idea has been practicing by many civilized nations including developed

nations like the USA because of their dark history of racial discrimination. In India, the Constitution of India through its various provisions guarantees the rights of the downtrodden and underprivileged by way of reservations or quota in educational institutions, jobs, and parliamentary privileges as well as command the legislatures to legislate special provisions for their overall advancement.

Article 14 of the Constitution does not speak of mere formal equality but embodies real and substantive equality. The essence of equality as a facet of the Constitutional tenets adopted to strike out inequalities arising on account of vast social and economic disparities among the citizens and is thus consequently an indispensable element of social and economic justice.<sup>1</sup>

However, absolute equality is impossible. The right to equality under part III of the Constitution therefore is not absolute and is subject to reasonable exceptions. Equality does not essentially mean that all laws should be universal and general in application neither all laws can be

applicable in all circumstances. Explaining the concept of equality, the Supreme Court in *Marri Chandra Sekhar Rao v. Dean, Seth G.S Medical College*<sup>2</sup>, observed that, equality must be a living reality for the people. Those who are unequal in status and opportunity cannot be treated by identical standards.

Article 14 permits reasonable classification between potential underprivileged and privileged sections of citizens based on definite schemes but strikes out class legislation. Reasonable classification explains that classification or segregation must not be artificial, evasive, and arbitrary. Such classifications must be based on the rule of intelligible differentia which differentiates between different classes or group persons from those left out of the group. Most importantly, there must be rational nexus between the differentia and the object sought to be achieved.<sup>3</sup>

Article 15(1) restricts the state from unreasonable bias or adverse distinction from one another only on account of caste, sex, race, religion, and place of birth. However, when the discrimination rests only on these grounds, Article 15(1) comes to play. There is an intrinsic correlation between article 14 and article 15. Whilst these articles guarantee equality of

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<sup>1</sup> Secretary, H.S.E.B v. Suresh, AIR 1999 SC 1160.

<sup>2</sup> Marri Chandra Sekhar Rao v. Dean, Seth G.S Medical College 1990(3) SCC 130

<sup>3</sup> K. Thimmappa v. Chairman, Central Board of Directors, SBI, AIR 2001 SC 467.

opportunity and equality of treatment to all, neither of these articles prohibits reasonable classification. It means that special treatment meted out to a particular class of citizen by the State on account of some special reasons and circumstances is justifiable, but should be on reasonable grounds.

## CONSTITUTIONAL MANDATE

**Article 15(3) enables the State to confer special rights to women,<sup>4</sup> and children.** This provision empowers the State to make special provisions and enactments in favor of women and children for their all-round upliftment in the society. This provision is specially designed to strengthen and improve the status of women.<sup>5</sup>

**Article 15(4) enables the State to make special provisions for the improvement of socially and economically backward classes of citizens specifically the Scheduled Tribes and Scheduled Castes.** This provision was added in the Constitution by the First Constitutional Amendment Act in 1951 as a result of the decision given in *State of Madras v. Champakam*

*Dorairajan*. It is important that the clause (4) is an enabling provision and does not obligate the State to take any action under it.<sup>6</sup>

**Article 15(5) was inserted in the Constitution in 2005 which enables the State to make special provisions concerning the reservation of seats in educational institutions.** This clause enables the State to make special provisions for the advancement of socially and educationally backward classes through the reservation of seats or quota whilst admission into educational institutions, whether private, aided or unaided by the State. Clause (5) is however not an exception but only makes a special application of the principle of reasonable classification.

**Clause (6) to Article 15 inserted through the Constitution (one hundred and third Amendment) Act of 2019.** This clause directs the State to make special provisions for the upliftment of economically weaker sections of the citizens concerning admission into

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<sup>4</sup> Shahdad v. Mohd. Abdullah, AIR 1967 J&K., 120

<sup>5</sup> Government of A.P v. P.B Vijay Kumar, AIR 1995 SC 1648

<sup>6</sup> N.T.R University of Health Sciences v. G.B.R Prasad, AIR 2003 SC 1947.

educational institutions, including private, aided or unaided by the State. Whilst **Article 16 (1)** guarantees to all citizens equality of opportunity in matters relating to employment in public offices, clause (3) to (6) of Article 16 contains an exception to the rule of equality of opportunity incorporated in clauses (1) and (2).

**Clause (4) to Article 16 expressly permits the State to make provisions concerning the employment of backward classes of the citizens.** This clause imposes discretion upon the State to make provisions for reservation of jobs to backward classes, which, the State believes is not adequately represented in the services of the State. In 1995 through the Constitution (Seventy-seventh Amendment) Act, **Clause (4A) to Article 16** had been inserted in the Constitution. This provision enables the State to make provision concerning reservation in matters of promotions with consequential seniority, in favor of Scheduled Tribes and Scheduled Castes.

**Article 16(5) permits that, concerning the operation of affairs of any religious institution or denomination, the incumbent shall necessarily be a person professing a particular religion or belonging to a particular denomination.** This exception may be read together with Article 25 to 28 that is fundamental Right to Freedom of Religion and the right of the minorities under Article 29 and 30.<sup>7</sup>

**Article 16(6)** added to the Constitution through the Constitutional (one hundred and third amendment) Act 2019, which **enables the State to make provisions for reservation in the matters of employment or appointments in favor of economically weaker sections of the citizens, subject to a maximum of ten percent in addition to the existing reservation.**

**Article 46** imposes a duty upon the State for the **promotion of educational and economic interests of the weaker section of the people, especially those belonging to Scheduled Tribe, Scheduled Castes, to protect them from the vicious cycle of all forms of exploitation and injustice.**

**Article 336** speaks for the **protection of rights of the Anglo-Indian Community in appointments in various sectors including railways, postal services, and customs.** The Parliament in 2020 brought the Constitution (one hundred and fourth amendment) Act 2019,

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<sup>7</sup> Narendra kumar, the Constitutional Law of India, 225 (2015).

amended Article 334 which extended the reservation of seats to STs and SCs in the Parliament for a further ten years.

## CARRY FORWARD RULE OF RESERVATION

If in a particular year, the seats specifically reserved for the Scheduled Castes and Scheduled Tribes for appointment are not filled and remain vacant, such vacancies can be deserved after following the due procedure for dereservation, the vacancies can be filled by candidates of other communities. The unfilled reserved vacancies to be carried forward to the subsequent year. This is known as the 'Carry Forward Rule'. In *Devdasan v. Union of India*<sup>8</sup>, the validity of the rule has been challenged. The Supreme Court by a majority of 4:1 struck down the carry forward of reservation stating unconstitutional on account of violation of right to equality of opportunity guaranteed by Article 16. Later in the landmark judgment of *Indra Sawhney v. Union of India*,<sup>9</sup> overruling the judgment given in *Devdasan Case*, ruled that operation of carry forward rule is valid and should not in breach of 50% and most importantly, there shall be no reservation in matters of promotions.

In 2000 the Parliament brought the Constitution (Eighty First Amendment) Act which inserted **Clause (4B) to Article 16**. This amendment removes the 50% ceiling on the carry-forward rule. Reckoning the established rule of carrying forward, it was envisaged that those reserved vacancies that are not filled are to be carried forward to the coming years and they are to be separated from the reserved vacancies of the current year. Unfolding the scope of Article 16(4B), it means that the reserved vacancies which would remain vacant in one particular year can be carried forward to subsequent years irrespective of the ceiling of 50% and are to be filled separately from the normal vacancy. The 81st Amendment upturned the decision given in the *Indra Sawhney case*.

## JUDICIAL DECISIONS

In *Vishakha v. State of Rajasthan*,<sup>10</sup> one another landmark judgment case in history, the Supreme Court held that women have a fundamental right to freedom from sexual harassment in the workplace. Equality Article 14 speaks for gender equality which includes protection

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<sup>8</sup> *Devdasan v. Union of India* AIR 1964; SC 179

<sup>9</sup> *Indra Sawhney v. Union of India* AIR 1993 SC 477.

<sup>10</sup> *Vishakha v. State of Rajasthan* AIR 1997; SC 3011.

*Air India v. Nargesh Meerza*<sup>11</sup>, known as the Air Hostesses case, Regulation 46 of Air India was challenged. The impugned regulation stated that Air Hostess to retire from services on attaining the age of 35 years or upon marriage, or on first pregnancy. The Supreme Court struck down the regulation being unconstitutional. The Court observed that such a cruel act is a straight insult to Indian womanhood and there should be no reason that stands in the way of her continuing service

*State of Madras v. Champakam Dorairajan*<sup>12</sup>, a landmark judgment case on reservation, the decision of Madras Government to reserve seats in the State Medical and Engineering Colleges for different communities on the grounds of religion and caste in the proportion of students in each community was challenged as violative of Article 15(1). The state government contended that the order was made in furtherance of the Directive Principle of State Policy enshrined in Article 46 of the Constitution. Although the Apex court held the impugned order void, it was observed that the State must enforce only the justiciable provision of the Constitution. The court gave a literal interpretation to the Constitutional provisions which led to the insertion of Clause (4) to Article 15.

*Indra Sawhney v. union of India*<sup>13</sup>, well known as the ‘Mandal Commission case’, has a major impact on today’s reservation system of our country. The Supreme Court in this case by 6:3 majority laid down the ground rules for reservation. The decision of the Union Government to hold 27% reservation for socially and economically backward classes held constitutionally valid. Furthermore, the classification of backward classes into ‘backward’ and ‘more backward’ held not only permissible but essential. It was opined that the intention of inserting special provisions in the Constitution is not only to uplift a few individuals but ensuring the advancement of the backward class altogether.

In *State of Kerala v. N.M Thomas*<sup>14</sup>, the dispute before the Court was whether preferential treatment to SC’s and ST’s comes under the permissible limit of Clause (1) of Article 16. In this case, the Supreme Court by 5:2 majority held that classification of employees belonging to SCs and STs that provided an extended period of two years for allowing them to pass the tests for promotion from other classes of employees was just and reasonable one that can be defended on the ground of providing rational nexus between such classifications and the

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<sup>11</sup> Air India v. Nargesh Meerza AIR 1981 SC 1829.

<sup>12</sup> State of Madras v. Champakam Dorairajan AIR 1951; SC 226; SCR 525.

<sup>13</sup> Indra Sawhney v. union of India AIR 1993 SC 477.

<sup>14</sup> State of Kerala v. N.M Thomas AIR 1976; SC 490: (1976) 2 SCC 310

object of promoting equal opportunities amongst all citizen for employment and appointment matters to the public offices.

In a recent case of *Ranveer Singh & Anr. v. Union of India*<sup>15</sup>, the Central Administrative Tribunal (CAT) observed that the scope of Article 15(3) is much greater than Article 16(4) of the Constitution. CAT upholds the reservation of 80% posts of Nursing Officer in favor of female in AIIMS. It was held that the said reservation is to be treated as a special provision for women candidates under Article 15(3) and a separate classification is held to be valid.

## RESERVATION FOR WOMEN

From the Vedic age to till today, status and position of women has been changing with the passing of time.<sup>16</sup> Historical studies and the scriptures indicate that Indian woman enjoyed a comparatively high status during the early Vedic period, later, the condition and status of women in India declined with the passage of time. During the medieval period, woman was given a position subordinate to man. Law and religion did not recognize the equality and equal rights of man and woman. Finally, when the British came in to contact with the Indian people in the latter half of the 18th century, the position of Indian woman had deteriorated to the lowest level. Ideologically, women were considered a completely inferior species, having no significance, no personality. But because of contributions made by many social reformers like Raja Ramohan Rai, Veresa Lingam, Ishwar Chandra Vidyasagar, Vivekananda, Jyothira Phule, Anne Besant, Mother Teresa, Mahatma Gandhi<sup>17</sup>, Nehru, Dr. B. Ambedkar, Vinoba Behave etc. British government introduced some laws for the protection of women like the widow remarriage Act, 1856, Civil Marriage Act, 1872, Married women's property Act, 1874, The Child Marriage Restraint Act, 1921, The Prevention of Prostitution Act, 1923, The Hindu Inheritance Act, 1929,

Sati Prohibition and more importantly special provisions for women protection in Indian Penal Code, 1860 etc.

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<sup>15</sup> <https://indiankanoon.org/doc/330503/>

<sup>16</sup> Puja Mondal, Status of Women in Vedic and Post-Vedic Period - Available at :

<http://www.yourarticlelibrary.com/society/status-of-women-in-vedic-and-post-vedic-period/4397>

<sup>17</sup> Mahatma Gandhi was having absolute faith in inherent power of women, he emphasized it by saying- "complete emancipation of women and her equality with man is the final goal of our social development, whose realization no power on earth can prevent" - Available at: <http://www.livelaw.in/women-laws-india>

After independence, Indian government passed several general as well as special laws especially constitutional provisions for protection of women to safeguard and to empower women in India. The improvement in women's position and status became further evident when immediately after the independence, Indian women made their mark by becoming Governors, Cabinet ministers, and ambassadors. Several measures were taken by the Government of India to assign equal status to women in the economic, political and social fields. The rights available to woman in India can be classified into two categories, namely as constitutional rights and legal rights. The constitutional rights are those which are provided in the various provisions of the constitution, which is the basic law of the land. The legal rights, on the other hand, are those which are provided in the various laws. The Constitution of India pledges equality of status and opportunity to men and women.<sup>18</sup> Being a custodian of constitution apex court has been trying to fulfill constitutional objectives by numerous pronouncements in several cases.

Finally it will be evident from history that the atrocities against women are since time immemorial. And at the same time protection of women from atrocities is also as old as atrocities against women in the form of religion, custom, ethical, moral values and through social movements, national and international legal protections etc. but among all these the significant role has been playing by law through judiciary as a savior of women from atrocities in modern era. Legal safeguards not only protect women from atrocities, violations etc but also empowering women in social, economical, educational, political fields.

Article 14 ensures that the state shall not deny to any person equality before law. It prohibits class legislation but permits reasonable classification. This is a very important provision which provides equal legal protection to women against any women based crime. Article 15 (1) prohibits discrimination against any citizen based on religion, race, caste, sex or place of birth while Article 15 (3) permits 'protective discrimination' in favour of women according to which state can make special provision for women and the scope of this article is wide enough to cover the entire range of state activity including employment. Article 16(2) of constitution of India ensures equal employment opportunity to every citizen of India. Article 42 empowers the state to make laws for women workers and by which it can provide special maternity relief to women. Like, above with the help of fundamental rights and directive principles of state policy state can provide protective discrimination towards women, which

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<sup>18</sup> Article 14 of the Indian constitution.

will not infringe general equality. The reason behind this is physical structure and performance of maternal functions of women place

her at a disadvantage in the struggle for subsistence and her physical well being becomes an object of public interest and care in order to preserve the strength and vigour of the race makers has given these safeguards to women. It is evident from numerous pronouncements of the court<sup>19</sup>.

## RESERVATION FOR SOCIAL EDUCATIONAL BACKWARD CLASS

Reservation in India is all about reserving access to seats in the government jobs, educational institution and even legislatures to certain sections of the population. Also known as affirmative action, the reservation can also be seen as positive discrimination. Reservation in India is a government policy, backed by the Indian Constitution (by means of various amendments).

**The two main aims to provide reservation as per the Constitution of India are:** Advancement of Scheduled Castes (SC) and the Scheduled Tribes (ST) OR any socially and educationally backward classes of citizens (Eg: OBC) OR economically weaker sections (EWS) -Article15(4), Article15(5) and Article15(6), Adequate representation of any backward class of citizens OR economically weaker sections (EWS) in the services under the State. - Article 16 (4) and Article 16 (6)<sup>20</sup>.

**The extent of Reservation in India In India, reservation is provided in :-**

Government Educational Institutions like IITs, IIMs etc as per Article 15 - (4), (5), and (6) Government Jobs like IAS, IPS etc as per Article 16 - (4) and (6) Legislatures (Parliament, and State Legislature) - as per Article 334. Before 2019, the reservation was provided mainly on the basis of social and educational backwardness (caste). However, after the 103rd constitutional amendment in 2019, economic backwardness is also considered. Apart from the reservation quota, additional relaxations like upper-age relaxations, additional attempts, and lower cut-off marks are also provided for various reservation categories. A vacancy

<sup>19</sup> <https://archive.org/details/jn-pandey.-the-constitutional-law-of-india-edition-tenth/page/n13/mode/2up>

<sup>20</sup> <https://prsindia.org/billtrack/the-central-educational-institutions-reservation-in-admission-amendment-bill-2010>

reserved for SCs or STs or OBCs cannot be filled by a candidate other than an SC or ST or OBC candidate, as the case may be. As seen from the above table, about 60% of seats are reserved in India - for various sections like ST, SC, OBC, and EWS - with respect to Government jobs and Higher Education Institutions. 3% of seats are also reserved for differently-able persons across all categories. This also means that only 40% of seats are available under merit. In the merit seats, not only the

general category candidates but all other categories like SC, ST, OBC, and EWS can also compete<sup>21</sup>.

Scheduled Castes (SC) are given 15% quota in jobs/higher educational institutions while Schedule Tribes (ST) are given 7.5% quota in jobs/higher educational institutions. Reservation is provided not only with respect to direct recruitment but also with respect to promotions for SC/ST category Article 16(4A)<sup>22</sup>.

Reservation for Other Backwards Classes (OBC) was introduced based on the Mandal Commission Report (1991). The quota for OBCs is 27% in government jobs and higher educational institutions. However, there is a concept of 'creamy layer' with respect to the OBC reservation. Only those from OBC who comes under Non-Creamy Layer would get OBC reservation.<sup>23</sup>

The creamy layer concept brings income and social status as parameters to exclude some of the privileged members of OBC from the extent of reservation. This concept also keeps a check to ensure that the benefits of reservation do not get extended to subsequent generations.

EWS Reservation The Central Government of India recently introduced EWS Reservation. 10% quota is provided for the Economically Weaker Sections (EWS) among General Category candidates in government jobs and educational institutions. This is done by adding clauses for the same in the Indian Constitution (103rd Constitution Amendment Act, 2019)<sup>24</sup>.

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<sup>21</sup> <https://prsindia.org/billtrack/the-central-educational-institutions-reservation-in-admission-amendment-bill-2010>

<sup>22</sup> [https://dopt.gov.in/sites/default/files/FAQ\\_SCST.pdf](https://dopt.gov.in/sites/default/files/FAQ_SCST.pdf)

<sup>23</sup> <https://journalsofindia.com/reservation-for-other-backward-classes-obcs-in-india/>

<sup>24</sup> <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1886686>

## EVALUATION OF RESERVATION (IMPACT)

The reservation policy adopted in India with a view to uplift certain caste of people should be implemented for the same purpose only and not take away the rights of people, unfortunately, belonging to the general class. Because the very reason of introducing reservation is losing its essence in the modern era. Therefore it is important to maintain the idea and originality of the reservation policy and not giving unfair means two people achieve the stairs of profit without even climbing it. While the reservation has been an important part of the Indian legal system for

a long time, many people are against the idea of the caste-based reservation that always stirs up controversy.

The argument of people in this is that it has been more than 70 years of independence since so people are enjoying reservations to a large extent but the reservation of seats on the basis of caste is not a necessity as such in today's time considering the status of everyone. The main purpose is not to blame reservation for minorities but to overcome the lack of job opportunities that have been generated because of the reservation policies especially on the basis of caste.

### Positive Impact Of Reservation

**Equal opportunities** The basic purpose of reservation is to ensure equality of opportunities in education, Government jobs, etc for all citizens irrespective of their caste, gender, race, religion, etc. When all individuals will have equal access to resources, the backward communities would also be able to uplift themselves in society. This in turn fulfills the very purpose of the Constitution as given under Articles 15 and 16 of the Constitution.

**Level playing field** The true potential of any individual can be judged only when he/she competes with equals. Reservation brings the SCs and STs to an equal level to the others in society. As a result, all of them run the race from the same starting point. This ensures that there is complete fairness and no discrimination towards any individual or community.

**Compensating for past injustices** Certain communities from a very long have been subjected to extreme discrimination and isolation from society. They were also not allowed to participate in general society. Reservation is also an attempt to compensate for all the

injustices these communities have faced in the past and to ensure that they break out of these shackles to start a new journey where they are respected and treated equally.

**Integration into mainstream society** Reservation has brought the disadvantaged sections of society into mainstream society. They now enjoy adequate representation in Government posts and educational institutions thereby increasing their participation in the general functioning of society. They are now no longer treated as outcasts and have rather become an indispensable part of society<sup>25</sup>.

**Increased mobility of labour** Reservation has directly ensured that equal opportunities are given to persons regardless of their castes. As a result, persons belonging to Scheduled Castes or Scheduled Tribes who were bound to perform certain specific jobs could now easily perform any

work which they wished. As a result, they are no longer restricted and can shift from the traditional jobs which were imposed to the jobs which they want to perform at their own will. This has helped in ensuring the mobility of labour which has had a positive impact on the Indian Economy.

**Improvement in quality of administration** When all citizens will get equal education opportunities, they would form an extremely educated workforce. If they then enter into administrative service, they would be able to ensure a much better quality of services for the customers. An example of the same is railways which have a large number of employees who belong to Scheduled Castes and Scheduled Tribes. The functioning has improved a lot over the years in Railways with the employees being able to adapt to the various technological innovations that have taken place over the years.

These are the major positive effects of the reservation system that has been followed in India. However, there's still a long way to go.

## Drawbacks of reservation

**Detrimental to meritocracy** Reservation to a large extent goes against the principle of providing opportunities on a merit basis. It provides an edge to certain individuals over others such that even when people possess the required capabilities, they aren't able to get the opportunity to reach a higher position or obtain a Government job. On the other hand, those who didn't have the requisite capabilities might obtain a Government post through reservation.

**Increases casteism** Reservation rather than reducing casteism increases it. This is so because the persons get classified into different categories of SCs or STs which further creates a caste-based society. By classifying people on basis of their caste, the Government has retained the caste system instead of removing it which further has the tendency to strengthen social evils.

**Social unrest** Reservation has led to widespread protests from certain sections of society over the years. These have mostly been persons from the general category who are higher in population but get lesser representation resulting from the 103rd Amendment. One of the major protests took place during the time Mandal Commission Report was implemented by the VP Singh Government for going against the Fundamental Right to equality.

**Used for personal benefits** Certain communities, despite being affluent and dominant in a region, demand reservation for them. As a result, certain communities which have genuinely been the victims of discrimination and atrocities are sidelined. In other words, demands for reservation have been rising from certain sections of society that haven't suffered as much as the other communities. This has opened the floodgates to various communities seeking reservation sidelining the others who have been historically subjected to discrimination.

**Discourages other communities** Reservation might create a feeling among other communities that the Government is being partial to the other community and that their contribution towards the nation or their merit is not being valued. As a result, they might develop feelings of hatred towards the other community for absolutely no fault of theirs. They would eventually become cynical and discouraged to work hard because of this feeling of efforts being wasted.

**Short-term solution** Reservation is only a short-term solution to address the issue of backwardness. In the long run, this could do more bad than good as certain communities might start feeling highly discriminated against and would protest which might turn violent. Further, there are a multitude of factors that contribute towards caste-based discrimination and reservation is not a panacea to cure all of them. There are certain questions that are yet to be answered to remove all forms of caste-based discrimination. To answer these, the Central Government and State Governments need to work with cohesion.

Therefore the reservation policy adopted in India with a view to uplift certain caste of people should be implemented for the same purpose only and not take away the rights of people, unfortunately, belonging to the general class. Because the very reason of introducing reservation is losing its essence in the modern era. Therefore it is important to maintain the idea and originality of the reservation policy and not giving unfair means two people achieve the stairs of profit without even climbing it.<sup>26</sup>

## **NEED TO EXPAND RESERVATION ECONOMICALLY WEAKER SECTION**

It's the duty of the government to provide [equality of status and opportunity in India](#). Reservation is one of the tools against social oppression and injustice against certain classes. Otherwise known as affirmative action, reservation helps in uplifting backward classes. However, reservation is just one of the methods for social upliftment. There are many other methods like providing scholarships, funds, coachings, and other welfare schemes. The way reservation is implemented and executed in India is largely governed by vote-bank politics. [Indian Consitution](#) allowed reservation only for socially and educationally backward classes. However, in India, it became caste-based reservation instead of class-based reservation. Initially, the reservation was intended only for SC/ST communities – that too for a period of 10 years (1951-1961). However, it got extended ever since. After the implementation of Mandal Commission report in 1990, the scope of the reservation was widened to include Other Backward Communities (OBCs). The benefits of the reservation were successively enjoyed only by a few

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<sup>26</sup> Dr J N Pandey 59th Edition 2022 – Constitution law of India

communities (or families), excluding the truly deserving ones. Even 70 years after independence, the demand for reservation has only increased.

At present, reservations in India account for a total of 49.5%. If the 10% extra reservation for EWS is also taken into account, it would be **59.5%**. 7.5%, 15%, and 27% quotas are reserved for Scheduled Tribes, Scheduled Castes, and Other Backward Classes respectively. If the EWS Quota Bill becomes an Act, only 40.5% of seats will be allocated in educational institutions/jobs based on the merit of candidates. As pointed by the Supreme Court, an increase in reservations **can compromise the merit**<sup>27</sup>.

Remember, the merit quota is not reserved anyone – not even for the general category (hence the name – merit). It is open to candidates from all categories – including SC, ST, OBC, and the General category – who qualify on merit (and not because of reservation).

## **CHALLENGES BEFORE INDIAN SOCIETY ( ISSUE RELATED TO RESERVATION)**

### **Argument against Reservation -**

- **Irrelevant :**
  - The majority of lower castes have stepped up the social ladder and are now on an equal status compared to the general population.
  - Hence, there is no need for reservation anymore.
- **Short Term Solutions:**
  - Reservation only provides a limited and short-term solution to the historical injustice issues.
  - Reservation is obviously a tool to address social and educational backwardness, however, it does not have solutions for all social and economic ailments. There are much better and innovative ways to solve those issues. However, reservation prevents the leadership to come up with viable solutions.
- **Social Exclusion:**
  - As the reservation grows larger, it becomes a mechanism of exclusion rather than inclusion. Because, nowadays, the previously advantaged communities

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• <sup>27</sup> <https://www.ijlmh.com/paper/constitutional-validity-in-the-economically-weaker-section-reservation/>

have becoming disadvantaged to a large extent due to the reservation conundrum.

Many upper castes are still plagued by poverty and illiteracy. Why equality and justice don't work for them?

▪ **Economic Growth:**

- Reservation brings down the economic growth rate of the country as it reduces the efficiency of its labor.
- Reservation agitations may cause social unrest as it was at the time of the Mandal Commission (1990).

**Concern/ challenges in the Reservation -**

- Castes that should be actually benefitted are not being benefitted, instead, others are reaping the benefits of the reservation system.
- The reservation system has just become an instrument for politicians to gain vote banks.
- Agitation for reservation resulted in several deaths, affected transport and the loss of many working days in schools and workplaces. Example- Jat agitation in Haryana.
- One community after another will start demanding reservations due to the success of others. Many of these communities are politically and economically sound and hence placing the whole community in the reservation system is unethical.<sup>28</sup>

## CONCLUSION

The debate over positive discrimination in India is acrimonious and is increasingly finding expression in violence. But a democracy which is essentially a social contraption is neither dictated by logic nor by ethics. At the root of democratic success is social engineering which is effected through political bargaining. In India the process is on and only the future would tell whether its experiments were in the right direction or not. We don't require reservations in the current scenario based only on castes or religion but to actually provide support to those who have fewer resources, and merit should be provided equal and due importance in admission procedures as well employment opportunities. This way we would be successful in

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<sup>28</sup> Dr J N Pandey 59th Edition 2022 – Constitution law of India

eliminating caste discrimination and unite the economically rich together in supporting the economically poor, regardless of their castes. As Justice Ravindran in *Ashok Kumar Thakur vs Union of India* case rightly said, “when more people aspire for backwardness rather than of forwardness, the country itself stagnates

The constitution of India via various provisions aims at eliminating disparities between different sections of the society and providing equality of status and opportunity. However, there has been

a long-debated dilemma of preservation of rights of the historically oppressed and socially as well as economically backward classes of citizens and the privileged section simultaneously. All people mustn't be equal by their nature, attainment, and circumstances.<sup>29</sup> The changing needs of different classes of persons often require diverse treatment. Where the essence of the right to equality is pervading throughout the constitution, it also speaks of special treatment to a particular section. The very idea of granting special privilege to repressed and backward classes is termed as ‘protective’ or ‘positive’ discrimination. India has a dark history of oppression and violence on account of stratified hierarchy and a vicious caste system. Although after seventy-three years of independence of the country and we Indians enter the age of liberalization and globalization, the social system and mindset of the masses have remained the same. Understanding the very nature of the society, there should be different laws, applying differently in different places and circumstances. Application of the same laws parallel to everyone irrespective of the socio-economic differences may result in violation of the spirit of the right to equality. Henceforth, protective discrimination as a constitutional tenet for protection and preservation of the rights of scheduled castes, scheduled tribes, and other backward classes of citizens as well as women is highly recommended in our society. However many of the critics in contemporary times came forth to argue that, the principle of protective discrimination is antithetical to the rule of fairness enshrined in the Constitution. Reservations are debated as the opposite of development and equality.

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<sup>29</sup> *Chiranjit Lal Chaudhary v. Union of India*; AIR 1951, SC 41.

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