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REIMAGINING SOCIAL EMPOWERMENT: A CONSTITUTIONAL, JUDICIAL, GLOBAL RETHINK OF INDIA'S RESERVATION SYSTEM.

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INTRODUCTION

India has a pretty rich and diverse culture, but at the same time it is plagued with an age-old rigid caste system which has perpetuated social inequality over several centuries in this country. The result of which is that large sections of society, particularly SCs, STs, and OBCs, were deprived of even basic opportunities. To correct these injustices and promote social equality, the system of reservations was introduced in our constitution as an exception to the principles of "equality before law"¹ and "equality of opportunity in matters of public employment"² enshrined in our constitution. Reservation termed as "affirmative action" is a policy under which special opportunities in education, employment, etc., are provided to marginalized communities to ensure social justice and to remove historical disadvantages and address the caste-discriminations faced by such communities.

However, the changing socio-economic milieu of the country in this modern age as well as the constant constitutional changes in the policy, necessitates an ever needed rehaul of the policy of reservation.

On that backdrop, part I of the essay discusses how the constitution makers saw the policy of reservations and how they intended it to unfold. Further, part II of the essay captures the trajectory of the policy under judicial and legislative oversight and how the meaning of reservation constantly kept changing over time. Part III highlights how the vision of the makers, as well as the judiciary, towards reservation was blatantly ignored by the politicians and how it became a mere tool of gaining votes³ and why there is a burning need to bring reforms in the reservation.

¹ The Constitution of India 1950, art 14

² The Constitution of India 1950, art 16

³ Arun Shourie, *Falling Over Backwards* (ASA Publications 2006, Delhi) 160

Part IV tackles with the problems in the policy and suggests reforms .It argues that the state should introduce the creamy layer concept in SC/ST and keep reviewing the policy periodically to make sure it's updated to the changing circumstances and, it also advocates for drawing inspiration from policies of foreign nations made to achieve equality. Part V concludes the discussion with a gist of the arguments made in favour of reforms in reservation policy and the actual reforms suggested in tandem with SDG 10 (reduced inequalities).

AFFIRMATIVE ACTION AS ENVISIONED BY THE FRAMERS OF THE CONSTITUTION:

The provisions surrounding reservation in our constitution are a testament towards the nuanced thinking of our constitution makers to incorporate such provisions which will foster substantive equality rather than mere equality on paper, Article 15(4) which allows the state to make special provision for backward classes and 16(4) which allows for making reservation in public employment for communities underrepresented in public services, reveal their brilliance in striking a balance⁴ between equality and uplifting the historically disadvantaged. The framers of the constituent assembly regarded these provisions of the constitution as mere exceptions to the general rule of equality⁵, and regarded them as enabling provisions which would allow the government to make special provisions for the marginalised and not as something which conferred a right upon the communities to claim reservation.⁶ Even Article 335 of the Constitution before the constitutional amendment showed how they struck a balance between efficiency and social justice.⁷ But later developments in these articles through amendments show how their vision was disregarded for mere politics, as discussed later in the essay.

⁴ Himabindu M, 'Social Justice and Caste Inequality: A Review of the Constitutional Provisions' (2017) 5(1) *Journal of Research in Humanities and Social Science* 117–121 <<https://www.questjournals.org/jrhss/papers/vol5-issue1/T0501117121.pdf>>. accessed 3 November 2025

⁵ *ibid*

⁶ LiveLaw News Network, 'Reservation An Exception To General Rule Of Equality; Enabling Provisions Do Not Form Basic Feature Of Constitution: Supreme Court' LiveLaw (Kochi, 7 November 2022) <<https://www.livelaw.in/top-stories/supreme-court-reservation-enabling-provision-basic-feature-janhit-abhiyan-vs-union-of-india-2022-livelaw-sc-922-213539>>. accessed 3 November 2025

⁷ GKToday, 'Article 335' (GKToday, 13 October 2025) <<https://www.gktoday.in/article-335>> accessed 4 November 2025

TRACING THE EVOLUTION OF RESERVATION POLICY IN INDIA.

STATE OF MADRAS V. CHAMPAKAM DORAIRAJAN (1951)⁸

This was the first major case on reservation, which dealt with caste-based reservations in educational institutions. It held unconstitutional a govt. order which provided for quota in admission to educational institutes. This resulted in the first constitutional amendment of India, thereby amending Article 15(4), which provided the state with the power to make special provisions for the advancement of socially and educationally backward classes, namely, the Scheduled Castes and the Scheduled Tribes, in educational institutions.

INDRA SAWHNEY V. UNION OF INDIA (1992)⁹

After the Dorairajan this case was one of the major turning point in reservation policy's history, under this case the Supreme Court upheld the implementation of 27% reservation for OBCs in government services and educational institutions, but with an exception and a turning point: that the creamy layer should be excluded from benefits arising out of the reservation and it also emphasized that total reservation in any public institution shall not exceed 50% except in special cases. This case thus played a very important role in shaping the contours of reservation law in India.

CONSTITUTIONAL AMENDMENTS AND THE EXPANSION OF THE RESERVATION

The Parliament through 77th Amendment inserted Article 16(4-A) relating to reservation in matters of promotion with consequential seniority and through 81st amendment inserted Article 16 (4-B) popularly known as Carry forward rule and through 82nd amendment added a provision in Article 335, which allowed the state to make any relaxation in qualifying marks for reserved communities, although originally the provision barred the state to make any such relaxation which would comprise the efficiency of the administration.¹⁰

The above-mentioned amendments were held constitutional in *M. Nagaraj v. Union of India*¹¹, though some restrictions were put on these to prevent the excess and perpetual continuation of

⁸ *State of Madras v. Champakam Dorairajan* (1951) SCR 525

⁹ *Indra Sawhney v Union of India* (1992) AIR 1993 SC 477

¹⁰ Sarthak Mishra, 'Critical Analysis of Constitutional Amendments' (*Academike*, August 2, 2024) <<https://www.lawctopus.com/academike/critical-analysis-of-constitutional-amendments>> accessed 4 November 2025

¹¹ *M.Nagaraj & Others vs Union Of India & Others* (2006) 8 SCC 212

reservation.¹²

SUB-CLASSIFICATION HELD VALID: VICTORY FOR THE MARGINALISED WITHIN THE MARGINALISED

The reservation system is often criticized for benefiting only the higher castes within the SC category. However, the watershed judgment in the case of *State of Punjab & Others vs Davinder Singh & Others, 2024*, upheld that sub-classification doesn't violate article 14 and marked a significant shift towards a more nuanced approach to affirmative action. The judgment focused on emphasizing not mere representation but actual upliftment of the most vulnerable among the disadvantaged.

Under the same judgment the judges asked¹³ the government to devise a policy to identify the creamy layer within the SC/STs and exclude them from reservation, highlighting how the judiciary believes that reservation is subject to change under the dynamic conditions surrounding it.

Overall, the judiciary has both upheld and challenged various aspects of the reservation policy, influencing its implementation and the legal framework surrounding it.

NEED FOR REFORMS AMONG THE CHANGING SOCIO-ECONOMIC AND CONSTITUTIONAL REALITIES

Since the advent of reservation, this nation and in particular some groups within the reserved categories, have undergone significant socio-economic changes and the legal position surrounding reservation has also changed a lot.

PRESENCE OF HETEROGENEITY AMONG THE SC/STs

The economic and social conditions of SC/STs have changed very much since independence. Studies reveal that there has been an emergence of an elite class within them which has availed repeated and continuous reservation and benefits disproportionately from it. The Supreme

¹² "M. Nagaraj vs Union of India - Drishti Judiciary" (*Drishti Judiciary*) <<https://www.drishtijudiciary.com/landmark-judgement/constitution-of-india/m-nagaraj-v-union-of-india-2006-8-scc-212-196>> accessed 5 November 2025

¹³ Supreme Court Observer, 'Validity of Sub-Classification within Reserved Categories - Supreme Court Observer' (*Supreme Court Observer*, August 1, 2024) <<https://www.scobserver.in/cases/punjab-davinder-singh-validity-of-sub-classification-within-reserved-categories-case-background>> accessed 5 November 2025

Court has also reiterated the same thing in its latest judgement¹⁴, highlighting how this change in socio-economic conditions of the SC/STs deprives the truly marginalised of its benefit and calls for immediate reforms in reservation policy.

CONSTANT TUSSLE BETWEEN THE LEGISLATURE AND JUDICIARY

The judicial attempts to save the true spirit of the constitutional provisions regarding reservations were always overridden by the legislature by introducing amendments. In *Indira Sawhney* judgement, reservation was limited only to initial phase and barred from being expanded to promotions¹⁵ but the court disregarded this by bringing in the 77th amendment.¹⁶ Before the 82nd amendment, Article 335 of the Constitution provided for considering the claims of SCs and STs to public services and posts. Given that it doesn't affect the efficiency of the administration¹⁷, however the legislative amendment of this article, didn't value the vision of the framers and even the courts.^{18 19 20} and allowed the state to lower the bar for reserved communities.²¹

This shows how imperative is reforms in the reservation policy given the constant changes in constitutional provisions against the will of judiciary,

REFORMS AND SUGGESTIONS

EXCLUSION OF THE ALREADY UPLIFTED FROM THE RESERVATION

Reports suggest that SC/STs are not a single group as a whole²²; some of the castes within it are more vulnerable and in more need of reservation than others. This ignorance towards recognising the formation of the privileged within the unprivileged is detrimental towards the truly marginalised within the group and snatches away the opportunity from them to climb the ladder of status. Therefore, the government shall introduce the concept of creamy layer in SC/ST's as well and ensure that the reservation goes only to the truly unprivileged.

¹⁴ *Telegraph India*, 'Castes of SCs, STs May Not Be Homogenous in Terms of Social, Economic Status: Supreme Court' (7 February 2024) <<https://www.telegraphindia.com/india/castes-of-scs-sts-may-not-be-homogenous-in-terms-of-social-economic-status-supreme-court/cid/1998972>> accessed 5 November 2025

¹⁵ *Indra Sawhney* (n 9)

¹⁶ Mishra (n 8)

¹⁷ The Constitution of India 1950, art 335

¹⁸ Mishra (n 8)

¹⁹ *Preti Shrivastava (Dr.) & Anr vs State of Madhya Pradesh & Ors* (1999) 7 SCC 120

²⁰ Mishra (n 8)

²¹ *ibid*

²² Himanshu, 'Subclassification of SC/ST and Its Fallout' (2024) VI(V) *Indian Journal of Law and Legal Research* <<https://www.ijllr.com/post/subclassification-of-sc-st-and-its-fallout>> accessed 7 November 2025

PERIODICALLY REVIEWING AND REVISITING THE POLICY TO ENSURE IT REACHES TO THE TRULY NEEDY

A major drawback of the political class is that it generally doesn't look back at the schemes rolled out by them for the public good and completely ignores their implementation part, as can be seen in the Public Distribution Scheme.²³ So in order to ensure that the reservation truly benefits the disadvantaged and doesn't harm the principles of Article 15 and 16, there should be a periodic review of its outcomes and effectiveness in uplifting the downtrodden in the changing socio-economic and constitutional realities, even the former CJI Y.V.Chandrachud has stressed upon the need for timely reviews of the scheme in one of his judgements.²⁴ This practice of reviewing a scheme would unfold the real picture and settle down the debate regarding, who truly benefits from the reservation, the marginalised or the elite within the backward communities.²⁵

INTRODUCING CAPACITY BUILDING INITIATIVES TO PUT THE DISADVANTAGED ON EQUAL FOOTING

The right way to uplift someone is not by lowering down the standards for them but by empowering them, Pandit Nehru²⁶ and the chairman of the drafting committee shared this very vision for reservations. We can empower the disadvantaged by launching several capacity building schemes which will lead to their upliftment. For this purpose we can learn from the world on how to tackle this problem.

THE BRAZILIAN MODEL TO EXPAND THE OUTREACH OF EDUCATION IN THE MARGINALISED COMMUNITIES

Government should decentralise the authority of decision making in schools from the state to individual school management and parents, as done in Brazil²⁷ in order to curate the school curriculum as per the needs of different marginalised communities, which will in turn increase the access of education in marginalised communities, just like it did in Brazil.²⁸

²³ Shourie (n 3) 160

²⁴ *K.C. Vasanth Kumar & Another vs State Of Karnataka* (1985) SCC 714

²⁵ Shourie (n 3) 160

²⁶ Shourie (n 3) ix

²⁷ World Bank, 'Mexico Improves Access and Quality of Education for Marginalized Communities' (World Bank, 1 April 2015) <<https://www.worldbank.org/en/results/2015/04/01/mexico-improves-access-and-quality-of-education-for-marginalized-communities>> accessed 7 November 2025

²⁸ *ibid*

(B-BBEE) POLICY OF INCENTIVE DRIVEN INCLUSION IN THE ECONOMY

Government should incentivise the businesses and the corporates for conducting business with and for giving out credit to the marginalised people, as seen in the Broad Black Based Economic Environment scheme of South Africa.²⁹ This policy will lead to the inclusion of the marginalised in the economy and help in building their economic and enterpreneurial capacity, as can be seen in South Africa.³⁰ Subsequently resulting in their upward social mobility,

CONCLUSION

The reservation policy, originally thought of as a great constitutional tool to undo historical injustices and ensure substantive equality, has reached a critical turning point. As this essay argues, the policy's effectiveness is now undermined by an internal paradox: its benefits are concentrated among an already-privileged class within the reserved classes, snatching opportunities from those who are most in need. To uphold the original promise of the Constitution, major reforms are needed in the policy.

This thought to return to the original ideals of the constitution and it's makers, demands a very strategic approach. It requires the mandatory and gentle introduction of the 'creamy layer' concept to SC/STs to ensure assistance reaches to the right class, the establishment of a periodic, objective review mechanism to ensure the policy remains effective in India's evolving socio-economic realities; and a shift towards capacity-building initiatives, inspired by international ways of making people empowered.

This is more than an administrative change, it is a fundamental shift. It will transform India's domestic policy which narrowed down too much on history into a modern, dynamic promoter of equity, directly aligning it with the global agenda. This action realizes the highest ambition of both the Constitution and Sustainable Development Goal 10: Reduced Inequalities

²⁹ Tina, 'How B-BEE Compliance Affects Tendering in South Africa: Boost Your Bid Success Today' (eTender SA, 23 January 2025) <<https://etendersa.co.za/how-b-bbee-compliance-affects-tendering-in-south-africa>> accessed 8 November 2025

³⁰ Neva Makgetla, *The Impacts and Outcomes of BBBEE: A Preliminary Assessment* (TIPS Working Paper, January 2021) <<https://tips.org.za/research-archive/trade-and-industry/economic-regulation/item/3965-the-impacts-and-outcomes-of-bbbee-a-preliminary-assessment>> accessed 8 November 2025