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RESERVATION POLICY OF INDIA: IS IT AN AFFIRMATIVE ACTION?

AUTHORED BY - ISHITA SINGH¹

Introduction

Reservation Policy refers to reserving a certain number of seats for Schedule Caste (SCs), Schedule Tribes (STs), Other Backward Classes (OBCs), Economically Weaker Sections, or Disabled people in various fields such as Educational Institutions, Government Jobs, Legislature, and Others (scholarships, land allotments, etc.) This Reservation is a kind of Favourable and Positive discrimination because these sections have faced injustice for a long time due to their caste.²

This article is about the study of historical evolution, constitutional provisions, current reservation policy and misuse of power.

Historical Evolution

Pre-Independence

In the early 19th century, the caste system divides Hindus into four categories i.e. *Brahmins*, *Kshatriyas*, *Vaishyas*, and *Shudras*. In this caste system, *Brahmins* were considered to be on top and they used to work as teachers and priests. *Kshatriyas* were considered second and they were the rulers and warriors of the kingdom. *Vaishyas* were in third place and they were involved in trading and farming. The *Shudras* were considered the lowest and they used to do inferior work like cleaning and sweeping. The caste system leads to discrimination and social backwardness of the people and that's the main cause behind the evolution of reservation policy in India.³

The idea of caste-based reservation was originally developed by William Hunter and Jyotirao Phule in 1882, but the reservation system that exists today was introduced in 1933 through the

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² *Reservation in India*. (July, 2019). Drishti IAS. <https://www.drishtias.com/to-the-points/Paper2/reservation-in-india>.

³ The Concept, origin and evaluation of reservation policy in India. (August, 2021). <https://www.legalserviceindia.com/legal/article-6526-the-concept-origin-and-evaluation-of-reservation-policy-in-india.html>

'Communal Award' by British Prime Minister Ramsay Macdonald. The Communal Award made provisions for separate electorates for Europeans, Anglo-Indians, Indian Christians, Muslims, Sikhs, and Dalits. Later, the Poona Pact agreement was signed between Mahatma Gandhi and Dr. B.R. Ambedkar and it was decided that there would be a single electorate with certain reservations in it.⁴

In 1942, 8.5 percent reservation was recommended for SC in civil services by the Viceroy's executive council.

Post-Independence

After Independence from British rule, when our country was divided into India and Pakistan, most of the Muslims migrated to Pakistan and Hinduism became the most prominent religion in India. There was a lot of social discrimination based on the caste system at that time, so the provisions of reservation were introduced in the Constitution of India for the socially backward classes.⁵

In 1950, the Constitution of India provided reservations to SCs and STs, and by 1991, OBC was also included by the recommendation of the Mandal Commission, which recommends 27 percent government job reservation for OBCs.

In 1992, the hon'ble Supreme Court of India laid down several landmark propositions such as a 50 percent threshold in reservations and struck down the 10 percent government job reservation for an economically backward class given by the Narasimha Rao government.

The recent amendment of Article 15 of the Constitution of India in 2019, allows the government to make special provisions for the advancement of economically weaker sections and allow reservations in educational institutions.⁶

⁴AnuMeena Care Foundation (September, 2023) *Reservation in India: historical evolution, constitutional provisions, and ongoing debate*.<https://www.linkedin.com/pulse/reservation-india-historical-evolution-constitutionalprovisions#:~:text=Historical%20Background%20%3A,British%20Prime%20Minister%20Ramsay%20Macdonald>.

⁵*The Concept, origin and evaluation of reservation policy in India* (October, 2018).
<https://www.legalserviceindia.com/legal/article-6526-the-concept-origin-and-evaluation-of-reservation-policy-in-india.html>.

⁶*History of reservation in India* (November, 2019).<https://www.goimonitor.com/story/history-reservation-india>.

Constitutional Provisions

There are certain provisions in the constitution of India for the reservation of the members of SC/ST and socially or economically backward classes and both the central and state government can reserve seats in public services for these members.

Article 15(4) states that the state can make special provisions for the advancement of socially and educationally backward classes or for SCs and STs. In *M.R. Balaji vs State of Mysore (1962)*⁷, The Mysore Government reserves the seats in medical and engineering college for backward and more backward classes, schedule caste and scheduled tribes under article 15(4).

Article 15(5) states that the state can make special provisions for the advancement of socially and educationally backward classes or for SCs and STs related to their admission in educational institutes, whether they are private institutes or aided or unaided by the state, other than minority educational institutes. *Kumari K.S. Jayasree & Anr. vs State of Kerala & Anr. (1976)*⁸, in this case Hon'ble High Court of Kerala held that there are two factors for the determination of backwardness, caste and poverty and focuses on income criteria but the Hon'ble Supreme Court of India finding the income test unconstitutional.

Article 16(4) states that state can make provisions for reservation of appointments or posts for backward classes. *Indira Sawhey vs UOI (1993)*⁹, This case is also known as mandal commission case and in this case Hon'ble Supreme Court held that the Union government may reserve 27% of government jobs for backward classes and exclude the creamy layer from this reservation policy under article 16(4).

The reservation policies shall only apply on the initial appointments not for further promotions and also the seats reserved should not exceed 50%.

Article 16(4A) states that the state can make provisions for reservation in the matter of promotion to any class or classes of posts in the service under the state for the SCs and STs.

Article 16(4B) states that Unfilled Reserved Vacancies from a year meant for appointment under

⁷ (1962) SCC OnLine SC 147

⁸ (1976) 3 SCC 730

⁹ (1996) 6 SCC 506

clause (4) or (4A) of Article 16 can be considered as a separate class of vacancies to be filled in subsequent years & the Backlog vacancies won't be added to regular Reserved Vacancies of the current year for determining 50% ceiling on reservation. In *M. Nagaraj vs Union of India (2006)*¹⁰, the Supreme court held that the reservation provision does not exceed the reservation limit of 50% and exclude creamy layer also.

Insertion of Article 16 (4A) and article 16 (4B) by the amendments held valid because they do not change the structure of article 16 (4) and these provisions are enabling in nature.

The State is not bound to make provisions for promotion. however, the State makes such laws for the advancement of SCs and STs.

Article 46 states that the state shall protect SCs and STs from social injustice and exploitation and promote their educational and economic interests. In *State of Madras vs Smt. Champakaran Dorairajan (1951)*¹¹, Madras reserved seats for the weaker section for admission into Government medical and engineering colleges and it was challenged as unconstitutional as it violates the fundamental right that guarantees equality and the Apex court also held that the Directive Principle of state policy cannot overrule the fundamental rights.

Article 243D states that the reservation of seats in panchayats for SCs, STs and women and one-third of the seats shall be reserved for women who belongs to SCs or STs.

This provision also provide reservation to SCs, STs and women for offices of the chairperson in the panchayat at the village and one third of the offices of chairpersons in panchayat shall be reserved for women.

Article 330 states that Reservation of seats in Lok Sabha for SCs and STs and the number of seats reserved in any state union or territory shall be proportional to their population in that state union or territory, as compared to the total population.

The number of seats reserve for ST in the autonomous district of Assam shall not be less than the proportion of the schedule tribe population as compared to the total population of that state.

¹⁰ (2006) 8 SCC 212

¹¹ (1951) SCC 351

Article 332 states that Reservation of seats in legislative assembly of every state for SCs and STs and it shall be proportionate to the total number of seats in the assembly as the population. *Baijnath vs Govt. of Madhya Pradesh (1979)*¹², In this case court held that section 29 of The Municipality act 1961 says that the reservation for SC and ST should be fixed in accordance with article 330 and 332 of Constitution of India. In this act there was a specific provision for reservation of seats for SC and ST in accordance with article 330 and 332 of the Constitution of India.

The Present Status of Reservation in India

Once the concept of reservation was evolved, The Indian Parliament routinely extended this with time to time and introduced reservation for other sections as well.

The Hon'ble Supreme Court of India held that the reservation cannot exceed 50%, the Central Government reserves 27% seats for higher education and in most of the States reservation is 50% but in certain states such as rajasthan have 68% reservation.¹³

The below table is the comparative data of the reservation given to applicants of different classes in educational institutions or government jobs:

CATEGORY	RESERVATION (%)
Scheduled Caste (SC)	15%
Schedule Tribe (ST)	7.5%
Other Backward Class (OBC)	27%
Economically Weaker Sections (EWS)	10%
Persons with Benchmark Disabilities	4%

Almost 60% reservation is given to SCs, STs, OBC and EWS etc. in Government jobs and Educational institutions.¹⁴

¹² (1979) MPLJ 679

¹³Raj, M.S.Y.S. and Gokulraja, M.P., 2015. An Analysis of Reservation System in India. *International Journal of Research (IJR)*, ISSN,(2348-6848).

¹⁴Law Insider IN (2021) *What is the current structure of Reservation in India?* <https://www.lawinsider.in/columns/what-is-the-current-structure-of-reservation-in-india>.

Misuse of Reservation Policies

The makers of the Constitution had a pure intention behind including reservation provisions into the constitution but now reservation is deviating from its primary purpose and people are misusing this privilege for their benefit like:

India is a country in which most of the population is showing themselves economically weak by making false documentation such as caste certificates and taking advantage of government policies.

The other misuse is that the political parties use reservation policies for vote bank politics and this is unfortunate that such acts in the name of election are not barred by the Representation of People Act, 1951 and it had become a normal feature of politics to manipulate the sentiments of a caste or a class on the name of election by political parties by promising them to aid economically as well as socially. As a result, the people who are actually in need and economically and socially backward failed to take benefits from these policies.¹⁵

Conclusion

In India reservation policy is a long-in-the-tooth and emerging concept. The primary purpose behind this policy is to uplift the lower section of society who is socially, economically and educationally backward so that they get a fair opportunity and through this many people came forward and take the advantage and it increases the number of people from backward section in various decision making procedures resulting in equal representation from different sections of the society but, somewhere it has deviated from its primary purpose because of the corruption and misuse of power .

So, the legislation has to amend certain provisions of law so that the enforceability of such provisions can be effective in the society.

¹⁵Tnn (2021) 'Parties misuse reservation policy for political gain, AG tells Supreme Court,' *The Times of India*, 19 March. <https://timesofindia.indiatimes.com/india/parties-misuse-reservation-policy-for-political-gain-ag-tells-supreme-court/articleshow/81580143.cms>.