

# Reservation System: A Push Back to Country

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## Abstract:

This study has been undertaken to understand the reservation system in India. Here author trying to discuss the historical background of reservation system and its present position in India; author also discussed the judicial approach towards the reservation system. Author mainly paid concerned towards the lacuna in present reservation system and its solutions.

## Introduction:

The reservation system in India comprises a series of action measures, such as reserving access to seats in the various departments like- legislature, government jobs, & educational institution. The social inequality in India is represented by the scheduled castes, scheduled tribes and other backward castes. This system of reservation in India is the result of historic, societal and cultural reason. The reservation system in India was introduced due to inequality and discrimination faced by the communities like Sc & St and to give these communities a place in the society. The primary objective of the present day indian reservation system is to enhance the social and educational status of underprivileged community.<sup>1</sup>

However the constitution of India also promises to provide equality to these communities. Article 17 of the constitution of India states that “untouchability” is abolished its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law<sup>2</sup>.

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<sup>1</sup>Qazalbash Yawer, Commentary On The Schedule Castes And Scheduled Tribes (Prevention Of Atrocities) Act 1989, page no.-3,( Universal law publisher,2013).

<sup>2</sup>J.N. Pandey, constitutional law of India, p.n. - 182 (Central law agency, Allahabad, 2016).

The constitution also obligates the state to make special provision for the betterment of the schedule caste and schedule tribes and other backward classes.

India being a developing nation is currently facing many challenges and the reservation system being one of them.

The biggest question that lies in front of us is whether implementing this reservation system has really helped the downtrodden? The current scenario clearly depicts that the ‘lower’ castes are still discriminated in their daily lives. To uproot casteism it is important that we fight the reservation system which alone will lead us to development, competency, equality and unity.

At present this reservation system creating lots of problem because the reservation system is purely based on the caste system and not paying attention towards the people who is economically backward.

Presently the system of reservation is not serving its goal because the classes which is getting fruit of reservation is well enough now they have the good position in the community, they are also having a good economical status. So the reservation system should be amended and it should be provided on the basis of economical situation of the person.

## **Historical Background:**

### **Before Independence<sup>3</sup>**

The root of reservation was traced back when India was not independent; the system of reservation was represented as quota, which favoured certain castes and communities in several areas of British India. The demand for quota was made by the people at various intervals. For example in 1882 and 1891. Shahu, the Maharaja of the princely state of Kolhapur, introduced reservation in favour of non-Brahmin and backward classes, much of which came into force in 1902. He provided free education to everyone and opened several hostels to make it easier for them to receive it. He also tried to ensure that people thus educated were suitably employed, and he appealed both for a class-free India and the abolition of untouchability. His 1902 measures created 50 per cent reservation for backward communities.

The British Raj introduced elements of reservation in the Government of India Act of 1909 and there were many other measures put in place prior to independence<sup>4</sup>. A significant one emerged from the Round Table Conference of June 1932 ,

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<sup>3</sup> supra note 1 p. no.6

<sup>4</sup> Government of India Act, 1909

When the Prime Minister of Britain, Ramsay Macdonald, proposed the Communal Award, according to which separate representation was to be provided for Muslims, Sikhs, Indian Christians, Anglo-Indians, and Europeans. The depressed classes were assigned a number of seats to be filled by election from constituencies in which only they could vote, although they could also vote in other seats.

Mahatma Gandhi fasted in protest against it but many among the depressed classes, including their leader, B. R. Ambedkar, favoured it. After negotiations, Gandhi reached an agreement with Ambedkar to have a single Hindu electorate, with Dalits having seats reserved within it.

### **After Independence<sup>5</sup>**

After independence the legislature of India had taken the some major initiatives in favour of the scheduled caste and scheduled tribes and other backward classes. The common form of problem faced by these communities on the time of independence was untouchability which was removed by the constitution of India.

Initially the policy of reservation was designed as an adhoc policy for ten years. But it is continuing and getting extension after the end of every ten years. At present the beneficial class of this policy is the main vote bank for political parties, so it was extended again & again by the politicians for their benefit.

In 1954 for the first time the ministry of Education suggested that 20% seats of the educational institution should be reserved for the SCs, & STs. In 1982 it was specified that 7.5% to 15% of vacancies in public sector and Government-aided educational institutes should be reserved for these communities<sup>6</sup>.

The Constitution of India states in article 15(4): "Nothing in [article 15] or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes".<sup>7</sup>

Article 15(2) of the constitution of India states that nothing in this or in sub clause(g) of clause(2) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or of the scheduled caste or the scheduled tribes in so far as such special provisions relate to their admission to educational institution, including private educational institutions,

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<sup>5</sup> supra note 1 p.no.10

<sup>6</sup> Ministry of Education's Report, 1954

<sup>7</sup> Supra note 2 p.no.136.

Whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

Article 46 of the Constitution states that "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".<sup>8</sup>

The Supreme Court of India ruled in 1992 states that reservations could not exceed 50 %; anything above which it judged would violate equal opportunity as guaranteed by the Constitution. It thus put a control on reservations.<sup>9</sup>

## **Present Position of Reservation system:**

However in today's time one of the major roadblocks to this equality is the Reservation system. India being a developing nation is currently facing many challenges and the reservation system being one of them. The biggest question that lies in front of us is whether implementing this reservation system has really helped the downtrodden. The current scenario clearly depicts that the 'lower' castes are still discriminated in their daily lives. To uproot casteism it is important that the reservation system should be amended which alone will lead us to development, competency, equality and unity.

At present all the major castes are demanding for reservation. There are so many examples present which results into damaging the public peace or creating violence which endangers to the life of the people.

As it clear by the recent example i.e. Jaats who are making demand for reservation, which results into endangering the life of other people, they also committed lots of brutal crime. Another example is demand of reservation by Patidars of Gujarat; the same result came from this demand as came in the demand made by Jaats.<sup>10</sup>

Presently reservation has become the hot topic to discuss because the political parties are using it as a tool to boost their vote bank. The practice of reservation is a big threat to the development of our nation. This all is

happening because a deserving person is not getting an opportunity, who can play a major role to develop our nation.

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<sup>8</sup> Supra note 1 p.no.-205

<sup>9</sup> *Indra Sawhney v. Union of India* (1992)

<sup>10</sup> Expressed in The Hindu Newspaper, Dated 10 Feb 2016

Currently reservation has been classified on the basis of caste which is creating lots of problem because a person who belongs to SC & ST classes is no more harassed by the society. They have their status in the society, so there is no more problem of discrimination being faced by the community of SC & ST.

The government of India along with the citizens is trying to amend the old system of reservation which is based on the caste system and trying to make the reservation policy in the manner that it should be granted on the basis of economical situation of the people

Supreme Court in one of the case namely; ***Balaji v. State of Mysore***<sup>11</sup> it was held that ‘*caste of a person cannot be the sole criteria for ascertaining whether a particular caste is backward or not. Determinants such as poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. The court further held that it does not mean that if once a caste is considered to be backward it will continue to be backward for all other times.*

*The government should review the test and if a class reaches the state of progress where reservation is not necessary it should delete that class from the list of backward classes.*

## Judicial Approach towards Reservation

***In Indra Sawhney v. Union of India***<sup>12</sup> popularly known as the Mandal case, the Constitution Bench of the Supreme Court had held:

It is well to remember that the reservation under Article 16(4) do not operate like a communal reservation. It also states that some members of reserved categories i.e. SC & ST can get selected in open competition on the basis of their own merits, then they should not be counted against quota reserved for SC & ST: they will be treated as open competition candidate.

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<sup>11</sup> Air 1965 sc, 478

<sup>12</sup> Air 1992 sc 477

***In R.K. Sabharwal v. State of Punjab***<sup>13</sup>, the Constitution Bench of the Supreme Court considered the question of appointment and promotion and roster points vis-a-vis reservation and thereby held:

“When a percentage of reservation is fixed in respect of particular cadre and the roster indicates the reserve point, it has to be taken that the posts shown at the reserve points are to be fixed from amongst the members of reserve categories and the candidate belonging to the general category are not entitled to be considered for the reserved for the reserved posts. On the other hand the reserves category candidate can compete for non-reserved posts and their number cannot be taken into consideration for working out the percentage of reservation.

No general category candidate can be appointed in the vacant place of reserved category candidate.

The Supreme Court also states that a reserved class candidate can be appointed or promoted against general seats in the state services and it may be a relevant for the state government to

Review the question of continuing reservation for the said class but so long as the instruction/rules providing certain percentage of reservation for backward classes are operative the same have to be followed. Despite any number of appointees/ promotees belonging to the backward classes against the general category.

***In Union of India v. Virpal Singh Chauhan***<sup>14</sup> the Supreme Court held that while determining the number of posts reserved for SC and ST, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

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<sup>13</sup>Air 1995 sc 1371

<sup>14</sup>Air 1996 SC 448, 1995 SCC (6) 684

***In Ritesh R. Sah v. Dr. Y.L. Yamul***<sup>15</sup> the question was whether a reserved category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the reserved category or if the candidate should be treated as a general candidate. On March 25, 1994The court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for schedule castes or any other reserved category.

***In the case of Jitendra Kumar Singh v. State of UP***<sup>16</sup> the Supreme Court was considering the UP Public Services (Reservation for Scheduled Castes and Scheduled Tribes) Act, 1994 Act (“UP Act”) and government order dated

The order stated: “If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies.

It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category.” The Supreme Court thereby stated that a bare perusal of the order implies that there is no express bar in the UP Act for SC/ST/OBC candidates being considered for posts under the general category. It held:

“From the above it becomes quite apparent that the relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The state has not treated the relaxation in the age & fee as relaxation in the standard for selection, based on the merits of the candidate in the selection i.e. Main Written test followed by Interview.

Therefore such relaxation cannot deprive a reserved category candidate to get consider himself as a general category candidate on the basis of merits of the competitive examination.

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<sup>15</sup> Air 1996 SC 1978

<sup>16</sup> Civil appeal no. 74 of 2010.

### ***In Gujarat Public Service Commission v. Parmar Nilesh Rajendrakumar*,<sup>17</sup> the Gujarat high court:**

After considering the reservation policy applicable in the state of Gujarat contained in circular date 29-01-2000 and 23-07-2004 and relevant statutory provision i.e. recruitment rules, 1967, 2009 & 2010, held that all those candidates belonging to the reserved category, if they avail the benefit of age limit relaxation then it is presumed to be relaxation in the standard, and therefore not entitled to claim the authority on general class vacancies.

***In Deepa EV v. Union of India***<sup>18</sup> the Supreme Court, held in its judgment that candidates from the “reserved” category (SC/ST/OBC) cannot claim seats in the general category in any case. It also states that 50% of all seats are completely “reserved” for the general category, and no SC/ST/OBC person can have a claim on such seats, even on the basis of merit.

The reason behind the judgement was that “there is an express bar for the candidates belonging to SC/ST/OBC who have availed relaxation for being considered for General Category candidates.” The court was reading the existing rules and proceedings of Department of Personnel and Training, which stated that: When a relaxed method is opted for selecting SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.

## Lacunae of the Present Reservation System<sup>19</sup>

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<sup>17</sup> Civil appeal no.1480 of 2013.

<sup>18</sup> civil appeal no. 3609 of 2017

<sup>19</sup> Explained in youth ki awaj

1. The policy of reservation was designed as an adhoc policy for ten years. But it is continuing and getting extension after the end of every ten years. It is creating some sort of frustrations among the high caste people as they are deprived of opportunities either to get a job or to take admission in any educational institution due to the reservation policy.

2. The Reservation Policy actually has created a “new class of vested interest” in the society. They have earned permanently the benefit of the reservation policy. Thus, the policy has created the psychology of dependency among them.

3. The policy of reservation is contrary to the principle of equality. Equality presupposes equal treatment to all and equal protection of all people. But special privileges and extra protection to certain class of people is against the policy of equality. It violates the very spirit of democracy.

4. The policy of reservation of jobs is violating the efficiency and merit system of recruitment. While the meritorious and talented persons are depriving of their due share of appointment, the authority is forced to make compromise with quality.

5. The policy of reservation has given rise to the politics of casteism in Indian political system. The over consciousness of caste identity is obstructing the process of national integration. Moreover, castes have been used as instruments for maintaining the vote banks of different political parties.

6. They are competing among themselves for enhancing the percentage of reservation for the weaker section more and more. When the reservation quota increased to 70%, no doubt the high caste people would be minorities in future demanding reservation for themselves.

## **Solutions to Improve Reservation Policy**

1. Reservation should be purely made on the basis of the economical conditions of the applicant and nothing else. The kind of reservation policy that our government currently follows does nothing but divide the society into different sections.

2. Instead of introducing reservations for the backward classes what is required is to bring about revolutionary changes in our education system at the grass-root level. When proper education is not provided to children belonging to such categories during the primary stage itself then on what basis are the reservations provided at a subsequent stage.

3. Reservations on the basis of caste and not on the basis of condition are bad and unacceptable.

Fair and just reservations to uplift the people with poor conditions of life, those who don't have meals to eat, clothes to wear and no home to live in. They shall be made on the basis of factors such as gender as women are more disadvantaged than men since primitive times, domicile, family education, family employment, family property, family income and if any disabilities and traumas. The process of reservation should be such that it filters the truly economically deprived individuals and bring them all to justice.

4. The citizens of india have to take initiative in a peaceful manner to avoid the practices played by the politic parties for their benefit and convinced them to make a policy of reservation which is fruitful to the needy people and not to the people who because of the benefits provided by the reservation system are well worsted now.

## **Conclusion**

The reservation system was introduced by the Dr. B.R. Ambedkar in our constitution, it was introduced because on that time some backward classes were facing problem of discrimination and to resolve this problem our constitution has suggested the solutions given under Article 17.

At present the system of reservation which was introduced for the benefit of the weaker section is creating lots of problem, because the policy of reservation is not serving its goal.

The policy still paying attention towards some classes like- SC & ST, but the problem is that the current policy of reservation is not paying attention towards the people who are in real need of this kind of help.



So the policy of reservation should be based on should be purely made on the basis of the economical conditions of the applicant and nothing else. The kind of reservation policy that our government currently follows does nothing but divide the society into different sections.

If we don't stop the current practices of reservation policy then it could be a threat to our Nation's development . So I can quote it as

“Reservation System: A Push Back to Country”.

