

## **THE WAVES OF RESERVATION ON EDUCATION, EXAMINED WITH EXACT TO INDIA'S CONSTITUTION**

**Pradip Kumar Kashyap,**

Assistant Professor of Law, Teerthanker Mahaveer University (Moradabad).

**Yogesh Chandra Gupta,**

Assistant Professor of Law, Teerthanker Mahaveer University (Moradabad).

**Abstract:** As a kind of affirmative action, reservation ensures that underrepresented groups have equal access to public institutions including universities, government agencies, and legislatures. Every Indian citizen has the same rights under the law. However, certain groups in society have always lagged behind others in terms of social and scholastic development. The ills of the caste system and the caste hierarchy were major factors. For the State to make up for past wrongs committed against these populations, it must provide a helping hand in the form of social and economic development programs.

This study's approach to research is multifaceted. History, theory, and analysis abound in this work. Primary and secondary sources are being used to compile the data. Books, journals, and magazines found in public libraries should be relied upon heavily.

**Keywords:** Reservation, Discrimination, Constitution, Law, Untouchability.

### **Introduction:**

When our country achieved independence, a large section of the society was leading a miserable life. They had been exploited for ages and the false beliefs in the society at that time further worsened their condition. The government of that day introduced the concept of reservations so that there would be equal progress of all sections of the society. Over the years, the condition of the people of reserved categories has improved at a fast rate while that of the middle class, general or open category people has remained more or less the same. Provision of Reservation was implemented for the SC/ST and OBC after the enforcement of Constitution of India. In the beginning, it was 15% and 7.5% for the SC and ST respectively. But in 1991 after the Mandal Commission, 27% reservation was provided to the OBCs. In 1995, 3% of reservation was allocated to the other weaker section i.e., physically disabled in jobs. After a long struggle by the teachers for SC/ST reservation in universities and colleges, the same was allowed in 1997, after 70 years of Independence. Apart from it, after the Supreme Court order, 3% reservation in jobs of universities and colleges was provided to the physically challenged in the year 2005 and to OBCs in 2007.

### **Educational Provisions in India's Constitution:**

The Constitution makes the following provisions under Article 45 of the Directive Principles of State Policy that, "The state shall endeavor to provide within a period of ten years from the commencement of this Constitution, for free and compulsory Education for all children until they complete the age of fourteen years." The expression 'State' which occurs in this Article is defined in Article 12 to include "The Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." It is clearly directed in Article 45 of the Constitution that the provision of Universal, Free and Compulsory Education becomes the joint responsibility of the Centre and the States.

Article 30 of the Indian Constitution relates to certain cultural and educational rights to establish and administer educational institutions.

- All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

- The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Article 29(1) states “Any section of the citizen, residing in the territory of India or any part there of having a distinct language, script or culture of its own, shall have the right to conserve the same.”

Article 350 B provides for the appointment of special officer for linguistic minorities to investigate into all matters relating to safeguards provided for linguistic minorities under the Constitution.

Article 21A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years, in such a manner as the State may determine. Thus, this provision makes only elementary education a fundamental right and not higher or professional education

Article 15, 17, 46 safeguard the educational interests of the weaker sections of the Indian Community, that is, socially and educationally backward classes of citizens and scheduled castes and scheduled tribes. Article 15 states, “Nothing in this article 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.”

Under Article 46 of the Constitution, the federal government is responsible for the economic and educational development of the Scheduled Castes and Scheduled Tribes

It states. “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 Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.” It is one of the Directive Principles of State Policy.

Article 29(1) states “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them.

The Fundamental Rights of the Indian Constitution has also adopted the fourfold ideal of justice, Liberty, Equality and Fraternity. Our Constitution laid down that in the eyes of law, everyone should have an equal status, to no one the justice be denied, everyone should have liberty of thought, expression.

The fundamental right of equality clearly signifies that in the eyes of law no distinction can be made on the basis of any position, caste, class or creed. Side by side the right of equality of opportunities to all is also provided. The equality of opportunity is meaningless, unless there are equal opportunities for one’s education.

The well-known Kothari Commission, 1964-66 recommended that Central Government should undertake the responsibility in education for the equalization of educational opportunities with special reference to the reduction of inter-state differences and the advancement of the weaker section of the community.

Parliament has the exclusive rights to enact legislation in respect of institutions and Union Agencies mentioned in entries 63, 64, 65, and 66 of List.

Article 239 of the Constitution states, “Save as otherwise provided by Parliament by Law, every Union Territory shall be administered by the president acting to such extent as he thinks fit through an administrator to be appointed by him with such designation as he may specify.

Entry 13 of the Union List reads. Participation in international conferences, associations and other bodies and implementing decisions made there at.

### **Indian Constitution and Reservation:**

The Constitution provides certain special provisions to the SCs, STs, women, child & economical weaker section to protect their educational and economic interest. These provisions are known as ‘protective discrimination policy’. They are related to political reservations provisions are provided under Articles 330 and 332, reservation of seats in educational institutions provisions are provided under Articles 15(4), 29, 46 and reservation of government jobs provisions are provided under Articles 16(4), 320(4), 333 and 335. The Constitution provides equality before law and positive legal measures against the disabilities based on birth provisions are provided under Articles 15(2); 29(2), 35, 244 and 371(a).

**SC/ST Reservation:**

The objective of providing reservations to the Scheduled Castes (SCs), Scheduled Tribes (STs) in services is not only to give jobs to some persons belonging to these communities. It basically aims at empowering them and ensuring their participation in the decision-making process of the State. Besides, the state is also keen to end practices such as untouchability. 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)). There is no concept of 'creamy layer' with respect to SC/ST reservation. This means that irrespective of the income status or the government posts held by the parents, children of SC/ST parents will get SC/ST Reservation.

**OBC Reservation:**

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. 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).

In the very recent case of *Janhit Abhiyan v Union of India (2022)*, the Supreme Court in a 3:2 verdict was in favour of 10% reservation for EWS over and above the 50% reservation bracket for SCs and STs. The primary contentions raised in this case were violation of the Right to equality of all citizens and violation of the basic structure of the Constitution. Additionally, the bracket for reservation had been fixed by the Mandal Commission at 50% and the amendment was increasing it to 60%.

**Committees and Commissions on Reservation Issues:**

- a) **1882** – Hunter Commission was appointed. Mahatma Jyotirao Phule made a demand of free and compulsory education for all along with proportionate reservation/representation in government jobs.
- b) **1933**- British Prime Minister Ramsay Macdonald instituted the reservation policy in 1933 under the name "Communal Award."
- c) **1953**-Kalelkar Commission was established to assess the situation of the socially and educationally backward class. The report was accepted as far as Scheduled Castes and Scheduled Tribes were concerned. The recommendations for OBC's were rejected.
- d) **1979**-Mandal Commission was established to assess the situation of the socially and educationally backward. The commission didn't have exact figures for a sub-caste, known as the Other Backward Class (OBC), and used the 1930 census data, further classifying 1,257 communities as backward, to estimate the OBC population at 52%.In 1980, the commission submitted a report, and recommended changes to the existing quotas, increasing them from 22% to 49.5%.In 1990, the Mandal commission recommendations were implemented in Government Jobs by Vishwanath Pratap Singh. Student Organisations launched nationwide agitations. Rajiv Goswami, a Delhi university student attempted self-immolation. Many students followed suit.
- e) **1991**-After Mandal Commission's recommendations, OBCs were also covered by the reservation
- f) **2003**- The Sachar Committee headed by Justice Rajinder Sachar, and including Sayyid Hamid, Dr. T.K. Ooman, M.A. Basith, Dr.Akhtar Majeed, Dr.Abu Saleh Shariff and Dr.Rakesh Basant was appointed for preparation of a report on the social, economic and educational status of the Muslim community of India. Dr.Syed Zafar Mahmood was the civil servant appointed by the

PM as Officer on Special Duty to the Committee. The committee submitted its report in the year 2006

- g) **2007**-Under the All-India Quota Scheme, 15% of the seats were reserved for members of the SC category, and 7.5% for members of the ST category
- h) **2019**- Introduction of the 103rd Constitutional Amendment Act (EWS)
- i) **2021**- For undergraduate and graduate medical/dental programmes beginning with the 2021–22 academic year, the Government of India has agreed to grant 27% OBC and 10% Economically Weaker Section reservations under the All-India Quota Scheme

### **The Present Eminence:**

After introducing the provision for reservation once, it got related to vote bank politics and the following governments and the Indian Parliament routinely extended this period, without any free and fair revisions. Later, reservations were introduced for other sections as well. The Supreme Court ruling that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. The central government of India reserves 27% of higher education, and individual states may legislate further reservations. Reservation in most states is at 50%, but certain Indian states like Rajasthan have proposed a 68% reservation that includes a 14% reservation for forward castes in services and education.

However, there are states laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69% and is applicable to about 87% of the population in the state of Tamil Nadu.

### **The Effects of Reservation on Education:**

Article 15(4) empowers the State to make special provisions for the advancement of the SC/STs. Under this provision, the State has reserved seats for SC/ST students in educational institutions in colleges and universities, including technical, engineering and medical colleges run by the central and state governments and government aided educational institutions. These provisions are supported by a number of financial schemes which include scholarships, special hostels for SC/ST students, concession in fees, grants for books, remedial coaching, etc. In the case of admission in educational institutions, the availability of assessments about the impact of reservation in higher education is limited. The limited evidence indicates that the student enrolment has increased under reservation. In 1981, one estimate put the proportion of graduate students around 3.3 per cent for SCs and 0.8 per cent for STs – which is highly disproportionate to the actual population share of SC/STs. By the late 1990's, the proportion of SC students to the total number of students enrolled rose to 7.8 per cent and for the STs, it rose to 2.7 per cent. This is nevertheless low if we look at the actual share of the SC/ST population to the total population – 16 per cent and 8 per cent respectively. Hence, it is difficult to estimate how many SC/ST students have benefited by the reservation policy. One estimate indicates that in 1996/97, roughly 5, 10,000 SC students and 1, 80,000 ST students were enrolled. Of these, roughly about 2, 00,000 students from both the categories may have been enrolled in desirable programmes in higher education where reservation matters. Weiss Kopf (2005) estimates conclude that about a third of SC/ST students enrolled in universities were pursuing higher education in desirable programmes because of the reservation policy. This implies that out of the approximately 7,00,000 SC/ST students attending universities, only a portion of them is enrolled into programmes of their choice; SC/STs obtain a much lower share in preferred institutions. In many cases, despite reservation being the norm, it is accepted only in theory and defies implementation of any sorts. Therefore, there is a substantial amount of catching up to do in order to reach the required level of 16 per cent and 8 per cent reservation for SC/STs.

### **Reservation Law and Judicial Opinions:**

*M.R. Balaji v. State of Mysore AIR 1963 SC 649* the court held that social and educational backwardness not the sole test for determining reservation and later in *State of U.P v. Pradip Tondon AIR 1975 SC 563* the court also held that poverty is not the sole criteria for backwardness. In *State of Kerala v. N.M Thomas AIR 1976*, the Supreme Court argues that Article 16(4) of the Indian Constitution is not an exception to Article 16(1) to be interpreted narrowly but rather clarifies and explains that classifications based on backwardness are permissible under Article 16(1)). The Thomas

Court concludes that “the quality and concept of equality is that if persons are dissimilarly placed, they cannot be made equal by having the same treatment.” In *Indra Sawhney v. Union of India AIR 1993 SC 477* the Court holds that Article 16(4) of the Indian Constitution was not an exception to 16(1) but rather merely an explicit statement of classifications and provisions for backward classes that were already implicitly stated in Article 16(1). By interpreting affirmative action not as the exception to equal treatment but as part of equal treatment itself, India has adopted a substantive notion of equality.

Whereas the Supreme Court of India, in *P. A. Inamdar v. State of Maharashtra AIR 2005* on August 12, 2005, gave a clear verdict against reservation of seats for the Scheduled Castes, Scheduled Tribes and Other Backward Classes (SCs, STs, and OBCs) in the un-aided private and minority higher education institutions, the UPA government is bent on extending access to higher education and technical skills to these groups by reserving up to 49.5% of seats in all central universities, prestigious professional schools, and elite colleges, such as the Indian Institutes of Technology (IITs), Indian Institutes of Management (IIMs), and National Institute of Fashion Technology (NIFT). *Ashoka Kumar Thakur v. Union of India AIR 2008* is a public interest litigation case challenging the conclusion of the Mandal Commission that about 52% of the total population of India belonged to Other Backward Classes classification. The National Sample Survey Organization had estimated the OBC segment to be 32 per cent. In April 2006, the government decided to reserve nearly 27% of seats for students from the OBC segment in institutes of higher learning in India. This would have reduced the seats for a general, unreserved candidate to about 50% (after taking into account other reserved seats). The Indian Parliament passed a bill to bring out an amendment in the constitution in this regard. Thakur challenged the validity of the amendments. The Supreme Court, as an interim measure, stayed the operation of admission to medical and professional institutions for OBC's under the 27% quota category for the year 2007-2008 and directed that the case should be listed for the third week of August for final hearing and disposal on the issue. The Court held that the 1931 census could not be a determinative factor for identifying OBCs for the purpose of providing reservation. However, it clarified that the benefit of reservation for the Scheduled Castes and Scheduled Tribes could not be withheld and the Centre can go ahead with the identification process to determine the backward classes. On April 10, 2008, the Supreme Court of India upheld the Government's 27% OBC quotas in Government funded institutions. The Court categorically reiterated its prior stand that “Creamy Layer” should be excluded from the ambit of reservation policy and private institutions are also not to be included in. The Creamy layer principle is one of the parameters to identify backward classes. Therefore, principally, the “Creamy layer” principle cannot be applied to STs and SCs, as SCs and STs are separate classes by themselves and as such, principle of exclusion of Creamy layer is applicable to OBC's. Preferably, there should be a review after ten years to take note of the change of circumstances. A mere graduation (not technical graduation) or professional is itself deemed to be educationally forward. The Supreme Court also held that the determination of SEBCs is done not solely based on caste and hence, the identification of SEBCs is not violative of Article 15(1) of the Constitution.

### **Conclusion:**

The issue of reservation has remained a cause of disagreement between the reserved and the non-reserved sections of the society. While the unreserved segments, keep on opposing the provision, the neediest sections from within the reserved segments are hardly aware about how to get benefited from the provision or even whether there are such provisions.

On the contrary, the creamy layer among the same segment is enjoying special privileges in the name of reservation and political factions are supporting them for vote banks. Reservation is no doubt good, as far as it is a method of appropriate positive discrimination for the benefit of the downtrodden and economically backward Sections of the society but when it tends to harm the society and ensures privileges for some at the cost of others for narrow political ends, as it is in the present form, it should be done away with, as soon possible. Now day's politicians are playing a major role in reservation policy. The reservation policy was only for 10 years after the independence, for upliftment of SC and ST but till now it is continued and no one has taken any step to amend it or revise it or to change it. The reason behind this is the population of SC and ST in country. Nearly 33% voting is done by SC

and ST so now if they make any change in the reservation policy against the SC and ST then they have to suffer a lot for the same. So, they are not taking any steps against the reservation policy.

**References:**

- a) Bhattacharya, Amit. "Who are the OBCs?" Archived from the original on 27 June 2006. Retrieved 19 April 2022. Times of India, 8 April 2006.
- b) Basu, Durga Das (2008). Introduction to the Constitution of India. Nagpur: LexisNexis Butterworths Wadhwa. p. 98. ISBN 978-81-8038- 559-9
- c) Chapter 3- An Assessment of Reservations (Pg 32)". News. Dalit Bahujan Media. Retrieved 17 November 2022
- d) Laskar, Mehbubul Hassan. "Rethinking Reservation in Higher Education in India". ILI Law Review
- e) Education Safeguards Department of Education. Government of India. Retrieved 27 November 2022
- f) Gupta Asha, "Affirmative Action in Higher Education in India and the US: A Study in contrasts", Centre for Studies in Higher Education, University of California, Berkeley, 2006.
- g) <https://indianexpress.com/article/opinion/columns/ews-reservation-supreme-court-equality-non-discrimination-affirmative-action-8274435/>
- h) [https://www.academia.edu/18311102/An\\_Analysis\\_of\\_Reservation\\_System\\_in\\_India](https://www.academia.edu/18311102/An_Analysis_of_Reservation_System_in_India)
- i) <https://indianexpress.com/article/india/ews-quota-supreme-court-103rd-constitutional-amendment-8253955/>
- j) <https://thewire.in/law/supreme-court-reservation-fundamental-right>
- k) <https://asiasociety.org/education/jati-caste-system-india>
- l) <https://www.thehindu.com/news/national/explained-what-has-the-supreme-court-ruled-on-creamy-layer/article61424803.ece>