

Reservation system in India: Is it indispensable ?

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Abstract

This research paper covering the aspect that whether the caste based reservation policy is indispensable or it become part and parcel of Indian Society which cannot be eliminated. Is there any other way to uplift the downtrodden particularly SCs/STs. Research Paper also dealt with the emergence of reservation system in India, legal provisions in Constitution of India, landmark Judgments of Apex Court pertaining to reservation, arguments in favour and against the reservation system.

Keywords: Reservation system, indispensable, eliminated

Introduction

“The worst form of inequality is to try to make unequal things equal.” - Aristotle

According to the oxford dictionary, the word ‘Reserve’ means something that you keep for a special reason or to use at later date and the term reservation means a seat, table, room, etc. that you have booked. In the Indian perspective, reservation refers to the act of reserving a fixed number of seats in government jobs, legislatures, and educational institutions for the weaker section of society. The reservation policy was introduced as affirmative action, with an idea of ensuring the equality and adequate representation of backward classes in every service under the state.

The reservation policy in India was adopted with a reason to uplift certain castes who were subjugated to atrocities, social and economic backwardness due to the prevalent dominance of caste system in Hindu Society.

Historical Aspect

Reservation policy in India was originally developed by William Hunter and Jyotirao Phule in the year 1882. The basic principle behind the reservation was the Caste System and the malpractice of untouchability in India, however, the present prevailing reservation system in India was introduced in 1933 by British Prime Minister Ramsay Macdonald in the form of the Communal Award. Under the provisions of the communal award, there were separate electorates for Europeans, Anglo-Indians, Indian Christians, Muslims, Sikhs, and the Dalits. But on 24th September 1932 when the Poona Pact agreement between Mahatma Gandhi and Dr. Ambedkar was signed, it was decided that for Hindus there would be a single elective with certain reservations for the depressed classes in it.

When the constituent assembly was framing the Constitution of India, social discrimination based on the caste system was a big hindrance to equality in society. So, the provision of reservation for the socially backward classes was introduced in the Constitution of India. Reservations were initially introduced for a period of 10 years and only for SCs and STs, but it kept on extending with several changes. The period of reservation was further extended to 2030 by the 104th Amendment.

Provisions of Reservation in Constitution of India for SC's/ ST's/OBC's/EWS

- Article 15(4) and 16(4) of the Constitution enabled the Central and State Governments to reserve seats in government services for the members of the SC's and ST's.
- Constitution (77th Amendment) Act, 1995 and a new clause (4A) was inserted in Article 16 to enable the government to provide reservation in promotion. Later on, clause (4A) was modified by the Constitution (85th Amendment) Act, 2001 to provide consequential seniority to SC's and ST's candidates promoted by giving reservation. Constitutional 81st Amendment Act, 2000 inserted Article 16 (4 B) which enables the state to fill the unfilled vacancies of a year which are reserved for SCs/STs in the succeeding year, thereby nullifying the ceiling of fifty percent reservation on total number of vacancies of that year.
- Article 330 and 332 provides for specific representation through reservation of seats for SCs and STs in the Parliament and in the State Legislative Assemblies respectively.
- Article 243D provides reservation of seats for SCs and STs in Panchayat.
- Article 233T provides reservation of seats for SCs and STs in every Municipality.
- Article 335 of the constitution says that the claims of STs and SCs shall be taken into consideration without compromising the maintenance of efficacy of the administration.
- Part XVI of the constitution of India deals with reservation for SC's and ST's in Central and State legislatures.
- 103rd Constitutional amendment provides 10% reservation for Economically Weaker Section (EWS) in the general category under articles 15(6) and 16(6).

In toto, after the recommendation of Mandal Commission, OBCs were also included in the ambit of the reservation and were given 27% of reservation, 15% seats are reserved for SC category and 7.5% for ST category, on 14 January 2019 when the 103rd Constitutional amendment was enforced; 10% reservation was given to the Economically Weaker

Section (EWS) in the general category under articles 15(6) and 16(6) of the Constitution of India. Reservation for the EWS category was given over and above the existing 50% reservation for SC/ST/OBC categories.

Landmark Judgments on Reservation in India

▪ **State of Madras v. Champakam Dorairajan AIR 1951 SC 226.**

Case was the first major verdict of the Supreme Court on the issue of Reservation. The Supreme Court in the case pointed out that while in the case of employment under the State, Article 16(4) provides for reservations in favour of backward class of citizens, no such provision was made in Article 15. Pursuant to the Supreme Court's order in the case the Parliament amended Article 15 by inserting Clause (4). Hon'ble court also held that caste-based reservations as per Communal Award violative of Article 15(1) of the constitution.

▪ **M. R. Balaji v. State of Mysore AIR 1963 SC 649**

court held that the government's 68% reservation on college admissions was deemed excessive and unreasonable, and was capped at 50%. Almost all states except Tamil Nadu (69%, under 9th schedule) and Rajasthan (68% quota including 14% for forwarding castes) have observed this 50% ceiling.

▪ **Indra Sawhney & Others v. Union of India AIR 1993 SC 477**

AIR 1993 SC 477 The court upheld separate reservation for OBC in central government jobs, but excluded these to the "creamy layer" (the forward section of a backward class, above a certain income), also held that total reservation cannot exceed 50%. Judgement implemented, with 27% central government reservation for OBCs.

The court examined the scope and extent of Article 16(4). Contrary to this Parliament enacting 77th Constitutional Amendment Act which introduced Article 16(4A). The article confers power on the state to reserve seats in favour of SC and ST in promotions in Public Services if the communities are not adequately represented in public employment.

▪ **M. Nagaraj v. Union of India (2006) 8 SCC 212**

case while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:

- The SC and ST community should be socially and educationally backward
- The SC and ST communities are not adequately represented in Public employment.
- Such reservation policy shall not affect the overall efficiency in the administration.

▪ **Ashoka Kumar Thakur Vs Union of India (2007) 4 SCC 361**

In the year 2005, the government introduced the 93rd constitutional amendment act. With the enactment of the act, Article 15 (5) was inserted in the constitution of India. Article 15 (5) provides reservation to the socially and educationally backward classes in the relation to admission in public and private educational institutions. But this amendment was challenged on the ground that it is against

the principle of equality and violative to the basic structure of the constitution. The Supreme Court upheld the constitutional validity of this amendment while saying that that reservation provides an extra advantage to those who without such support cannot dream of university education. It was held that:

- 93rd constitutional amendment act does not violate the basic structure of the constitution as it only moderately abridges or alters the principle of equality.
- Reservation in educational institutions is a part of affirmative action.
- Social and financial status must be studied for the identification of backward classes.
- Caste or economic backwardness should not be the sole criteria of the reservation. For reservation social, economic, and educational backwardness should be considered together.
- Creamy layer exclusion principle should not be extended to SCs and STs.

▪ **Jarnail Singh vs Lachhmi Narain Gupta AIR 2018 SC 4729**

Hon'ble Supreme Court held that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes. The Court also held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.

Arguments against Reservation System

- Quotas based on the reservation are a form of discrimination against other citizens, which is contrary to the right to equality guaranteed under the Constitution of India.
- In the socially backward section of society, only the economically sound people take most of the benefits of the reservation and the rest of the section remains deprived due to lack of knowledge and awareness, thus it ruins the aim of reservation, marginalized section among backward section still remains marginalized.
- The caste-based reservation policy is promoting the caste system, instead of abolishing it. People are using it as a tool to meet their political benefits.
- Reservation may adversely affect the educational, economic growth of India because it does not ensure the efficiency of people who get selected by way of the quota system in educational institutes as well as in other sectors.
- Reservation schemes do not elevate the quality of education and work efficiency of employees, rather degrades it.
- In the caste-based reservation system, the economically backward section of the upper caste does not get any benefit whereas the economically well-off section from backward and lower caste enjoys the privilege of it.
- Reservation agitations may cause social unrest by creating the feeling of discrimination among the different castes and classes of society.

Arguments favours Reservation System

- The most fundamental principle of justice is one that has been widely accepted since it was first defined by Aristotle more than two thousand years ago is the principle that "equals should be treated equally and unequal unequally." In its contemporary form, this principle is sometimes expressed as follows:

“Individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved.” For example, if Jack and Jill both do the same work, and there are no relevant differences between them or the work they are doing, then in justice they should be paid the same wages. And if Jack is paid more than Jill simply because he is a man, or because he is white, then we have an injustice—a form of discrimination—because race and sex are not relevant to normal work situations. Considering this view reservation can be the criteria to uplift the society.

- Affirmative action of reservation has socially and economically uplifted a large section of the underprivileged and marginalized population of India.
- Reservation to the tribal groups (STs) has helped the members of the tribal community to improve their representation in educational institutes and services of the state by minimizing the disadvantages faced by them due to lack of resources.
- Reservation to the OBCs has helped the left-out section of society who was backward in terms of education and other resources.
- Reservation to the economically weaker section of society (EWS) has helped the section of society that was socially forward as compared to SCs and STs but was economically weaker. This section was deprived of education and resources because of poor financial conditions.
- Reservation helps in providing the same level of playing field to every citizen of the country. It helps socially and educationally backward sections of society who are deprived of money, education, and other resources. Without reservation, it was nearly impossible for them to match with the rest of society.
- The reservation system in India has improved the delivery of justice to every section of society by providing free legal aid to the members of SCs, STs, and women, who otherwise would suffer due to lack of money, knowledge, and awareness.

Conclusion

Equality is the essence of the constitution of India. Reservation policy provides special privileges and extra protection to certain classes of people in the society. The intention of reservation policy to provide reservation as a form of affirmative action so that the disadvantaged groups can match up with the mainstream of the society. This policy was enacted for a period of 10 years, but it is continuing till today by way of extension. To achieve the final aim of the reservation, that is, to overcome the historical injustice, provide a level playing field for all, ensure adequate representation of all and to ensure equality among all, the caste system and other discriminations must be completely abolished, as it will help to reduce the disparity between the people of the country. But until the final aim is achieved, it is very important that the fruits of reservation policy must reach the people who literally require it. Reservation is fair, as far as it provides 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 to some at the cost of others for narrow political ends, it should be done away with. Meritocracy should not be polluted by injecting relaxation of entry barriers, rather than it should be encouraged by offering financial aid to the

underprivileged. A strong political will is indispensable to find an equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system. If reservation is indispensable, Social, educational and economic criteria should be taken cumulatively to determine the backward classes of the society. Reservation should not be provided perpetually generations after generation. So that the fruits of the reservation can be provided to people who really deserve this kind of affirmative action. Simultaneously equal importance should be given for the abolishment of the caste system, malpractice of untouchability, and other sorts of discrimination from our society. So that equality in society can be ensured.

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