



PROBLEMS AND SAFEGUARDS OF THE RESERVATION POLICY IN INDIA

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Introduction

The concept of reservation came strongly after the independence of the country and also some provisions regarding it are included in the constitution. The framers of the constitution made the reservation system to uplift the people who were not given equal opportunities and respect in the society so the concept of reservation came into existence.

Reservation in simple words is an act of reserving the seats for particular people. “**Reservation**” in English means “*An arrangement by which some provisions are secured in advance*” or “*The act of keeping back or withholding*”¹. If the same word is uttered in India it creates a widespread debate, heated conversations, and divides the society between who supports reservation and who are against it. Reservation is provided to the particular class of people like schedule caste, schedule tribes or other backward class and also to the women and physically challenged people.

There were some leaders like Dr. Ambedkar who wanted to help people of backward class. He demanded the reservation for just 10 years only but still it is the part of the system. In earlier times our society was divided in people from different castes like

Brahmin, kshtriyas, vaishyas and shudras. People known as ‘bhangis’ and ‘harijans’ were not given respect or opportunity to work and were discriminated on basis of their caste.

Reservation system was included in the constitution because the framers of the constitution believed that, people from backward class who belong to particular caste were denied respect and equal opportunity in the society. To provide them the equal opportunity and respect, reservation system was introduced so that every person in the society was treated equally without any discrimination. Reservation was the need at that time to change the thinking of people to uplift the socially and economically backward people, and to bring the caste in mainstream.

History:

Reservation system found its roots from 19th century when the hunter commission appointed. It is divided in two parts:

- Pre independence
- Post independence

Pre Independence

Mahatma Jyotirao Phule, a social reformer from the lower caste demanded free and compulsory education and representation in the government jobs.

In 1909, Indian Councils act 1909 came into existence which is also known as Morley Minto Reforms. It was on the basis of religion and aimed to divide the society into different religions rather that uplifting the backward people².

¹ <https://knowledgeofindia.com/quota-or-reservation-system-in-india/>

² *supra*1



In 1914, after the first world started, British government was in need of support and they started considering bringing constitutional reforms to get the support from the people of India. British government also appointed the Simon commission who recommended the need to protect the minorities, socially and politically depressed class of people.

In 1933, Communal Award was introduced by the Prime Minister Macdonald where Separate representations for Muslims, Sikhs, Christians, Anglo-Indians, European and Dalit. It was opposed by Gandhiji and supported by Dr Ambedkar.

In 1932, Poona pact came and brought single general electorate for each of the seats of British India and new central legislatures. The Act was finally stamped in 1935 where seats were reserved for the depressed class. The word Schedule caste was first used in The Government of India Act 1935.³

Dr Ambedkar became the member of Viceroy Executive council and demanded reservation not only in legislative seats but also in Education and Government employment and the demand was accepted.

Post Independence

In 1947, when India obtained independence, Dr Ambedkar was appointed as a chairman of drafting committee of Indian Constitution.

India's first Prime Minister Mr. Jawaharlal Nehru while addressing the Constituent Assembly in May 1949 said **"I try to look upon the problem not in the sense of**

religious minority, but rather in the sense of helping backward groups in the country. I do not look at it from a religious point of view or a caste point of view, but from a caste point of view that a backward class ought to be helped, and I am glad that this reservation will be limited to ten years".⁴

In December 1946, Constituent Assembly came into existence. The Framers of the constitution thought to set up a welfare society. According to Minority committee's report representation in legislature, Higher Education and in Government Jobs was demanded and also the reservation on the basis of religion was asked for but it was not accepted.

In 1953, Kelakar committee came and recommended that caste should be the basis for the backward class but the report was not accepted.

In 1963, there was a case M R Balaji v State of Mysore⁵ also known as Mandal Commission case. In this case backward class was defined by the court and it upheld the validity of reservation and also said that reservation cannot exceed more than 50 %. It was also held by the court that not only caste but also their social and economical status matters to decide the backwardness.

In 1979, 2nd Backward Class Commission was made by The Mandal Commission and they recommended that caste should be the basis for that reservation and there should be 27% reservation in central and state

³ <https://blog.ipleaders.in/reservation-policy-india/>

⁴ *Supral*

⁵ 1963 AIR 649, 1962



services, public undertakings and educational institutions.

Beneficiaries of reservation scheme

- Reserved category..... percentage
- Schedule caste (SC).....**15%**
 - Schedule tribe (ST).....**7.5%**
 - Other backward class (OBC).... **27%**
 - General category.....**10%**

Schedule caste (SC).....15%

The term schedule caste was introduced by the Simon commission in 1927. Dr. Ambedkar called it as a depressed class and Gandhi ji called them the Harijans. Schedule caste means the people who belong to poor family or the people who are socially and ritually tainted. The class of people who were treated differently in the society. In 1935 when government of India came it referred as schedule caste and also referred as dalits. In earlier time the criteria to identify this class of people was on basis of rituals but now the criteria is that people should be socially, economically and educationally backward and that untouchability should be the reason for that. The person who is claiming sc should be from Hindu Sikh or Buddhist religion. It is defined under section 341 of the Indian constitution.

Schedule tribe (ST)..... 7.5%

The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness on account of the primitive agricultural practices, lack of infrastructure facilities and geographical isolation. The Constitution of India in Article 366 (25) prescribe that the

Scheduled Tribes means such tribes or tribal communities as are deemed under Article 342 of the Constitution to be Scheduled Tribes.

The words and the phrase ‘tribes or tribal communities or part of or groups within tribes or tribal communities’ in Article 342 have to be understood in terms of their historical background of backwardness. Primitiveness, geographical isolation, shyness and social, educational & economic backwardness due to these reasons are the traits that distinguish Scheduled Tribe communities of our country from other communities.⁶

Other backward class (OBC).... 27%

The term ‘backward classes’, as originally used around 1919 by political leaders, referred to a section of population which was backward in a socio-economic sense. It did not limit itself to the matrix of caste. The term ‘backward classes’ encompassed the depressed classes, the aboriginal tribes and other backward classes (OBCs).

Even the Constitution is not clear about the OBCs. While the constitution clearly says that special provisions must be made for the SCs and STs, it does not mention the OBCs. It only refers to “social and educationally backward classes of citizens, in addition to the scheduled castes and scheduled tribes”.⁷

General category.....10%

Recently in the amendment of the constitution 10% reservation was passed in lok sabha to the people of general category whose household income is below 8 lakh.

⁶ <https://indiantribalheritage.org/?p=21438>

⁷ <http://www.yourarticlelibrary.com/law/highlights-on-reservation-policy-in-india/39793>



Government sources said the 10 per cent reservation would encompass all communities and classes that don't fit in the 50 per cent quota. "It would include economically backward people cutting across religious lines," the sources said.⁸

Safeguard of the policy

Constitutional Provisions are the safeguards of the policy

Article 14⁹

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

“equal protection of laws”, which is rather a corollary of the first expression, and is based on the last clause of the first section of the Fourteenth Amendment to the American Constitution, directs that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges without favouritism or discrimination. It is a more positive concept implying equality of treatment in the equal circumstances.¹⁰

Under this article every person has a right to be treated equally and no one should be treated differently on any kind of basis. However, the current reservation system is

violating the equality rights. People from the General category are not able to get the admission or job with higher merit and justice should be done to them.

Article 15¹¹

Prohibition on discrimination

Article 15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Under this article no person should be discriminated on any basis of caste, religion, sex or birth. Reservation system was made to provide equal opportunities and respect to the backward class and to uplift them but now the reservation is misused by the people from the reserved category.

The right guaranteed in clause (1) is conferred on a citizen as an individual and is available against his being subjected to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen generally.¹²

Art. 15, clauses (4) and (5) of the Constitution provides reservation of seats to SCs, STs and Backward Classes in educational institutions. Even the private aided and unaided institution must also reserve certain seats to the students belonging to these groups. Right to education has also provided reservation to these communities.¹³

⁸ <https://www.dnaindia.com/india/report-10-reservation-for-general-category-govt-seeks-constitution-amendment-2705471>

⁹ <https://indiankanoon.org/doc/367586/>

¹⁰ <https://www.legalbites.in/law-notes-constitution-right-to-equality-under-article-14-of-constitution/>

¹¹ https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

¹² *Supra*7

¹³ <http://www.yourarticlelibrary.com/law/highlights-on-reservation-policy-in-india/39793>



Article 15(4) was added by the 1st constitution amendment 1951 under which state has power to make any special law for socially and educationally backward class of people and for schedule caste and schedule tribes. Every state has made laws for SC, ST, and OBC but because of this reservation, people of the general category who are actually socially and economically backward are not able to get the benefit and the people from the reserved category who are not backward are getting the benefit. So the government should not make more reservation but they should help the people whether they are from any class.

Article 15 (5) was added by the 93rd constitutional amendment under which state has power to make laws for the SC, ST and socially and educationally backward classes of the citizens. State has power to make laws in the matter of admission to educational institutes including private educational institutes.

Article 16 Equal opportunity in the public employment

Article 16 (1) & (2) says that every person who is citizen has a right to equal opportunity in public employment or appointment. No person should be denied to get the employment on the basis of caste, sex or religion and also discrimination should not be done to them on any basis. Every person should be provided equal opportunity is right given to the citizen of the country by the constitution.

Article 16(4) is the second exception to the general rule embodied in Articles 16(1) and (2). It empowers the state to make special provision for the reservation in

appointments of posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State. The 16(4A) was added by 77th constitutional amendment which permits the reservation in promotion to the schedule caste and schedule tribe.

In a case of [Dr. N.T.R. University of Health Sciences v. Dubbasi Praveen Kumar](#), the division of the Andhra Pradesh & Telangana high court held:

“There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the constitutional mandate enshrined in Article 16(4).”¹⁴

Article 330 and 332

The above article of the Indian Constitution provides reservation to SCs and STs both in Lok Sabha and State Legislative Assembly respectively

Article 335

The above article claims reservation for SCs and STs in Public Service both in Central and State Governments.

103rd constitutional amendment

Article 15(6) was added by this amendment where 10% reservation is provided to the people who are economically weak and belong to the general category. It belongs to

¹⁴ <https://thewire.in/law/reservation-law-india-sc-st-obc>



the people who are economically weak from upper caste. It provides reservation in government jobs as well as admission in government educational institute and private higher education institutions. The main object behind this amendment was to provide reservation to the people from general categories that are excluded from getting higher education or jobs because of their financial situation.

This amendment exceeds the limit of reservation which is 50% and it was stated in the case of *M R Balaji vs. state of Mysore*.¹⁵

Concept

Reservation based on caste

The current system of reservation is based on the caste and it is the biggest social evil which led to the discrimination amongst the people of the country. Caste based reservation was made because there were some people who belonged to a particular caste who were economically weak but after the implementation of the caste based reservation people from the backward class are no more backward in economical status. Now it is the time to make changes in the policy because people from the general category who are having proper merit and qualification are not able to get the admission or job though and people from reserved category that are not having proper merit or qualification easily get the admission or job. So the people from the reserved category are using the reservation policy and taking advantage of that even if there is no need.

Caste is being used as a means to classify people. The classification is being made to extend certain benefits - in educational institutions, in public services and also to become members and the representatives of the people. Thus, caste is being used for extending all such benefits which leads to emphasizing caste which the Constitution makers sought to avoid. The classification for extension of benefits should be on a secular i.e. "non-discriminatory, non-communal and non-caste" basis and any person who satisfy such secular conditions of classification should be eligible for such benefits. The assumption of the backwardness limited to certain castes is wholly illicious and should not be allowed to continue.¹⁶

On the basis of caste, backwardness cannot be decided.

There was a time when a particular caste of people was termed as the backward class or underprivileged people but it is not so today and in the private sectors no one will be given job on basis of their caste but they are given job on basis of their qualification and ability to work.

There is **no reservation** in the two fields

- Sports
- Armed forces

If there is no reservation in the sports and army then why do we need reservation in the other fields? This 2 particular fields don't have any reservation because in this most strongest and the best people are needed.

Free Education should be provided to the every person of country so that every person

¹⁵ *Supra*5

¹⁶ <http://www.youthforequality.com/our-agenda/why-against-caste-based-reservation.aspx>



can get admission or job on the basis of merit and there will be no need of reserving seats for any person.

Types of reservation policy in India

Reservation is provide by the government in the following categories

➤ **Reservation in the legislative bodies**

Reservation is provided to the schedule caste and schedule tribes people in the loksabha and in legislative assemblies according to their population in the particular state. The purpose behind this was to make presence of minimum representative in the in the legislative bodies. This type of reservation is not given to the other backward class.

➤ **Reservation in the Educational Institutions**

Reservation is provide to the schedule caste, schedule tribes and other backward class in the educational institute whether private or not and also provided reservation in the higher education.

➤ **Reservation in the Public Employment**

Reservation is given to the schedule caste schedule tribes and other backward class in the public employment under the article 16 of constitution.

Problems

Biggest hurdles in our progress

Reservation system is creating hatred among the people of country because the less qualified people are getting admission and jobs. Moreover, by giving admission and jobs to the people who are less qualified from the reserved category country is leading in the wrong direction.

Equality

The reservation system came into existence so that discrimination can be avoided between backward class and the upper caste and they also have right to be treated equally. this days purpose is being not served for what reservation system was made. Injustice is being done to the people from the general category. Even if the people from general category are having higher merit or qualification not able to get the admission or job and reserved category people with less qualification or merit easily get that job or admission.

Vote bank politics

Reservation system was introduced to uplift the backward class and adopted for 10 years only but it still prevailing in the system because of the politicians. Political parties are using reservation to get the votes not to support the needy or backward class people. For example, recent amendment in the constitution which is 10% reservation for the people of general category who are socially and economically weak.

Discourage performers

When People who are having higher merit and qualification are unable to get the admission or job because of the reservation policy, they feel disheartened. Current reservation is used by the people from reserved category and because of that people who are from general category feels discouraged.

Used for benefit

People from the reserved category are misusing this policy even though they are not socially or economically backward. Reservation policy is being misused by



reserved people with a lesser merit and qualification to get the admission in institutes and in public employment. Reserved category people don't want to work hard because they know they will get the job anyway.

Migration of merit

Individuals who don't get the opportunity to work though they are qualified migrate themselves in another country work for them to earn more. The people of our country prefer to work in another country because they were not given the opportunity in our country. They like to go there for the higher studies and jobs.

Equal opportunity

Reservation system came so that equal opportunity can be provided to every person and no discrimination on the basis of caste, sex or religion can be done. If the people are not selected on the basis of merit and qualified people cannot get that job or admission than their opportunity is taken away from them and it violates their right of equality and equal opportunity.

Internal partitions

Reservation system is dividing our society and internal partition is being done amongst the people because of the caste system. Dr Ambedkar framer of the constitution came up with the reservation concept so that every person treated with respect and provided equality in the society but the concept is bringing internal partition because of the caste.

Conclusion

The reservation policy was adopted with aim to uplift the socially and economically

backward class. It was adopted by Dr Ambedkar the framers of the constitution for 10 years only but it is still prevailing because of the politicians.

Reservation policy was adopted with a purpose and the purpose is not being served to the people for whom the reservation policy was made.

People of the country are demanding more and more reservation. They want their caste to be included in the OBC and SC, ST.

For example, Patels from Gujarat wanted to be included in the OBC category.

India is the only country where people want them to be called as backward class. People should not fight for reservation but they should demand the more opportunities and the free education. Otherwise there will be time when every caste will demand there different reservation or to include them in OBC quota.

The reservation policy is good till the point some deserving candidate is not missing upon his opportunity because of the prevalent reservation system. I find no reason for giving admissions to undeserving students over deserving students. If these classes of people have been denied opportunities in past, then the scenario is being repeated with the general class in the present. The undeserving should not reap the fruits of the labour of the deserving.¹⁷

Instead of giving reservation to the people,

¹⁷ <https://blog.ipleaders.in/reservation-policy-india/>



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- Education should be made compulsory for everyone so that no one will be educationally backward
 - Free education should be provided to the people in need so that every person can get the education and no person will be discriminated from getting education
 - Admission and jobs should be given on the basis of merit only so that we can get the best persons in every field and development can be done.
 - Provide more job opportunities in different sectors so that no person will be unemployed in the country.
 - If reservation is there it should be economical status of the person
 - Reservation can be used by only one generation and not by the others because till that time the family was given opportunity to work and uplift their family.
 - Student should be provided opportunity to work and earn.


