

**RESERVATION IN INDIA: DEVIATING FROM  
ITS ORIGINAL PURPOSE BY:  
ASST.PROF.HINA KAUSAR\* & KAUSER  
HUSAIN\***

---

**ABSTRACT**

The notion of reservation was included in the Constitution to give a chance to the underprivileged classes to come at par with the so-called privileged ones. The Constitution of India through its various provisions has tried to bring equality of opportunity and equal status in the society<sup>i</sup>. Reservation is constitutional support to those who are deprived of adequate opportunity and equal treatment from the rest of the society. The Hon'ble Supreme Court has also provided the guidelines related to reservation in India in the case of Indra Sawhney vs UOI.<sup>ii</sup>

To give an idea about the present scenario, this article specifically gives a glance of recent conditions of reservation in India and how people are misusing the reservation system for their own benefits.

It is true that the constitution drafters had a bonafide intention behind inclusion of reservation into the constitution, but now when we closely examine the issue, we observe that reservation in India is deviating from its prime purpose. People are misusing this privilege for their benefit. For poor and needy people, benefits of reservation are out of reach due to unawareness. Today political parties are busy in creating vote banks through the weapon of reservation. On the other hand reservation plays a big role in dividing Indian society on the basis of caste and creed. In the end this article offers some suggestion to reduce the misuse of reservation policies and how can it be utilized for development of the country.

**INTRODUCTION**

The Indian society is characterized by a high degree of structural inequality based on the tenets of the caste system. The caste system is based on the principles of purity and pollution, which involve the division of people into castes with unequal and hierarchal assignment of economic and civil rights ascribed by birth. Social exclusion among the castes is ensured through the practices of endogamy and social separation. Exclusion is, thus, internal to the system, and a necessary outcome of its basic features.

In India social, educational and economic inequalities have existed from time immemorial in different social segments of the society. Early Vedic Society was a casteless and classless society. But with the Brahminical culture, caste system came and priests were its strongest

---

\* Assistant Professor, A.M.U MURSHIDABAD CENTRE, W.B.

\* KAUSER HUSAIN, BALLB (Hons.) 3rd yr, A.M.U MURSHIDABAD CENTRE

supporters. The scheduled castes, scheduled tribes and other backward classes represent those social groups, suffered through the ages due to castes prejudices, economic inequality, educational backwardness and lagging behind in the field of educational and economic development in comparison to certain advance or the forward castes.

To eradicate the present social, educational and economic disparities caused by purposeful societal discrimination in the past, reservation policy thought to be inevitable and justified for deprived persons to give them justice. Therefore, the Constitution of India authorise the state to adopt such affirmative action's in the form of reservation, as it deems necessary to uplift the backward classes of citizens to level of equality with the rest of the countrymen. In the past, the backward classes of citizens have been denied access to government services in account of their inability to struggle effectively in upon selections on the basis of merit. It is, therefore open to the government to reserve a certain number of seats in the places of learning and public services in the favour of the SCs, STs and now for OBCs also, to the exclusion of all others, irrespective of merit.<sup>iii</sup>

The question of reservation of jobs in the government has become an issue intimately linked to the ensuring of social justice in India. At the same time this has become controversial and conflict prone particularly after the decision to implement the Mandal Commission report. The sudden decision by the central government to implement the Mandal Commission Report has infused a new life into the already dormant and controversial reservation policy. It has sent shock waves through the entire society and political spectrum of India. In stark contrast to the government reaction to Kaka Kalelkar Commission report and Mandal commission report, it is observable that while the former was subject to intense debate and rejected, the latter was accepted without a murmur of hesitation by all political parties.

The framers of the constitution in their determination to herald in a new era enshrined in it the provisions of the fundamental rights, thereby ensuring the elimination of stumbling blocks towards progress in the socio-political sphere. But reservation policy which was encouraged to ameliorate the depressed classes and promote egalitarianism has only ensured the compartmentalization of society into backward and forward castes. Thus the principle of equality becomes the greatest causality of reservation policy. Mutual suspicion and hatred engenders which would thereby be a greatest deterrent towards social egalitarianism. Discrimination is the net result of such policies which definitely bodes ill for the health of the nation.

Caste system gets a fresh lease of life through reservation policy. The framers of the constitution had fought tooth and nail against the caste system, which had blocked the progress of the society. **Reservation on a caste basis** will result in an Indian version of apartheid, an emotional balkanization, a form of reverse discrimination that will not result in the harmonious and cohesive functioning of the society. Caste antagonism will deter all sorts of improvements needed to be effected on the overall progress of the nation.

## **PRINCIPLE OF CREAMY LAYER**

The concept of 'Creamy Layer' owes for its birth to the apex court of India<sup>iv</sup> because Indian Constitution has no room for it but for the first time the term creamy layer introduced by the Sattanathan Commission in 1971 to direct that the "creamy layer" should be excluded from the reservation of civil posts and services granted to OBCs.<sup>v</sup> The creamy layer principle has been laid down by Supreme Court for the exclusion of the advanced sections of the backward class groups for the purpose of reservation and it had caused to the division of the society into backward classes and forward classes.

The constitution even though stipulates reservation for "backwardness" has remained silent with regards to determining the criteria for measuring backwardness. Hence several states and courts interpret the term according to their views which often turn out to be mutually conflicting and contradictory. This has caused a great deal of confusion and prolonged litigation.

**Supreme Court on Creamy Layer-** In the case of Indra Sawhney vs UOI<sup>vi</sup>, petitioner's arguments was that some members of designated backward class are highly advanced socially as well as economically and educationally. They constitute forward section of that particular backward class and are as forward as any other forward class member. The petitioner relied on K S Jayshree V State of Kerala<sup>vii</sup> case wherein the Supreme Court had approved the Kerala Scheme to keep certain classes out from the reservation benefit by fixing economic ceiling.

In the case of State of Kerala V. N M Thomas<sup>viii</sup>, Krishna Iyer J. pointed out one of the danger of reservation to be that, "its benefits, by and large, are snatched away by the top creamy layer of the 'backward caste' of the class keeping away weak and leaning the formulate layers to consume to the whole cake". Therefore, the seed of concept of creamy layer has been found in above cases before the Indra Sawhney case.

Principle of creamy layer applicable to OBCs as Former Chief Justice K G Balakrishnan<sup>ix</sup> stated "by excluding those who have already attained economic well being or educational advancement, the special benefits cannot be further extended to them and, if it done so, it would be unreasonable, discriminatory or arbitrary resulting in reverse discrimination. But this logic is applies exclusively for OBCs and the logic is not applied for SCs, STs and unreserved category seats".

## **FLAWS OF RESERVATION POLICY**

One of the basic flaws of the reservation policy is that it does not take into account economic backwardness as a criterion. There is no guarantee the beneficiaries of the new policy will unnecessarily be poor. This calls for a suggestion to bar those who had availed the benefit of reservation, from receiving benefit again in the larger interest of the communities concerned. Besides caste/class criteria, economic criteria should also take into account for granting reservation.<sup>x</sup>

A policy is formulated and executed to address a particular problem. Hence a periodic analysis as to its effectiveness in addressing the problem in consideration is a must. Any drawback so identified should be removed at the earliest so as to render the policy more update and effective. Reservation policy should also be subject to such reviews. The recent

tendency is such that a caste which is once declared as “backward” puts up to a determined fight to retain such status. In several states, particularly in the south reservation are continuing without any changes in the list of eligible communities being effected since 1930.

Politicians have from time and then being utilising reservation policy for creating vote banks. In their zealously to ensure success at the polls reality is ignored and entire attention gets focused in pandering to the desires of a particular section of society.

The Indian Constitution, right from its inception and till date has not given a clear definition of BC so as to evolve a criteria for determining backwardness. This has resulted in various states and judiciary giving their own interpretation of backwardness which often turns out to be mutually conflicting and political expediency too playing its role in making it more complicated further.

Not a Panacea for Backwardness- Reservation policy effects only a cosmetic change to the problem of backwardness. Offering relaxation in qualification, age concessions, and scholarships to pursue education would benefit an individual only at a certain stage. It does not alter the circumstances of depravity under which an individual is shaped up. Reservation will not steal the resolve of a person to overcome the hardship he confronts. It makes him dependent, dullard, indolent and lazy. An improvement in the circumstances alone will not strengthen the will power to surmount handicaps. “the state should adopt ultimately a policy of reservation facility to build up human material and therefore let the best be selected to give their best in services of the nation.”

The benefits of reservation policy always remain confined to the upper strata of the backward classes. Thus results in the creation of an elite group, which monopolises all the employment opportunities. They refuse to allow the benefits to percolate down to the real beneficiaries or the deserving lot. A caste monopoly can be defined as the difference between the percentage of government jobs held by a caste category and its proportion of the population.

**Merit Sacrificed-** Recruitment on the basis of merit is envisaged to secure the best talent available and utilised in the service of the country. Merit is fixed as a criterion for entry into government services in order to avert nepotism, corruption and favouritism in the recruitment process. Provision for reservation policy would impede the intention behind recruitment on merit basis by creating a separate set of rules in the recruitment process. In addition to merit caste also becomes a criterion for recruitment.<sup>xi</sup> Professions like teaching, engineering and medical practices which are extremely vital to the development and welfare of the country will be severely affected by deterioration in standard and quality.

**Constitutional Provisions-** To fulfil the aim of Indian Constitution (casteless and classless society), preferential treatment are given under Articles 15(4), 15(5) and 16(4) enables the state to act positively in the direction of uplifting the weaker elements in the society by making a reasonable classification. These articles classify that during making a classification which shows favoured treatment to the backward class, the state might use the forbidden criteria because any real classification will have to take into account the inequalities based on the abuse of caste, religion race etc.

Articles 15(4), 15(5) and 16(4) indicates only one of the means to achieve equality of opportunity namely by the means of reservation in education and appointments or post in

favour of underrepresented backward classes of citizens. But there are certain other measures like relaxation in age, relaxation in fees, and special training and coaching programmes, usually accompany reservation. These concessions and facilities are upheld under the general doctrine of classification under Article 14 or 16(1) on the clues supplies both by Articles 16(4) and 46.

Anti-reservationists criticised that Article 15(4) does not provide any reservation in educational institute expressly. If we interpret the words used in article 15(4), it is found that *the state is authorised to make special provisions for the educational and social advancement of backward classes or SCs and STs. Phrase “educational advancement” does not mean reservation.* It is the executive or judiciary who interpreted this phrase in such manner and used reservation in education as apparatus for educational advancement.

## CONCLUSION

Founder of Indian Constitution were intended to establish casteless and classless society. To uplift the down-trodden people and to provide them equality of status and opportunity in employment, provisions of reservation in education and employment were made. In the beginning reservation was given to Scheduled Castes and Scheduled Tribes only. Although voices were raised time to time in substantial number by members of Parliament to give reservation to Other Backward Classes also specifically in southern and northern states of India.

Indian has enshrined article 15 in her constitution ensuring reservation for socially and educationally Backward Classes, Other Backward Classes and Scheduled Castes in jobs and seats in legislative bodies. The desire for government jobs is one reason for the demand for reservation and hence the policy gets promoted by state and central government. Reservation cannot be time bound.

The Indian Constitution, right from its inception and till date has not given a clear definition of Backward Classes so as to evolve a criteria for determining backwardness. This has resulted in various states and judiciary giving their own interpretations of backwardness which often turns out to be mutually conflicting and political expediency too playing its role in making it more complicated further. Reservation, therefore, should not be removed absolutely in an abrupt manner. Instead it should be scrutinised, fine tuned and updated as the years pass by and thereby be gradually erased. It should not be permanent measure extending to eternity, but an ad hoc measure to alleviate the most deprived sections of the society irrespective of caste.

There are so many people in the society who are covered under Scheduled castes and Schedules Tribes but are not economically backward. They are as forward as a general category person but then also they would have the reservation benefits. Vice versa can also be held true that there are so many people who come under the general category but are as backward as a Scheduled Caste or a Scheduled tribe person.

Although there is principle of creamy layer but the author would like to say that issue of creamy layer among Other Backward Class is not as effortless as it has been taken by majority decisions in Mandal Commission. When Indian Constitution does not contain a

single word about it, it is really very tricky to classify and trace out creamy layer among backward class; it is left on the committee's decision.

At last the author would like to say that no doubt, reservation policy has brought a new good morning for the thousands years oppressed class, but to a vast number of potential beneficiaries, it is yet to effect realisation. This may perhaps be due to some slackness in its execution. It is also due to lack of awareness among those for whom the policy is intended that its benefits are yet to trickle down.

## SUGGESTIONS

After reviewing various dimensions of reservation policy of the government protected under Article 15(4), 15(5) and 16(4), several shortcomings of reservation policy brought into the notice. To remove them and to achieve get goals of reservation policy, the author's humble suggestions are as follows-

- A constitutional amendment is required to clear the ambiguity of term "backward class". Article 15(4) has used expression 'socially and educationally backward classes of the citizens' or 'Scheduled Caste and Scheduled Tribes'. While article 16(4) mentions the expression 'backward class of the citizens'. Art.46 mentions 'other weaker sections of people' or 'scheduled castes and scheduled tribes' term. Several times these expressions make confusion because women, children and persons living below poverty line are also categorised as backward and weaker section. Therefore, to remove this ambiguity an amendment for clarity should make.
- Reservation at promotional stages should not be given to anybody because it can create inefficiency in administration as well as in candidate also. If reservation is necessary to SC/ST at promotional stages in the name of social justice, percentage of reservation should very low and it should be given to OBCs also.
- Regarding political safeguard or reservation to backward class under Article 320. It is often complained that the political parties and the government in power wanted to sustain the reservations, just for the sake of getting votes of the backward classes and to reserve them as their party's solid vote banks. Therefore, suggestion is; it is the right time to abolish such type of reservation by constitutional amendment. Because due to this reservation politics is becoming dirty day by day.
- An amazing vigilant approach is required for classification of creamy layer i.e. consistency of creamy layer classification and scattering of cream should be the shaped factor. Besides it is strongly recommended that the concept of creamy layer should apply on elite class of Scheduled Caste and Scheduled Tribes also. It is also suggested that scheme of creamy layer should properly be reviewed scientifically and in time as prescribed.
- It should be mandatory for the Central Government as well as for the State Government to review, assess and to make change from time to time, in both—the long term and short term policy to evolve better schemes and programmes for upliftment of downtrodden people.
- Reservation on basis of minority and religion should be prohibited. If any attempt is taken by an authority or state government, not only strict action but penal actions

should be taken against because reservation on minority basis will increase conversion of religion which could not be consider a healthy practice in the line building casteless or egalitarian Indian society.

- It is also suggested that the criteria for reservation should be economic because there are many people or class other than backward classes who are living under very mercy able conditions.
- It is suggested that instead of reservation other measures should provide for i.e.— Incentives and Financial Assistance to individual backward class, wanting to pursue higher studies.
- It is strongly recommended that now time has come to restrict the reservation strictly up to only one generation. Because reservation benefit is such a drug the extensive use of which shall be prove harmful to the particular class or community and to the society also.
- Last but not the least suggestion is that a change in mind set is required. It is necessary to eliminate the caste feeling. The question as how to tackle such a deeply entrenched cultural divide? Government's action alone cannot do so. What is needed is that reservation within one hearts must finally go.

---

<sup>i</sup> An analysis of Article 16(2) and Article 16(4)

<sup>ii</sup> AIR 1993 SC 477, 1992 Supp 2 SCR 454

<sup>iii</sup> Indira Sawhney vs UOI, AIR 1993 SC 477, 1992 Supp 2 SCR 454

<sup>iv</sup> Indra sawhney vs Union of India, AIR 1993 SC 477. Supreme Court tries to define “creamy layer” by quoting an office memorandum of Sept 8, 1993.

<sup>v</sup> Dr Pallavi Gupta; “Backward Class Reservation and Concept of Creamy Layer”; Deep and Deep Publications Pvt Ltd., 2012

<sup>vi</sup> AIR 1993 SC 477

<sup>vii</sup> AIR 1979, 3 SCC 730

<sup>viii</sup> AIR 1976 SC 490

<sup>ix</sup> First chief Justice of India belongs to Scheduled Caste

<sup>x</sup> Kumar V Santosh (2008), Social Justice and the Politics of Reservation in India, New Delhi: Mittal Publication

<sup>xi</sup> Kumar V Santosh (2008), Social Justice and the Politics of Reservation in India, New Delhi: Mittal Publication