

RESERVATION IN INDIA: NEED OR TRADITION

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ABSTRACT

According to Justice Chinappa Reddy, “Reservation is not a charity it is a representation”. Reservation is always a lime-lighted theme. We can say that it has a false mind set of people because it is believed that due to reservation the deserving candidates are lacking behind and they are searching for better opportunities in foreign countries. The reservation policy is a way to compensate the depressed classes whom were tortured by the upward classes.

We think now there is no need for reservation policy but today also in small village areas untouchability is still practised. They were always kept outside the Varna system. Varna system is mentioned in the “Purusha Suktam” verse of ancient Sanskrit “Rig Veda.” The pyramid of Varna system consists of four Varna’s namely: Brahmins, Kshatriyas, Vaishya and Shudras.

In this above Varna system, Untouchables or Dalits or Schedule Caste\Schedule Tribe were not included they were excluded from the Varna system and were treated in a harsh manner.

When the constitution was made the constitution makers recognised the concept of inequality which was prevailing at the peak, to outcome it and to provide equal rights and opportunities to the depressed classes. Reservation policy was introduced to reserve seats for those depressed classes. But nowadays politicians are using this policy as a weapon for casting votes and winning election for this purpose it is reviewed again and again, it has become a tradition for them rather a need for people.

The aim is to create awareness among people and to change the wrong mind set of the people because the needy are still betrayed from enjoying its benefits.

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INTRODUCTION

“Indifferentism is the worst kind of disease that can affect people.” – B. R. Ambedkar

Our Indian society is a diverse society which have different people, culture, traditions, rituals, festivals, caste system, etc. people living here are united by their culture but are divided by caste system, which is still prevailing in the society. Caste system is the biggest loophole of Indian society, due to which the equality among people is degrading and feeling of superiority upon depressed classes are enhancing.

The Indian society is highly based on caste system. When the pyramid of caste system is observed it is seen that the sufferers of the society are excluded from the pyramid of caste system. According to the people caste system is based on purity which divides people into caste and unwillingly the depressed class fall completely outside the pyramid due to which they have to remain limited to the status and rights ascribed to them by birth. These sufferers of caste system were not given equal rights and opportunities because they were considered as sinful or impure and contaminated.

Schedule caste are one of the most oppressed caste who were known as Untouchables or Dalits. They were kept outside the Varna system. They were termed as Panchama², referring to the non-existent fifth Varna. While framing the constitution the framers of the constitution have given special provisions for the backward classes to uplift and to protect them.

HISTORICAL BACKGROUND OF THE RESERVATION POLICY

As the caste system discussed earlier, we came to know how the oppressed classes were brutally treated by the upward classes. The Untouchables or Dalits were called as “Harijans or People of God by Mahatma Gandhi.” The SCs, STs and OBCs are the principal recipients of the reservation arrangement under the Constitution, the goal of which is to guarantee a level playing field. It has improved the condition of backward

² (March 23, 2019, 4:27 PM), https://joshuaproject.net/people_groups/17826/IN.

classes to greater extent.³ There are 22.5% seats reserved for SCs and STs, where 15% for SCs and 7.5% for STs. Reservation percentage has been raised to 49.5% by including an additional 27% reservation for OBCs.

The demand for reservation in India dates back to 19th century with the appointment of Hunter Commission⁴ in 1882.⁵ Mahatma Jyotirao Phule, a social reformer from the lower caste made a demand for free and compulsory education as well as a proportionate representation in government jobs. In 1901 reservation were introduced for the first time in India in the state of Maharashtra (in the princely State of Kolhapur) by Shahu Maharaj. The provision was in favour of non-Brahmins and backward classes. The notification of 1902 created 50% reservation in services for backward classes/communities in the State of Kolhapur. In 1908 reservation were introduced by the name of Indian Councils Act 1909 or Morley Minto Reforms but the main provisions of these reforms were on religious lines. It aimed to divide the society on the religious basis rather than uplifting the backward communities.⁶

The communal award⁷ was announced by the British Prime Minister, Ramsay MacDonald, in August 1932. This was yet another expression of British policy to divide and rule.⁸ The Muslims, Sikhs and Christians had already been recognised as minorities. B.R. Ambedkar was in support of it because he was well-versed with the situations of these depressed classes. But before it was enacted Gandhi Ji felt that it was a new way to divide and rule. Once depressed classes were treated as a separate political entity, he argued, the question of abolishing untouchability would get undermined, while separate electorates would ensure that the untouchables remain untouchables in perpetuity.⁹ And

³ Divya Vishal, The need for review of the caste based reservation system in India (March 21, 2019, 1:52 PM), <http://www.legalserviceindia.com/legal/article-458-the-need-for-review-of-the-caste-based-reservation-system-in-india.html>.

⁴ Hunter commission was landmark commission appointed by Viceroy Lord Ripon. Its main aim was to observe the status of the elementary education in the British territories and to enhance it.

⁵ (March 26, 2019, 1:20PM), <https://www.gktoday.in/gk/hunter-education-commission-1882-83/>.

⁶ (March 26, 2019, 11:56 AM), <http://knowledgeofindia.com/quota-reservation-system-in-india/>.

⁷ Also known as MacDonald Award. It was a proposal on minority representation.

⁸ (March 23, 2019, 2:28 PM), <http://www.yourarticlelibrary.com/history/notes-onocommunal-award-and-poona-pact/23455>.

⁹ (March 23, 2019, 2:28 PM), <http://www.yourarticlelibrary.com/history/notes-onocommunal-award-and-poona-pact/23455>.

to press his demands, he went on an indefinite fast on September 20, 1932. To break his fast Poona Pact was signed by B.R. Ambedkar on behalf of the depressed classes in September 1932, the Pact abandoned separate electorates for the depressed classes. The Poona Pact was accepted by the Government as an amendment to the Communal Award.¹⁰ This was an agreement made between Mahatma Gandhi and Dr. B. R. Ambedkar which was signed on September 24, 1932.¹¹ It was signed by Pt Madan Mohan Malviya and Dr. B. R. Ambedkar and some Dalit leaders at Yerwada Central Jail in Pune, to break Mahatma Gandhi's fast.

There were certain terms of the Poona Pact:¹²

- Seat reservation for Schedule Caste (SCs) and Schedule Tribe (STs) in provincial legislature.
- The SCs and STs would form an electoral college which would elect four candidates for the general electorate.
- The representation of these classes was based on the standards of joint electorates and reserved seats.
- The system of election to the panel of candidates in both, Central and Provincial Legislature should come to end in 10 years, unless it ends on mutual terms.
- The representation of the classes through reservation should continue as per clauses 1 and 4 until determined, else by mutual agreement between the communities.
- The franchise for the Central and Provincial Legislatures of these classes should be indicated in the Lothian Committee report.
- There should be a fair representation of these classes.
- In every province, the SCs and STs should be provided with sufficient educational facilities.

¹⁰ (March 23, 2019, 2:28 PM), <http://www.yourarticlelibrary.com/history/notes-onocommunal-award-and-poona-pact/23455>.

¹¹ (March 25, 2019, 1:04 AM), <https://www.indiatoday.in/education-today/gk-current-affairs/story/poona-pact-338403-2016-09-24>.

¹² (March 25, 2019, 1:04 AM), <https://www.indiatoday.in/education-today/gk-current-affairs/story/poona-pact-338403-2016-09-24>.

CONSTITUTIONAL PROVISIONS FOR RESERVATION POLICY IN INDIA

Under the constitution of India some of the Articles provides mere knowledge with reference to the reservation policy. Untouchability is practised by people which is abolished.¹³ Practising it in any form is forbidden by law and is a punishable offence.

Reservation for these depressed classes are provided in education, public employment and in politics these are enshrined under Articles as under-

Article 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

Article 15(4) – Special provision for the advancement of the backward classes,¹⁴ is another exception to clause (1) and (2). It was added due to the decision in **State of Madras v. Champakam Doraijan**.¹⁵ In that case the Madras Govt. had by a G.O. reserved seats in State Medical and Engineering Colleges for different Communities in certain proportions on the basis of religion, race and caste. The Government defended it for promoting social justice for all sections of people as required by Article 46. The SC held the G.O. void because it classified students on the basis of caste and religion irrespective of merit.¹⁶

Article 15(5) – Provision for reservation of Backward, SCs and STs Classes in private educational institutions,¹⁷ this amendment has been enacted to nullify the effect of three decision of the SC in **T.M.A. Pai Foundation v. State of Karnataka**,¹⁸ and **P.A. Inamdar v. State of Maharashtra**,¹⁹ the SC held that the State could not make reservation of seat\|s in admission in privately run educational institutions. There, the admission could be done on the basis of common admission test conducted by the State or these institutions and on the basis of merit. In **Islamic Academy v. State of Kerala**,²⁰ the

¹³ Article 17, The Constitution is India

¹⁴ Added by the Constitution (First Amendment Act, 1951.)

¹⁵ AIR 1951 SC 226

¹⁶ Dr. J. N. Pandey, Constitutional Law of India 145 (54th ed.2017).

¹⁷ Ins. By the Constitution (Ninety-third Amendment) Act, 2005

¹⁸ AIR 2003 SC 355

¹⁹ AIR 2005 SC 3226

²⁰ AIR 2003 SC 3724

Court held that the state could fix quota for admission to these educational institutions but it could not fix fee and also admission could be done on the basis of common admission test and on the basis of merit.²¹

Article 16(3): Reservation of posts in Public Employment on the basis of residence –

Article 16(3) is an exception to clause (2) of article which forbids discrimination on the ground of residence. However, there may be good reasons for reserving certain posts in State for the residents only.²²

Article 16(4): Reservation for Backward Classes –

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 of appointment of posts in favour of any backward class of citizens which in the opinion of the state are not adequately represents in the services under the State. It applies two conditions first, the class of citizens is backward and second, the said class is not adequately represents in the services of the State.²³

In the case **Indra Sawhney v. UOI**,²⁴ the majority of seven judge bench of the SC which decided the Indra Sawhney case held that the reservation contemplated in Clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main-stream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.²⁵

²¹ Dr. J. N. Pandey, Constitutional Law of India 155 (54th ed.2017).

²² Dr. J. N. Pandey, Constitutional Law of India 168 (54th ed.2017).

²³ Dr. J. N. Pandey, Constitutional Law of India 168 (54th ed.2017).

²⁴ AIR 1993 SC 477

²⁵ (March 26, 2019 02:32 PM), <https://www.livelaw.in/news-updates/increasing-obc-reservation-ordinance-stayed-143706>.

In the case of **Balaji v. State of Mysore**,²⁶ SC held that the ‘caste’ of a person cannot be the sole test for ascertaining whether a particular class is a backward class or not. Poverty, occupation, place of habitation may all be relevant factors to be taken into consideration.

The DPSP contained in Part IV of the Constitution set out the aims and objectives to be taken up by the States in the governance of the country.²⁷

Article 46: Promotion of educational and economic interests of Schedule Castes, Schedule Tribes and other weaker sections:

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the SCs and the STs, and shall protect them from social injustice and all forms of exploitation.”

Part XVI of Indian Constitution deals with the special provisions relating to certain classes. “Article 330 and 332” reserves the seats in LS and Legislative State Assemblies for SCs and STs.

PRESENT SCENARIO OF THE RESERVATION POLICY

Reservation policy is known as “quota system” in India. This system provides special privileges to the depressed classes. People are educated nowadays and they assume reservation in every field doesn’t provide opportunities to the deserving candidates. People become aggressive in nature when talked about the reservation, they felt that it should be given for education but in the cases of employment. When they get educated then they shouldn’t be given any reservation as they are eligible enough to secure their job to earn. The nature for their aggression is also for the reason that though the depressed classes are not economically stable enough but the general classes also have the population which is not economically stable. Considering this point BJP govt. approves 10 per cent reservation for poor general category. Where, a proposal for 10 per cent reservation for who are economically weaker and fall in the general category was

²⁶ AIR 1963 SC 649

²⁷ Dr. J. N. Pandey, Constitutional Law of India 453 (54th ed.2017).

approved by the Union cabinet today. Following the cabinet approval, the government will move to amend the Constitution in order to grant this 10 per cent reservation for economically weaker in the general category.²⁸ The reservation will also be availed for admission in higher educational institutions.²⁹ The govt. will amend Articles 15 and 16 Of the Constitution, these amendments will bring several benefits to the upper castes. But this 10 per cent reservation will be provided to those who fulfil the certain criteria which qualify them as economically backward. The person will be qualified as economically weaker (a) when the annual income of a person is below Rs 8 lacs; (b) if they own less than five hectares of agricultural land; (c) if their home are smaller than 1,000 sq. ft.; (d) if the municipality notify that their residential plots are below 109 yards; (e) if they own residential plots in non-notified municipal area below 209 yards; the Bills would need to be passed by the LS and RS. “The amendments moved by the Modi govt. to enable 10% reservation in govt. jobs and education for economically weaker upper castes will face implementation problems,” asserts former CJI KG Balakrishnan.³⁰

The Madhya Pradesh HC has virtually stayed an ordinance brought in by the state increasing OBC reservation. In an interim order issued in a writ petition filed by Ashita Dubey, the Division Bench directed the state to not provide reservation of more than 14% for OBC category in admission made to the colleges on the strength of the Ordinance. The ordinance promulgated by the Governor Anandiben Patel increased the reservation in govt. jobs and university admission to the OBC category from the existing 14% to 27%. This is apart from 16% reservation to SCs and 20% to STs. It was contended that, with this ordinance, the statutorily prescribed reservation has gone up to 63% which is impermissible.³¹

²⁸ (March 25, 2019 12:57 PM), <https://www.indiatoday.in/india/story/ten-per-cent-reservation-economically-weaker-upper-caste-modi-government-1425241-2019-01-07>.

²⁹ (March 25, 2019 12:27 PM), <https://m.timesofindia.com/india/union-cabinet-approves-10-reservation-for-economically-weaker-sections/articleshow/67418734.cms>.

³⁰ (March 19, 2019, 2:40 PM), <https://www.nationalheraldindia.com/india/ex-cji-jurists-feel-10-quota-unconstitutional-and-will-e-difficultto-implement>.

³¹ (March 26, 2019 02:32 PM), <https://www.livelaw.in/news-updates/increasing-obc-reservation-ordinance-stayed-143706>.

In recent changes the Punjab Legislative Assembly unanimously passed a resolution for 33% reservation for women in Parliament and State legislative assembly. The resolution was moved by CM Captain Amarinder Singh, urging the Centre to enact it. The Bill would ensure the representation of men and women equally in national electoral process. The women Reservation Bill will ensure the representation of women in electoral and decision-making process. Once enacted, 181 seats in LS will be reserved for women along with 1,370 assembly seats (out of a total of 4,109) in 28 State Assemblies in the country. Women make 50% of our country's population and it is unfair to keep them out of electoral process and decision making." Amarinder said.³²

In recent days, SC recognised "transgenders or hijras" as 'third gender.' In a landmark judgement, they were given the status. Earlier, they were forced to write male or female against their gender. The SC asked the Centre to treat transgender as socially and economically backward. The apex court said that transgender will be allowed admission in educational institutions and given employment on the basis that they belonged to the third gender category. The third gender will be considered as OBCs. The SC said they will be given educational and employment reservation as OBCs.³³

Untouchability is still practised in Indian households, we are standing in the 72nd year of independence and it is abolished by the Constitution of India. To break these barriers of caste discrimination, Tirupati Tirumala Devasthanam has decided to train Dalits as priests. According to the reports, around 200 Dalits will be given training for about three months on daily Vedic rituals and practices. In the state of Uttar Pradesh, a school has been set up by a group of teenage children because the village kids who were from a socially barred group were denied access to the only primary school, in the adjoining village.³⁴

³² (March 22, 2019, 05:05 PM), <https://m.hindustantimes.com/chandigarh/punjab-passes-resolution-for-women-s-reservation/story-i6kYpURWRHrvY1Sxj1IFzL.html>.

³³ (March 19, 2019, 2:49PM), <https://m.timesofindia.com/india/Supreme-Court-recognizes-transgenders-as-third-gender/articles/33767900.cms>.

³⁴ (March 25, 2019 11:57 PM), <https://www.indiatoday.in/education-today/gk-current-affairs/story/untouchability-in-india-265233-2015-09-28>.

Many changes are made to and steps are taken by govt. or by people themselves to uplift the depressed classes. The sufferers are not in real being benefitted. Changes are made by the govt. according to the present society demands, we cannot in total say it's of no use

CONCLUSION

Our Indian society has many distinctive features. But it has loopholes also, which divides people on basis of caste, colour, creed etc. there were many restrictions on the people as upper class never gave any opportunity to depressed classes to rise.

We are well-versed with the line “united we stand, divided we fall” which means when we stand together nobody can break that unity but when we disperse we can be broken easily. This is the main reason why British ruled in India for many successful years. They know the limitations, restrictions which prevailed here which they used against us.

Though, we are living in the 72nd year of independence but still but still the belief in caste system makes the people's view handicapped. Like taking one of the example from South India (Karnataka) where an upper caste person dropped poison in the well of the Dalits from where they drew water. Yet the wells of both classes were different but this was also not seen by them which made them to perform such an immoral act. Lower class were made to starve for water. But still we believe that lower class are enjoying much more privileges than upper class. We should believe what we see, not we hear from others. Because the thing we hear are manipulated in such a way that we get influenced by those people. India is a democratic country and everyone are equal in the eyes of Law. But it's not the truth people are still betrayed from enjoying their rights on the basis of discrimination. Reservation or Quota system is the need of the society to represent its people equally.

Reservation is the means of compensating the depressed classes who suffered a lot. So, not to repeat the mistake reservation is necessary to be implemented and till people are not aware enough what the Constitution have given them their rights they cannot enjoy

it. And it is the duty or responsibility of people to make them aware. The main aim was to uplift those people. There was a positive point that after reservation policy people started accepting them in the main society. It can be said that the reservation policy in some extent reduced the gap between the upper and lower class.

But nowadays politicians play major role in every policy to caste vote in favour of them, due to which the system is corrupted. They never won elections on the basis what good they did for the people rather they make certain changes in the policy existing so that people would stand in favour of them. The policy of reservation has become the tradition and way of vote banks. At present there were certain changes in favour of general category which are to be enacted and also transgender to be given reservation, which was a major step taken. Small steps would change the country.

LIST OF ABBREVIATIONS

- SCs – Schedule Castes
- STs – Schedule Tribes
- OBCs – Other Backward Castes
- Govt. – Government
- SC – Supreme Court
- G.O. – Government Order
- DPSP – Directive Principles of State Policy
- LS – Lok Sabha
- BJP – Bhartiya Janta Party
- RS – Rajya Sabha
- UOI – Union Of India
- HC – High Court
- CJI – Chief Justice of India

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