
RESERVATION POLICY IN INDIA: A SOCIO - LEGAL ANALYSIS

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ABSTRACT

India's reservation policy is a positive action mechanism that helps some individuals in society who have been discriminated against and disadvantaged for a long time. The government provides them with special opportunities in education, employment, and politics so that they have an equal chance to prosper. This is as per the Indian Constitution, which allows for the provision for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). Over the years, different enactments and judicial decisions have evolved the reservation system with an aim towards attaining social justice as well as fairness in competition. Individuals prefer reservations because they help to uplift groups that had been denied a level playing field in the earlier times. However, others believe that reservations need to be provided on economic lines rather than caste. The initiative to introduce a 10% reservation for Economically Weaker Sections has also added fuel to the debate because it benefits poor people from all sections. The reservation system helped many to change their lives, but then there are also pitfalls. For some, the perception is that it is not always given to those who need it most, but for others there is a requirement for more reservations. Achieving a proper balance of social justice against equal opportunity makes sure that the system benefits society as much as it can.

KEYWORDS: Reservation, Social Justice, Equality, Discrimination, Affirmative Action, Opportunities

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INTRODUCTION:

India's history is marred with the discrimination of certain communities because the caste system handles them poorly. This motivated the Indian government to implement the reservation system which is a type of affirmative action that allocates disproportionate resources (such as funding or seats in educational institutions) to ensure basic level structure equality within education, job opportunities, and political representation. Stated Indian Constitution, reservation is positive discrimination aimed at advancement of disadvantaged sections of the society. This paper examines the mandate changes of the reservation system alongside the impact of Mandal Commission, main constitutional pillars, and grade A case studies. It also looks at the cases for and against reservation, the increased calls for overwhelming need of it, as well as the systemic consequences. In the end, the paper analyzes how effective the system has been, and how it can be improved.

HISTORICAL BACKGROUND:

The concept of reservations based on caste originated way back in 1882 when William Hunter and Jyoti Rao Phule suggested initiatives for the empowerment of downtrodden communities for the first time. The systematic introduction of reservations, however, took place in 1933 with the Communal Award by British Prime Minister Ramsay MacDonald. The award sanctioned separate electorates to different communities such as Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, and the Depressed Classes. After resistance, especially from Mahatma Gandhi, the Poona Pact was signed by Gandhi and Dr. B.R. Ambedkar, resulting in an consolidated Hindu electorate with reserved seats for the Depressed Classes. Since India became independent, reservations were only given to Scheduled Castes (SCs) and Scheduled Tribes (STs). In 1991, the reservation was extended to Other Backward Classes (OBCs) based on the Mandal Commission's recommendations, which suggested a 27% quota in government employment for OBCs. Recently,

the Economically Weaker Sections (EWS) category was added, offering reservations over and above the current 50% limit for SCs, STs, and OBCs.³

MANDAL COMMISSION:

Was set up in December 1978, with B.P. Mandal at the helm, under Article 340 of the Constitution. Its mission? To pinpoint and uplift “socially and educationally backward classes” in India. After diving deep into research, the commission discovered that around 52% of the population fell into the Other Backward Classes (OBCs) category and suggested a 27% reservation in government jobs for these groups. They took great care in establishing criteria to evaluate backwardness and put together comprehensive lists of OBC communities, which included both Hindus and non-Hindus. In total, the commission identified 3,743 OBC castes throughout India, along with a distinct list of 2,108 groups that were particularly disadvantaged, referred to as “depressed backward classes.” While its recommendations ignited discussions across the nation, they ultimately paved the way for significant changes in India’s reservation policies.⁴

CONSTITUTIONAL PROVISIONS GOVERNING RESERVATION:

Constitutional provisions that focus on reservations in India. The Indian Constitution has laid out several measures aimed at uplifting socially and educationally backward classes, as well as Scheduled Castes (SCs) and Scheduled Tribes (STs), through various forms of reservations in legislatures, education, and employment.

1. Reservation in Legislatures (Part XVI) - Articles 330 & 332: These articles ensure that seats are reserved for SCs and STs in both Parliament and State Legislative Assemblies. – Article 243D:

³ <https://preonlinetest.com/blogs/reservation-in-india-policies-impact-and-future-directions/>

⁴ <https://www.epw.in/engage/debate-kits/reservations-in-india-resource-kit>

This article guarantees reservations for SCs and STs in Panchayati Raj institutions. – Article 233T: It provides for reservations for SCs and STs in Municipalities.

2. Reservation in Education and Employment - Articles 15(4) & 16(4): These articles allow the government to reserve seats for SCs, STs, and Other Backward Classes (OBCs) in educational institutions and government jobs. – Article 15(5) (93rd Amendment, 2006): This amendment permits reservations for SCs, STs, and OBCs in private educational institutions as well. – Article 16(3): It allows for reservations in public employment based on a candidate's place of residence.

3. Special Provisions Regarding Backward Classes - Articles 39A & 45: These directive principles instruct the state to ensure justice, provide free legal aid, and improve the living standards of backward classes.

4. Reservation Related Amendments - 77th Amendment Act, 1955: This amendment introduced Article 16(4A), which allows for reservations in promotions for SCs and STs. – 85th Amendment Act, 2001: This act amended Article 16(4A) to grant consequential seniority to SC/ST candidates who are promoted on a reserved basis. – 81st Amendment Act, 2000: This amendment added Article 16(4B), which allows for the carry-forward of unfilled SC/ST reserved positions to the next year, bypassing the 50% reservation cap.

5. Administrative Considerations - Article 335: This article emphasizes that the interests of SCs and STs should be considered without compromising the efficiency of administration. These provisions aim to promote social justice while balancing the need for administrative efficiency and equal opportunities for all. ⁵

⁵ <https://www.drishtiias.com/to-the-points/Paper2/reservation-in-india>

TYPES OF RESERVATION

Women's Reservation:

- i. **106th Amendment Act, 2023:** Reserves one-third seats for women in Lok Sabha, State Legislative Assemblies, and the Delhi Assembly, including SC/ST seats.
- ii. **Local Bodies (Article 243D):** Provides at least one-third reservation for women in Panchayats and municipalities, including chairperson.
- iii. **Scheduled Castes (SCs) & Scheduled Tribes (STs):** Initially provided for 10 years, but renewed from time to time. SCs (traditionally subjected to untouchability) receive 15% reservation in government employment, education, and legislatures. STs (tribal groups with separate identities) receive 7.5% reservation for incorporation into governance and development.
- iv. **Other Backward Classes (OBCs):** Started in 1991 on the basis of Mandal Commission Report (1980). Grants 27% reservation in government employment and education to socially and educationally backward classes.⁶

SOCIO-LEGAL IMPLICATIONS OF RESERVATION POLICY

Reservation in Education

Scheduled Castes (SCs) and Scheduled Tribes (STs) Policies

Reservation equips socially and educationally backward classes with an equal opportunity to counteract the effects of past discrimination. Reservation allows them the means of obtaining

⁶ <https://pwnlyias.com/reservations-in-india/>

access to education, employment, and other opportunities so that they are on par with the remaining part of society on a uniform platform.

Reservation for Other Backward Classes (OBCs)

The Constitution of India makes provisions for the reservation of seats in educational institutions, jobs, and political seats for OBCs. The reservation creates a protective guarantee of their representation in government schemes and scholarships, narrowing socio-economic gaps.

i. Impact on Higher Education

Although policies of reservation attempt to have improved access to education, such access remains deficient in infrastructure and quality for the marginalized sections. A properly planned and systemic approach is needed for reservation policies to ensure their outcomes without compromising merit.

Reservation in Employment

Reservation in jobs enables historically underprivileged classes to secure government employment and promotions. The State and Central governments implement reserved quotas under provisions of the Constitution to provide social justice and economic advancement. There are nevertheless apprehensions regarding preserving a balance between merit and affirmative action in the professional domain.

i. Economic Impact

There is a controversy regarding whether reservation should also be based on economic criteria. Although caste-based reservation aims to compensate for historical disadvantages, others opine that economic-based reservation would make sure that the benefits go to the most economically disadvantaged, irrespective of caste.

ii. Social Impact

Reservation policies sometimes generate social tensions because some individuals perceive them as unjustified privileges. Resolution of these problems includes awareness programs

and discussion highlighting the historical necessity of such policies in achieving social equality.

Economically Weaker Section (EWS) Reservation

103rd Constitutional Amendment Act, 2019 introduced a 10% reservation for EWS in the field of education and government service. This was done by modifying Articles 15 and 16, adding Articles 15(6) and 16(6). EWS reservation is for individuals who are neither SC, ST, nor OBC but economically backward. The Indira Sawhney judgment (1992) fixed the 50% ceiling on reservations, but the Supreme Court subsequently clarified that this restriction was not absolute and only in the case of caste-based reservations. The policy provides for the Centre as well as the States to reserve EWS depending upon the need. In addition to this, the 106th Constitutional Amendment Act, 2023, reserves one-third to women in Lok Sabha, State Assemblies, and the Legislative Assembly of Delhi, even to SC and ST reserved seats. ⁷

LEGAL FRAMEWORK GOVERNING RESERVATION

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act or POA Act) aims to prevent and punish crimes against members of Scheduled Castes and Scheduled Tribes, providing special courts and rehabilitation for victims, and is rooted in the Indian Constitution's provisions against discrimination.

⁷ <https://sleepyclasses.com/understanding-the-origins-of-the-reservation-system-in-india/>

CHALLENGES AND CONTROVERSIES IN THE RESERVATION POLICY

Creamy Layer and Its Problems

Creamy layer' means those more prosperous and better-educated sections of OBC (Other Backward Classes) who do not qualify for reservations in government jobs and education. This is to make sure that only genuinely needy individuals receive reservations in government employment and education.

But there are some issues with this idea:

- i. Disparities in Economic Status Within the Community: All OBC, SC, and ST families need not be as poor or marginalized. Some families are prosperous while others remain in need. Uniformity of law for everyone could be unfair to some.
- ii. Income-Based Criteria Cannot Be Always Perfect: The creamy layer is decided primarily based on family income. But merely being high in earnings does not prove one has succeeded over caste prejudice. Thus, some meritorious individuals would lose reservation facilities.
- iii. Legal and Government Issues: Most people approach courts because the creamy layer rule is often not well defined or applied. This generates additional work for government and courts. Some people propose making the rule flexible enough to accommodate the actual scenario of various communities.

Reservation in Promotions

Reservation in promotions refers to the fact that SC and ST employees receive special preference when advancing to higher government job posts. This policy is in place for the benefit of those who have been discriminated against in the past.

Key facts regarding this policy:

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- i. It is applicable at all levels of government jobs (Group A, B, C, and D).
 - ii. It is carried out in various ways, such as by seniority-based promotions, examinations, and selection procedures.
 - iii. Reservation percentage is 15% for SCs and 7.5% for STs.

But this policy has been challenged legally:

- i. **Indra Sawhney Case (1992):** The Supreme Court held that the Constitution never provided for reservations in promotions, which put an end to the practice for a while.
- ii. **Nagaraj Case (2006):** The Supreme Court later stated that Parliament could legalize reservation in promotions, but with stern conditions. The government needs to establish with facts that SCs and STs continue to be disadvantaged at higher-level positions.

This issue is still being argued today. Some people believe that it ensures justice to marginalized sections, but others feel it might impact merit and efficiency in government posts.⁸

COMPARATIVE ANALYSIS OF RESERVATION POLICIES

Reservation policies are instruments of social justice used to deal with historical injustices and provide opportunities for the marginalized communities. While that of India is immersed in the ideology of caste-based affirmative action, other nations such as the U.S. and South Africa aim at racial and socio-economic inequalities. A comparative analysis is beneficial as it helps us understand what does not work, what does, and how policies can become more inclusive and effective.

RESERVATION POLICIES: INDIA VIS-À-VIS GLOBAL PERSPECTIVES

⁸ <https://legalonus.com/caste-based-reservations-and-affirmative-action-in-india/>

India's Reservation Framework

India follows a caste and social backwardness-based reservation policy. The 103rd Constitutional Amendment added Economic Weaker Section (EWS) reservation, modifying Articles 15 and 16 to provide opportunities to economically weaker people beyond SC, ST, and OBC.

United States: Affirmative Action

Focus: An affirmative action policy redresses racial discrimination, segregation, and historical disadvantages the African Americans and other minorities have endured.

Methods: Promotes diversity by race-conscious hiring and admissions practices, but does not require rigid quotas.

Examples: University admissions (e.g., Harvard's former race-conscious admissions practices), corporate diversity initiatives.

Challenges: Faces backlash on charges of reverse discrimination. The 2023 Students for Fair Admissions v. Harvard case resulted in a prohibition on race-based university admissions.

South Africa: Post-Apartheid Equity Measures

Focus: Remediates socio-economic inequalities brought about by apartheid by means of racial equity policies.

Methods: Broad-Based Black Economic Empowerment (B-BBEE) encourages historically disadvantaged group employment and business ownership.

Examples: Affirmative action in employment, education, and land redistribution initiatives.

Challenges: Economic growth versus social justice, as business ownership and land are still unequal.

STATE-LEVEL DIFFERENCES IN INDIA

Tamil Nadu: A One-of-a-Kind Model

69% reservation, which is above the 50% limit established by the Supreme Court.

There are sub-quotas in OBC (e.g., Vanniyars, DNTs) and SC (e.g., Arunthathiyars) categories.

Covered under the Ninth Schedule, in judicial review.

Bihar: Emphasis on Strong Local Governance

Extends reservation from education and employment to Panchayati Raj institutions.

Guarantees representation of women in local governance.

Maharashtra: Reservation for Maratha and Nomadic Tribes

In addition to SC, ST, and OBC reservation, encompasses Nomadic Tribes (NTs).

The Maratha reservation (SEBC) was quashed in 2021 on a ground of violation of the 50% ceiling.

Northeast India: Highest ST Reservation Quotas

States such as Arunachal Pradesh, Meghalaya, Nagaland, and Mizoram set aside as much as 80% of state government positions for Scheduled Tribes.

Policies are supported by the Inner Line Permit (ILP) system in order to defend indigenous identity.

Rajasthan: The Gujjar Agitation

Gujjars have long protested and fought a legal battle over being included as Special Backward Classes (SBC). ⁹

RECOMMENDATIONS FOR REFORM

1. Move Beyond Caste-Based Quotas

Employ a multi-dimensional model taking into account income, education, rural origin, and disability.

2. Periodic Review and Sunset Clauses

Enact regular review periods (e.g., every 10 years) to evaluate the efficacy of the policy.

3. Strengthening Support Systems

Prioritize scholarships, mentoring, and career development programs over mandatory quotas.

4. Balancing Merit and Social Justice

Establish bridging programs for training marginalized groups for competition and not in dilution of standards.

5. Using Technology for Transparency

Initiate AI-based tracking to avoid leakage of benefits to undeserving sections. ¹⁰

RESEARCH QUESTIONS AND ANALYSIS

- 1) What are the social-legal effects of reservation policies?

⁹ https://www.researchgate.net/publication/360941680_A_Socio-Legal_Study_Of_Reservation_in_India_With_Special_Reference_To_Human_Rights

¹⁰ <https://www.civildaily.com/future-of-reservation/>

Social Implications

Amending Historical Wrongs: Offers opportunities to the disadvantaged community due to caste, class, or colonialism.

Encouraging Social Equality: Assures them of representation in education, employment, and politics.

Effect on Caste Hierarchy: Criticized on the grounds of reinforcing caste rather than eradicating it.

Legal Implications

- i. Constitutional Framework: Articles 15(4), 16(4), and 17 authorize the state to make special provisions for marginalised groups.
- ii. Judicial Interpretation: Courts have time and again amended and interpreted reservation policies, striking a balance between social justice and meritocracy.

1) How effective is India's reservation policy in redressing historical injustices?

Positive Impacts

- i. Improved education and employment opportunities for SCs, STs, and OBCs.
- ii. Enhanced political representation for disadvantaged groups.
- iii. Mitigation of social inequalities through affirmative action schemes.

Challenges and Criticism

- i. Creamy Layer Concept: Affluent sections among reserved groups gain more than the most impoverished.
- ii. Social Tensions: Non-reserved groups feel left out and resent it.
- iii. Implementation Gaps: Bureaucratic obstacles slow down effective implementation of policies.

2) What are the possible alternatives or reforms?

Rebooting the Infrastructure of Opportunity (3Es Approach)

- i. Education: Improve public schools, vocational training, and higher education funding.
- ii. Employability: Emphasize skills training, apprenticeships, and soft skills.
- iii. Employment: Cut red tape for employment generation, encourage startups and formal sector employment.

Merit-Based but Inclusive Models

- i. Diversity Index Model: Applied in Brazil, balancing affirmative action with merit-based choices.
- ii. Means-Based Aid: Movement towards economic considerations in addition to social background.

Effective Resource Utilization

- i. Direct Benefit Transfers (DBT) to award scholarships, accommodation, and healthcare in place of blanket quotas.
- ii. Ensure that the subsidies are received by the actually disadvantaged, not those already advanced.

3) How do state-level differences affect policy effectiveness?

- i. Inconsistent benefits: A Tamil Nadu student with 69% reservation has greater access than a student in some other state.
- ii. Need for an integrated framework with room for local needs.

4) What can India learn from international policies?

- i. Brazil: Blends racial and economic quotas for equity.
- ii. U.S.: Employs outreach programs instead of rigid quotas.

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- iii. South Africa: Tries to balance affirmative action with economic policies.
 - iv. China: Employs ethnic minority policies for education and business incentives.

CASE STUDIES ON THE THEME OF RESERVATION OF INDIA:

1. State of Madras vs Smt. Champakkam Dorairajan (1951)

This led to the First Amendment of the Indian Constitution. The Supreme Court noted that although Article 16(4) permitted reservations in government service to backward classes, Article 15 had no such provision for education. Parliament introduced Article 15(4) so that the imbalance could be bridged and reservations were permitted in educational institutions for educationally and socially backward classes.

2. Indra Sawhney vs Union of India (1992) (Mandal Commission Case)

This judgment established fundamental principles in respect of reservations in India: Affirmed 27% reservation to Other Backward Classes (OBCs) in government employment and education. Established the 50% ceiling on total reservations to balance with merit recruitment. Enunciated the “creamy layer” doctrine, barring socially and economically advanced OBCs from benefiting under reservations.

3. M. Nagaraj vs Union of India (2006)

The Supreme Court renewed reservations in promotion for Scheduled Castes (SCs) and Scheduled Tribes (STs) but with rider: Backwardness shall be established with quantifiable data. Underrepresentation of the state employee group must exist. Administrative efficiency is not to be prejudiced.

4. Jarnail Singh vs Lachhmi Narain Gupta (2018)

The case altered M. Nagaraj’s ruling: The State need not gather data of SCs/STs’ backwardness in order to grant reservations in promotions. The creamy layer concept was applied to SCs and STs,

excluding successful members of these classes from availing reservation benefits. In 2019, the Supreme Court upheld Karnataka's law of reservation in promotion with consequential seniority.

5. Suraj Bhan Meena vs State of Rajasthan (2010)

The Court reaffirmed M. Nagaraj's criteria for reservations in promotions:

States need measurable data on backwardness. Demonstrate poor representation in government employment. Provide that administrative efficiency is not affected. Reservations can't bring in fresh selection standards.

6. Janhit Abhiyan vs Union of India (2022)

The Supreme Court validated the 103rd Constitutional Amendment, which brought in 10% reservation to Economically Weaker Sections (EWS) in education and government jobs.

7. M.R. Balaji vs State of Mysore (1963)

The Supreme Court invalidated a policy of 68% reservation as excessive and against the Constitution. It upheld the 50% limit on reservations, a law later reaffirmed in Indra Sawhney (1992).¹¹

ARGUMENT FOR RESERVATION:

Reservation is vital to amend historical wrongs, create equality for underprivileged groups, guarantee representation, and maintain equality as the foundation of meritocracy. It tackles systemic discrimination and offers opportunities to those who have been historically deprived of resources.

¹¹ <https://lawchakra.in/blog/reservation-education-jobs-legal/>

ARGUMENT AGAINST RESERVATION:

Opponents maintain that reservation reinforces caste divisions, does not tackle economic advancement, diminishes self-respect, obstructs meritocracy, and is misused for political benefits. The notion of the 'creamy layer' is regarded as inadequate, and reservation is viewed as a means of exclusion. Reservation in state services caused conflict and discord among government workers, which ruined the work environment. The goal of the reservation policy was to abolish caste, not to maintain it; instead, caste-based reservations merely promote the idea of caste in society. Although reservations came in place to guarantee historically deprived groups equal access to resources, their social disadvantage remains regardless of their financial success. Self-respect is so severely damaged by reservations that the struggle to see which one is the best is replaced by the most progressive. The main threat to meritocracy, which is the cornerstone of many developed nations, is reservations. It has evolved into a strategy for achieving certain political goals by appealing to inherent identities and class affiliations. The most disadvantaged members of the backward castes maintained to be excluded, while the dominant and upper classes seized the benefits of reservation.¹²

REASONS BEHIND INCREASING DEMANDS:

The rising demands for reservations arise from worries regarding agricultural distress, stagnant employment, and developmental inequalities, even in economically prosperous regions. Upper castes are concerned about losing their advantages, resulting in calls for similar benefits. Awareness is also lacking among the neediest individuals within reserved categories.

CONCLUSION

¹² <https://www.drishtiias.com/to-the-points/Paper2/reservation-in-india>

Reservation has proved to be a great instrument in solving social imbalances, but it needs to be updated according to changing times. India needs to balance affirmative action with the need to provide efficiency, inclusivity, and equity. Future policy should concentrate on economic development, skill-based reservations, and transparent implementation to provide opportunities to the most deserving persons. Reservations are still necessary for social justice, but they need to change to be fair and effective. Reservation is becoming increasingly viewed as a solution to the negative consequences of improperly considered development programmes. The upper castes' growing demands for reservations are also a consequence of their incapacity to adapt to change and their fear of losing their privilege. Since upper castes don't enjoy the same benefits as lower classes, they have started to feel disadvantaged, particularly when it comes to government employment. Some of the major suggestions:

- i. Giving primacy to economic considerations over caste for reservations.
- ii. Leaving out the creamy layer among SCs, STs, and OBCs.
- iii. Improving access to education at all levels rather than banking on quotas.
- iv. Balancing merit and justice to make governance effective.
- v. A careful, fact-based approach based on robust political will is the way to make reservations an effective instrument of equality and opportunity.¹³

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