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**RETHINKING RESERVATION POLICIES: EQUITABLE
ALTERNATIVES ARE THE NEED OF THE TIME**- Abhimanshi Singh¹**Abstract**

Reservation policies have long been a contentious issue worldwide, with India's caste-based reservation being a prime example. While reservation was initially introduced to address historical discrimination and promote social equality, their effectiveness and relevance have been questioned over time. Recently caste based census has been conducted in Bihar which makes this debatable topic relevant again. Reservation policy particularly in India has faced criticism on several fronts. Critics argue that the current system perpetuates divisions based on caste and that it often fails to uplift the most marginalized communities. This paper looks into the evolution of reservation policy in India, the reason behind implementation, and arguments in favour of and against it, and critically examines its impact and suggests that the state needs to review reservation policy and adopt alternative approaches that could foster inclusivity and social justice.

Keywords: Reservation, Untouchability, Backwardness, Representation, Upliftment,

Introduction

Recently the Bihar government has conducted a caste-based census and released the report on 2nd October 2023. The Bihar Caste Census Population report revealed that 27.1 percent of the population is from the underprivileged classes (Backward class), 36 percent are from the very underprivileged classes (Extremely Backward Class), 19.7 percent are from Scheduled Castes, and 1.7 percent are from Scheduled Tribes in Bihar. The results of the study will intensify the

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calls for an EBC quota within the OBC quota and for raising the OBC quota above 27%. The results of the survey will also reignite the controversy surrounding the Supreme Court's historic decision in Indra Sawhney v. Union of India (1992), which placed a 50% cap on reservations. Demands for an increase in the reservation quota proportionate to the population may come from various caste groups, depending on the number of OBCs.

In the Vedic times, the Varna system was prevalent among Hindus. There were four Varna i.e. Brahmin, Kshatriya, Vaishya, and Sudhra. Varna was not assigned at the time of birth but by the profession. This system is distorted with time and it was changed into a caste system where the caste is assigned by birth. The profession of a person largely depended on what caste they belonged to. Someone born into the Kshatriya caste, for example, was a warrior and Vaishya were traders. Sudhra were employed in menial jobs that were (and still are) considered physically polluting like Scavenging, Cleaning toilets, Killing animals (like fishing, butchering), Cremating and handling dead bodies, and Dealing with human excretions etc.

Anyone involved in such tasks was considered 'impure' and thus, not allowed to come in contact with the upper-caste people and their belongings. Thousands of people suffered due to this practice, and it created an uneven society, where a section of people were denied rights and opportunities because of their caste. To eradicate this inequality caused by the caste system in India, affirmative action in the form of reservation based on caste came into the picture.

In India, the term "reservation" refers to the practice of giving selected members of a group access to government jobs, schools, and even legislatures while excluding others to give the oppressed more chances. Because the reserve is based on quotas, it could be seen as positive discrimination.

History of Reservation in India

William Hunter and Jyotirao Phule came up with the concept for India's reservation policy first in 1882. The Caste System and the Indian practice of untouchability served as the fundamental

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inspiration for the reservation policy. In the state of Kolhapur, a notice from 1902 set out 50% of services for those who were economically disadvantaged.² This was India's first notification establishing a reservation for the benefit of the country's underprivileged. The Madras Presidency granted 44% of reservations to non-Brahmins, 16% to Muslims, 16% to Anglo-Indian Christians, and 8% to Scheduled Castes through an official government order in 1921.³

The Morley-Minto reforms of 1909 marked the inception of India's communal election system. The Indian Council Act of 1909, sometimes referred to as the Morley-Minto Reform established communal electorates, which were distinct electorates based on religion. The Communal Electorate became renowned as having its father in Lord Minto.⁴

British Prime Minister Ramsay Macdonald instituted the "Communal Award," the basis for the current reservation system in India, in 1933. There were distinct electorates for Europeans, Anglo-Indians, Indian Christians, Muslims, Sikhs, and Dalits under the terms of the communal award. However, when Dr. Ambedkar and Mahatma Gandhi signed the Poona Pact agreement on September 24, 1932, it was decided that Hindus would have a single elective, with some reservations for the lower classes.⁵

Following India's 1947 declaration of independence from British rule, the nation was split into Pakistan and India. Following the split, a significant portion of the Muslim population moved to Pakistan, as Hinduism rose to prominence in India. Consequently, social inequality based on the caste system was a significant obstacle to equality in society during the formation of the Indian Constitution by the Constituent Assembly. Thus, the Indian Constitution included a reservation clause for the socially disadvantaged sections. Reservations were once made available solely to

² Reservation in India, Know everything about reservation in detail, available at <https://blog.finology.in/Legal-news/reservation-system-in-india> (Last visited on October, 21, 2023)

³Ibid

⁴Communal Award: Provisions and objectives, available at <https://unacademy.com/content/karnataka-psc/study-material/polity/communal-award-provisions-objectives/> (Last Visited on October 25, 2023)

⁵Bipin Chandra, *History of Modern India* (NCERT, 2000)

SCs and STs, but they were later extended to other unprivileged sections of society on multiple occasions.

Evolution of reservation

As mentioned above, initially reservation was given only to SCs and STs. Later on, its scope and communities availing the benefit of the reservation have also been extended. Firstly OBCs and in 2019 EWS category were also included in the category to avail the benefit for reservation.

- **Reservation to OBCs**

To provide benefits of reservation to OBCs, two backward class commissions were constituted by the then government. The first commission was named the Kaka Kalelkar Commission which is also known as the first backward class commission constituted in 1953 by presidential order under Article 340. The commission submitted its report on 30 March 1955. It had prepared a list of 2,399 backward castes or communities for the entire country of which 837 (*starred communities) had been classified as the ‘most backward’.⁶ The committee suggested measures for economic upliftment of OBCs and the commission also suggested treating all women as backward class. The second Commission was constituted in 1970 under the Chairmanship of B.P Mandal in 1979, and it is known as the second Backward Class Commission. The Mandal Commission had created a report using the data of the 1931 census, the last caste-aware census, extrapolated with some sample studies. In 1990, the then PM V.P.Singh following the recommendations of the Mandal Commission provided 27% reservation to the people belonging to backward classes. Later on, this was challenged under **Indra Sawhney v Union of India**.⁷ The 9 judges' bench of the Supreme Court pronounced its judgment by a 6:3 majority, the

⁶Editorial“Sunday story: Mandal Commission Report, 25 years later”, The *Indian Express*, September 1, 2015, available at: <https://indianexpress.com/article/india/india-others/sunday-story-mandal-commission-report-25-years-later/> (Last visited on October, 22, 2023)

⁷AIR 1993 SC 477.

Supreme Court, in its verdict, upheld the government order, thinking that caste was an acceptable indicator of backwardness. Thus, the recommendation of reservations for OBCs in central government services was finally implemented in 1992.⁸

In *P. An Inamdar v State of Maharashtra*,⁹ In its ruling, the Supreme Court recognized minority educational institutions' autonomy and their ability to admit students of their choosing. The court decided that although minority institutions must follow the merit principle, they are allowed to create their own admissions processes and do not have to abide by the state's reservation policies. To nullify the judgment of this case the government introduced the 93rd Constitutional Amendment Act in 2005. The act's passage resulted in the addition of Article 15(5) to the Indian constitution. In terms of admission to both public and private educational institutions, this gives preference to the socially and educationally disadvantaged classes. However, in the *Ashok Kumar v Union of India* case,¹⁰ the constitutional legitimacy of this amendment was contested on the grounds of equality; the Supreme Court noted that reservation gives individuals who would not otherwise be able to afford it an additional advantage in their pursuit of university education. The amendment's legitimacy was affirmed by the court, which also noted that as it only slightly modifies the principle of equality and incorporates affirmative action and reservation in educational institutions, it does not contradict the basic structure of the constitution.

- **Reservation in promotion:**

The parliament and the Apex Court have long disagreed over the reservation of seats for SCs and STs in public job promotions. The Supreme Court ruled in the 1992 case of *Indra Sawhney v. Union of India*¹¹ that reservation in promotion is prohibited by Article 16(4). In opposition to it,

⁸Siddharth Prabhakar, "20 years after Mandal less than 20% OBCs in central Jobs", *The Times of India*, December 26, 2015, available at: <https://timesofindia.indiatimes.com/india/20-years-after-mandal-less-than-12-obcs-in-central-govt-jobs/articleshow/50328073.cms> (Last Visited on October 15, 2023)

⁹(2005) 6 SCC 537


¹⁰1972(1) SCC 660

¹¹Id note 5

the 77th Constitutional Amendment Act, 1995 was passed by parliament and added a new clause 4A under article 16, giving the state the authority to impose reservations in the promotion of SCs and STs in public employment.

The legislature passed the 82nd Constitutional Amendment Act, 2000, in the year 2000. A proviso was added to Article 335 of the Constitution by this amendment. It gives the state the authority to enact laws easing the requirements for qualifying marks or evolution standards for members of the SC and ST groups when it comes to promotions within the public sector.

However, in the *M. Nagaraj v. Union of India*¹² judgment from 2006, the Supreme Court established three requirements for the advancement of SCs and STs in public service and expanded the application of the creamy layer exclusion concept to include them.

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- The government has to show the backwardness of the particular community before introducing the quota for them
 - There should be inadequate representation of the community and it should be based on quantifiable data.
 - Overall efficiency of the public administration should not be affected due to reservations in promotion.

The ruling in *Mukesh Kumar v. The State of Uttarakhand*¹³ established a well-established legal precedent that states the state government is not required to impose reservations for SCs and STs when it comes to promotions or appointments to public positions. Consequently, no one can assert that a reservation constitutes a fundamental right. Whether or not reservations are needed for appointments and promotions is up to the state government. Reservation became discretionary after the ruling. Before granting a reserve, the state government must gather

¹²(2006) 8 SCC 212

¹³(2020) 3 SCC 1

quantitative evidence demonstrating the class's backwardness, inadequate representation, and general administrative effectiveness.

- **Reservation for EWS category:**

The legislature proposed the additional reservation in the 103rd Constitutional Amendment Act of 2019. With this amendment, a 10% reservation was made for the EWS or economically disadvantaged segment of society. Economically disadvantaged groups are given preference in public jobs and both public and private educational institutions. It resulted in a total reservation of almost 60%, which is against the current guidelines regarding the ceiling on reservation set by the Supreme Court in the cases of *Balaji v. State of Mysore* and *Indra Sawhney v. Union of India*.

The 103rd Constitutional Amendment, which provides for the reservation of EWS, was upheld by the Supreme Court by a 3:2 majority in *Janhit Abhiyan v. Union of India*.¹⁴ The court expanded the net benefits of reservations to cover only economic backwardness as a result. The court also makes clear that every affirmative action policy of the government that works towards advancing the socio-economic order and the establishment of an equal society is authorized by the constitution, which is one of the main goals of our constitution. By distinguishing between formalistic and substantive equality, the court suggests that the Constitution upholds equality in its truest essence and substance rather than only as a formality. To provide equality in its purest form, the court must reach out to all socially and economically disadvantaged groups, including those who are fighting to overcome financial constraints and who depend on government assistance to overcome the limitations and disabilities brought on by these causes.

The Global context of affirmative action:

¹⁴ 2022 LiveLaw (SC) 922

Affirmative action for those in need started to take shape in the 1960s as a result of American civil rights movement efforts to preserve the idea that "all people are equal." The goal was to give everyone equal opportunity, regardless of color, gender, race, national origin, or religion—a promise that had not yet been realized in history. The phrase "affirmative action" refers to the country's successful initiatives in this field.

Indian reservations are not the only ones. To mention a few, reservation systems are in place in Bangladesh, Nepal, Pakistan, and Sri Lanka. Even though quotas are extremely uncommon in nations, affirmative action is still in use everywhere in the world.¹⁵ To mention a few:

- The United States has Affirmative Action
- The United Kingdom has the Equality Act 2010
- Japan has policies to help the Burakumin, who are considered the outcast group of Japan.
- Brazil has Vestibular
- Canada has Employment equity (Canada) which affects Aborigines and minorities
- China reserves positions for ethnic minorities and women
- Finland has quotas for Swedish speakers
- Germany has quotas in their Gymnasium system
- Israel has affirmative action
- Macedonia has quotas for Albanians
- Malaysia has the Malaysian New Economic Policy
- New Zealand has affirmative action for Maoris and Polynesians
- Norway requires 40% of the PCLs boards to be women.
- Romania has quotas for Romans
- South Africa has Employment Equity

¹⁵Gopi K Mishra, "Reservation system and Confirmation biased", *Thoughts and Ideas*, March 22, 2016, available at: <https://medium.com/indian-thoughts/reservation-system-and-confirmation-bias-4b7ff633745a> (Last Visited on October, 21, 2023.)

- South Korea has affirmative action for Chinese and North Koreans
- Sweden has general affirmative action

The Convention on the Elimination of All Forms of Racial Discrimination, which was held in 1969 at the UN, encourages states to implement affirmative action policies for marginalized populations.

The United States' reservation system is known as "affirmative action." Racialized groups are frequently assigned higher numbers to guarantee equal representation. There are many differences between this method and the Indian methodology. While Dalit-OBCs account for 10% to 12% of the population in the US, they make up about 70% of the population in India.¹⁶

Bangladesh scrapped the reservation policy in government services after massive protests by students against reserving certain jobs for special groups of people. Since the students disliked the system, Prime Minister Hasina proposed its elimination.

China has been able to compete with Western countries and produce an intellectual output of the highest caliber because of its emphasis on merit and excellent educational system. China lagged behind the US in 2016 in terms of the volume of academic papers published, even though the caliber of the work was not as good. China offers world-class facilities and salaries as part of its merit-based "Thousand Talents" strategy to entice the best academics from outside. China is not guided by the No Detention System, Reduced Syllabus RTE, Reservation, Transfer-Posting Corruption, Reservation, Liberal Pass Policy, or any other set of policies. China's technological prowess and human resources have increased as a result.¹⁷

¹⁶Sushree Sahu, "Reservation system in India and Abroad: is it still needed", Lawyersclubindia, July 29, 2021, available at: <https://www.lawyersclubindia.com/articles/reservation-system-india-and-abroad-is-reservation-still-needed-14200.asp> (Last Visited on October, 21, 2023.)

¹⁷Ibid

Rationale for Reservation:

It is a wise man who said that there is no greater inequality than the equal treatment of unequal
-Felix Frankfurter

We are expressing our prejudice and privilege-blindness when we criticize reservation systems without any solid justification. We must acknowledge that the lower castes were intended to be included in society by the introduction of this system and that special arrangements for them will remain necessary as long as we hold onto our biases.

Reservations are a type of affirmative action that was introduced as a means of addressing the persistent issue of prejudice and helping to mitigate its impacts. As per Aristotle, equality means that things that are alike should be treated alike and things that are unlike should be treated unlike. The injustice arises when equals are treated unequally and also when unequal are treated equally".¹⁸ As per John Rawls, "Society must give more attention to those born with or placed in less favorable social positions to treat all persons equally and to provide genuine equality of opportunity."¹⁹

It was decided in the *Andhra Pradesh v. Nalla Raja Reddy*,²⁰ that treating unequal people similarly would likewise be considered a violation of equality. The Indian Constitution upholds the notion that those who are unequal should be treated differently from those who are equal. For those citizens who are viewed as marginalized in society, there is the Reservation provision.

Our constitution's preamble extols social, economic, and political justice, enshrining equality of status and opportunity, but do these notions of justice and equality exist?

Affirmative action is necessary for the underprivileged classes for just these same reasons. to offer them equity and social fairness.

¹⁸John Christman, "Review: Equality by the Rules", volume.11.No.3, *Springer*, 283-290 (1992)

¹⁹John Rawls, *The Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1971

²⁰ 1967 SCR (3) 28

Opposition to the reservation:

Due to their belief that reservations go against fairness, many people are against them. Social benefits should be distributed by each person's merit or aptitude, regardless of whether it is innate or learned, according to the "Merit-based Argument." It stipulates that each candidate must be chosen based on their unique merit, usually through an intelligence test combined with relevant expertise.

According to the "Right-based Argument," discrimination against other groups that are denied the same benefits stems from reservations made in favor of one group. This is a denial of equality, which is a right that every person has as an individual and as a member of any group and cannot be taken away from them just because one of them is labeled as a member of an advanced group and another as a member of a backward group.²¹

The "Efficiency-based Argument" emphasizes that if we compromise public institutions' effectiveness to make amends for past injustices, we will be causing irreparable harm to future generations. The "Fragmented class-based arguments" contend that rather than empowering people to rise and compete in the world of excellence, affirmative action tends to reinforce a caste-ridden and racially conscious society that is already split into caste and ethnic groups or work to maintain the reservation divide.²²

Critical Analysis of Reservation in India

The recent caste census in Bihar makes it imperative to critically analyze the impact of reservation policy on the development and representation of the societies that are availing the benefit of it. On one hand, it is increasing the representation of marginalized people in different sectors. On another hand, it enhances the feeling of enmity and hatred among unreserved people because they believe because of reservation they are not able to get good jobs and colleges. Instead of diluting the caste system, reservation is strengthening it. Reservation continues to operate for two reasons. First is because it is still needed for the development of a few sections of the society. Another reason is that there is no alternative to reservation that the government has

²¹Pradeep K, Chhibber, Rahul Verma, "Who oppose reservation and why", *Oxford Acedemic*, 55-102 (2018)

²²Ibid

proposed. With time it has become a political tool for all governments. There is a need to look for an alternative to reservation to include marginalized people in the mainstream.

There is disparity even among the people who are taking the benefit of reservation because all of them are not able to get the benefit of it. To look into this situation Rohini Commission was set up in 2017 under Article 340 of the constitution to check on the issue of sub-categorisation of OBCs in the central list. One of the objectives of the commission was to study the extent of inequitable distribution of benefits of reservation among the castes listed in the broad category of OBC concerning such classes included in the Central list. It has submitted its report to President Droupadi Murmu. It has proposed a four-category formula for equitable distribution of benefit of reservation. Category 1, 2, 3 and 4 people will get reservations of 2%, 6%, 9%, and 10% respectively.²³ It was also suggested by SC to exclude the "creamy layer" (advanced sections) among the OBCs from benefiting from the reservation policy, ensuring that it reaches the most disadvantaged.

Representation with recognition is the most important justification for caste-based reservations. Representation is a core principle of democracy and the latter has no meaning without the former. However, a fair representation is still not possible for the underprivileged and deprived sections of society due to the existing caste discriminations, Brahmanical attitudes, and prejudices. It is also imperative to note that representation alone is not enough to democratize social spaces. The representation will not fulfill the purpose if there is no recognition. Both recognition and representation are complementary to each other. Recognition is a matter of attitudinal change and transition of morality from social to constitutional and can be achieved when people adopt democracy as a way of life.

Conclusion

In my opinion, reservations ought to be made about India's educational system. As a result, individuals can also obtain excellent and higher education; however, there should be no reservations made for jobs or public service. After completing his education, a person is eligible to profit from the reservation policy for approximately 22 to 25 years. It is now his time to take

²³Fareeha Iftikar, "Explained: What is Rohini Commission on OBCs", *Hindustan Times*, August, 3, 2023, available at: <https://www.hindustantimes.com/india-news/explained-what-is-the-rohini-commission-on-obcs-101691058793660.html> (Last Visited on October 24, 2023)

the market by storm and stand on his own two feet. They have all that a person born into a different caste would already have, given that they have access to a reasonable and socially acceptable environment and the general public (i.e., those who are not SC, ST, or OBC).

The reserve policy has been greatly influenced by the judiciary. The Supreme Court has mentioned the SC and ST job reservation in passing in several decisions. However, the Supreme Court ruled that reservations should never rise above 50% under any circumstances. Despite this ruling, most states in the Northeast have raised their reservations to 85%, and there are currently efforts underway to raise them to 95%, with no legal action being taken by the court. In this sense, it is evident that the court is contributing to the rise in SC and ST reservations. Politicians now have a significant influence on reservation policy. Because SC and ST make up over 33% of the voting population, they will now bear a heavy price if the reservation policy is changed against them. Therefore, they are not acting in a way that violates the reservation policy.

Keeping vote bank politics aside, the government needs to review the reservation policy like Bangladesh and China or modify it as per the needs of our country. Alternative approaches to reservation are required to guarantee their integration into society and lessen the animosity and resentment that reservation causes among those who are not reserved.