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Constitutional upliftment and Reservation System in Independence India

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As individuals united by the meaning of people in a country we all live as Indians in the cap of Bharath that is state. But as the constitution states everyone is equal before the law as per article 14 of the Indian constitution and for the purpose of treating every unequal equally the mandate of the reservation system has come into existence. One can think what is the purpose of reservation in India as a democracy and country and even after 75 years of Independence in a developing country. This means that inequality exists even till date, there are people even in this century who live as underprivileged and marginalized ones. There are many people who live without any identity of themselves. In this paper an attempt has been made to widely discuss the constitutional upliftment and reservation system in the Independence of India, how it evolved, what is necessary for enacting such provision of the reservation system for a backward class people, who are they, and the reasons behind it, constitutional provision regarding the same, the concept of the creamy lawyer, its impact and so on. This paper will enrich with you a detailed view of the reservation system and understand its need of it.

Keywords: *reservation system, constitutional interpretation, creamy lawyer, underprivileged, right to equality.*

INTRODUCTION

India is a country well known for unity in diversity, where individuals with different physical qualities, skin colour, castes, creed, cultures, races, and religious traditions live together having a deep rooted respect for each other, without any arise in disputes. The constitution of India constitutes India to be a sovereign, socialist, secular, democratic, republic, and secure for all its citizens. ¹The term socialist in the constitution intensely provides that the state has a responsibility toward citizens for their welfare, abolishing discrimination, nationalization of means of production, equal distribution of wealth, and securing justice for all.²In the case of *D.S. Nakara v Union of India*, the Supreme Court has held that the basic framework of socialism is to provide decent standards of life to the working people and especially provide security from cradle to grave.³ Thus every individual in the country deserves to be treated equally, with equal respect and equality irrespective of caste, sex, gender, place of birth, nationality, etc. Article 46 of the constitution of India has impliedly stated that it is the duty of the state to promote the educational and economic interest of Scheduled castes, Scheduled Tribes, and other weaker sections. Justice which is one of the objectives of the Indian Constitution consists of three elements which is social, economic, and political. Where economic justice raises that no discrimination should be made to the people on the basis of their wealth, income, and economic status. Everyone deserves and is entitled to equal opportunity without any discrimination. The reservation system is a method of positive discrimination that exists for a long for the socially, educationally and economically weaker sections of society.

EVOLUTION OF RESERVATION SYSTEM

The existing reservation is the result of the ancient ages of the caste system that prevails since the arrival of Aryans in India around 1500 BC. The caste system divides Indian society into

¹ 'What is the Reservation System? Insights into the Reservation System in India' (UPSC Pathshala) <<https://upscpathshala.com/content/what-is-reservation-system-in-india-quota/>> accessed 24 July 2022

² *D.S. Nakara v Union of India* (1983) AIR 130

³ Constitution of India 1950, art 15

sectarian groups and classes.⁴ The concept of caste-based reservation emerged in the 2nd century. The idea of caste-based reservation was formally initiated by William Hunter and Jyoti Rao Phule in 1882 and implemented by ChatrapatiSahuji in 1901. Today's reservation system was created by British Prime Minister Ramsay Macdonald with the introduction of communal awards also known as the MacDonal Award. This award aimed to grant separate electorates in British India for the Forward caste, Lower caste, Muslims, Buddhists, Sikhs, Indian Christians, Anglo Indians, Europeans, and Untouchables. This system was brought in to solve the rising conflicts due to the caste system in India. This award was opposed and protested by many Indians including Mahatma Gandhi whereas Dr. B. R. Ambedkar encouraged it.

Thereafter, Poona Pact was signed between M K Gandhi and Dr. Amedkar in the Yerwada Central Jail, Poona on September 24th, 1932, to end up the fast unto death by M K Gandhi in jail for the protest against communal award as he saw this system as a British attempt to split Hindus and create conflicts. By this Poona Act, the depressed classes were avail seats in the central legislative councils and provincial. The main aim of this act is to uplift the depressed class and untouchability who are the scheduled castes of today's society. In 1979, a commission was set up under the leadership of B.P. Mandal by the Janata Party government under Prime Minister Moraji Desai. The primary objective of the Mandal Commission is to identify the socially and educationally backward classes of India and to consider the question of reservations of seats and quotas as a means to address caste inequality and discrimination. In 1991, OBCs were included in the ambit of the reservation upon the recommendation of the Mandal Commission.

REASONS FOR RESERVATION

The major reason for the reservation system in India is to uplift the backward and deprived classes from inequalities, humiliations, and untouchability and thus enhance standards of living. By way of affirmative action, the backward classes also get the rights that were only

⁴ Anurag Das, 'An Analysis on the evolution of Reservation Policy in India' (*Lexilife*, 29 September 2021) <<https://lexlife68840978.wordpress.com/2021/08/29/an-analysis-on-the-evolution-of-reservation-policy-in-india/>> accessed 24 July 2022

enjoyed by the upper classes. Equality prevails and adequate representation is made from every section of society.

CONSTITUTIONAL PROVISIONS

Reservation is an affirmative action of accessing facilities to seats and quotas in governmental jobs, educational institutions, and in legislatures for the weaker and backward section of the society. Part XVI of the Constitution of India provides special provisions relating to certain classes, where it deals with the reservation of SC and ST in Central and State legislature, also including Article 342 A, inserted by the Constitution by way of 102nd Amendment Act, 2018 to provide reservation to socially and educationally backward classes and the power of the Parliament to change the list.⁵ In the case of *Dr. Jaishri Laxmanrao Patil v Chief Minister*, the Supreme Court Constitution Bench by a 3:2 verdict ruled that after the insertion of 342A in the constitution, it is the Central Government alone that is empowered to identify Socially and economically Backward class and include them in a list to be published under article 342A(1), specifying SEBC's in relation to each state and Union Territory. The state can only make suggestions to the President or the NCBC for any rectifications in the list of Backward Classes. The 102nd Amendment also inserted 338B into the constitution, which deals with the structure, duties, and powers of the National Commission for Backward Classes. ⁶Part III of the constitution of India includes Article 15(4) and 16(4) which enables the states and central government to make special provision for the advancement and reserve appointments and posts in favour of any socially or educationally backward classes of citizens or for the scheduled castes or the scheduled Tribes.

⁷In the case of *State of Madras v ChampakamDorairajan*, the Supreme Court pointed out that while in the case of employment under the State, Article 16(4) provides for reservation in favour of a backward class of citizens, and no such provision was made out in Article 15. To overrule the Supreme Court order in this case the Parliament intervened and amended Article 15 by inserting Article 15(4) by the constitution 1st Amendment Act, 1951. Article 16(4B)

⁵ *Dr. Jaishri Laxmanrao Patil v Chief Minister* (2020) Civil Appeal No. 3123/2020

⁶ Constitution of India 1950, art 15(4) & 16 (4)

⁷ *State of Madras v Champakam Dhorairajan* (1951) AIR 226

inserted by way of the 81st Amendment deals on Carry Forward Rule by which if a sufficient number of candidates belonging to the reserved quota were not available for appointment, then the vacancies that remained unfilled would be treated as unreserved and filled by available unreserved candidates but the corresponding number of post would be reserved in the next year for reserved candidates, in addition to their reserved quota of the succeeding year.⁸ In the case of *S. Devadhasan v Union of India*, the Supreme Court struck down this rule since it denies reasonable equality of opportunity for members other than the reserved category.⁹ The case of *Indra Sawhney v Union of India* commonly called as Mandal Commission case partly overruled S. Devadhasan case and held that the carry forward rule is valid and it must be within 50% of the limit, and any reservation in excess of 50% for 'backward classes' will not violative of Article 14 or 16 of the constitution. And at the same time, such reservations made either under Article 16(4) or 16(1) cannot be extended to the totality of 100%. Article 243D deals with the reservation of seats for SC, and STs in Panchayat. Article 233T provides the reservation of seats for SC and STs in every municipality. Article 330 and 332 under Part XVI provides reservation for SCT, and STs in Parliament and legislative assemblies.

CONCEPT OF CREAMY LAYER

The concept of the creamy layer is based on social status which was made in order to uplift the backward classes in society.¹⁰ At present, OBCs are entitled to a 27% quota in higher educational institutions and public sector employment if the gross annual income of the parents does not exceed Rupees 8 Lakh. A person with an annual income of Rupees 8 Lakh and above is classified as a "creamy layer" and cannot get the reservation Benefits. The term was introduced by the Sattanathan Commission (the 1st backward commission) in 1971, which stated that the creamy lawyer should be excluded from the reservation of civil posts and thus introduced a creamy layer among OBCs in the state. The 2nd Backward commission is the

⁸ *T. Devadhasan v Union of India* (1964) AIR 179

⁹ *Indra Sawhney v Union of India*, AIR 1992 SC 477

¹⁰ Arkoday, 'Creamy Layer: The Mandal Commission View' (*Legal Service India*)

<<http://www.legalservicesindia.com/article/535/Creamy-Layer:-The-Mandal-Commission-View.html>>

accessed 24 July 2022

Mandal Commission which is recommended for 27% reservation for OBCs in Central Government Jobs. This principle for the first time used by the Supreme Court in the landmark judgment of *Indra Sawhney v Union of India (1992)*, where it restricted creamy lawyers from accessing those reservations made for OBCs. The court also considered that if the creamy layer among the backward classes is given the same benefits as it of given to the BCs, then it will amount to treating the unequally equally which leads to violating the inequality in the society. In addition to this, the court has held that if the person from backward classes occupied high-level services in the government then such persons can be treated as backward classes and excluded from the purview of the creamy layer. The Supreme Court also capped that the limitation of beneficiaries should not exceed 50% of India's population.¹¹ In the case of *Jarnail Singh v Lachhmi Narain Gupta*, the Apex court held that the principle of creamy layer exclusion extends to SC/STs. Thus the concept of the creamy layer which is applied only to OBCs is also applicable to the promotions of SC/ST belonging to the creamy layer of their community.¹² On 24th August 2021, a Division Bench of the Supreme Court observed that economic criteria cannot be the sole basis for identifying the 'creamy layer' of a backward class and that other factors like social advancement, education, and employment, too matter. Justice Nariman wrote 'Benefits, by and large, are snatched away by the top creamy layer of the Backward caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake.'

BASIS OF RESERVATION

Caste

Caste-based reservation was introduced in the period of the British Raj and continued even after the independence of India. There is no mandatory provision for caste-based reservation in the Constitution of India. Reservation in India is primarily provided to four categories such

¹¹ *Jarnail Singh v Lachmi Narain Gupta* (2022) Civil Appeal No. 629/2022

¹² Krishnadas Rajagopal, 'Explained | What has the Supreme Court ruled on 'Creamy Layer' (*The Hindu*, 25 August 2021) <<https://www.thehindu.com/news/national/explained-what-has-the-supreme-court-ruled-on-creamy-layer/article61424803.ece>> accessed 24 July 2022

as ¹³Scheduled castes, Scheduled Tribes, and Other Backward Classes at the rate of 15%, 7.5%, and 27% respectively in case of direct recruitment on all India basis by open competition. And in direct recruitment on all India basis, other than by open competition, the percentage fixed is 16.66% for SCs, 7.5% for STs, and 25.84% for OBCs.¹⁴ In the case of **Balaji vs State of Mysore**, the Court held that the caste of a person cannot be the sole criteria for ascertaining whether a particular caste is backward or not. Determinants such as poverty, occupation, and place of habitation may all be relevant factors to be taken into consideration.

Gender

The first women's reservation bill was introduced in the parliament on September 12, 1996. The bill aims to uplift women in Indian politics.¹⁵ The main aim of this bill is to reserve 33 % of seats in Lok sabha and in all state legislative assemblies for women. Vajpayee government pushed for the bill in Lok Sabha but was not yet passed.

Transgender

Karnataka has become the first state in the country to provide with 1% reservation for transgender in all government services. As per the census of 2011, India has a total population of transgender of around 4.88 lakhs.¹⁶ On 9th July 2016, The High Court of Madras directed the Tamil Nadu state government to provide with 3% reservation for transgender in educational institutions and public service opportunities.¹⁷ In the case of *NALSA v Union of India*, the Supreme Court had directed the center and state governments to take steps to treat transgenders “as socially and educationally backward classes of citizens and extend all kinds of reservations in admission to educational institutions and in the public appointment. The statutory provision of the 2019 Act prohibits discrimination against transgenders.

¹³ Alok Ranjan, ‘Existing reservation quota limit of the Indian States’ (*India Today*, 7 May 2021) <<https://www.indiatoday.in/news-analysis/story/existing-reservation-quota-limit-of-the-indian-states-1799705-2021-05-07>> accessed 24 July 2022

¹⁴ *Balaji v State of Mysore* (1963) AIR 649

¹⁵ Women’s Reservation Bill 2008

¹⁶ N Kavitha Rameshwar, ‘Why Reservation should come first for third gender’ (*The Times of India*, 24 January 2022) <<https://timesofindia.indiatimes.com/city/chennai/why-reservation-should-come-first-for-third-gender/articleshow/89084673.cms>> accessed 24 July 2022

¹⁷ *NALSA v Union of India* (2014) Writ Petition (Civil) No. 604/2013

Women Reseroation

India ranks 148th in a list of 193 countries based on the percentage the women who get elected as representatives in the national Parliament.¹⁸ As per Article 243-D (3) of the Constitution of India, not less than one-third(including the number of seats reserved for women belonging to the Scheduled castes and the scheduled tribes) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies of Panchayat. 50 % reservation of women in Urban Local Bodies was introduced in Lok Sabha by The Constitution (112th Amendment) Bill 2009. 50% of members of Lokpal shall be from SC/ST/OBCs, minorities, and women.

RESERVATION IN EDUCATION

The right to education is a fundamental right as per Article 21A of the Constitution of India. It is also a part of the Directive Principles of State Policy under Article 45, where it is the duty of the state to provide early childhood care and compulsory education to all children below the age of six years. The reservation system in education helps children from backward and deprived classes to come forward and thus uplift society equally. ¹⁹50% reservations are provided to the students in educational institutions from SC/ST/OBCs. In the year 2019, the government announces 10% reservation in educational institutions and government jobs for economically weaker sections of the general category. In Central Government funded higher education institutions, 22.55 of available seats are reserved for scheduled caste and scheduled tribes students(7.55 for STs, 15% for SCs, 20% for ESC, 12% for SCA, 16% for SCB, 22% for SCC, 18% for SCD).

IMPACT OF RESERVATION SYSTEM

Even though the reservation system has its own pro but also have cons. This system acts as a barrier between ethnicities. It does not encourage and allow the intermixing of different castes

¹⁸ Constitution of India 1950, art 243D(3)

¹⁹ Shinjinee Namhata, 'Caste Based Reservations in Education- The Never Settled 'Bone of Contention' in India' (*International Journal of Advanced Legal Research*, 9 September 2021) <<https://www.ijalr.in/2020/09/caste-based-reservations-in-education.html?m=1>> accessed 24 July 2022

so that the lower remains lower always. The impact of Reservation is in the form that it creates discrimination between the castes and thus does not allow for intermixing of castes.²⁰ It has been reported that the number of Dalits benefiting from reservations has been reduced by 16 percent from 5.40 lakh to 4.55 lakh. And the number of OBCs benefiting from reservations jumped from 14.89 lakh in 2008 to 23.55 lakh in 2012, it dropped to 23.88 lakh the year after. Most of the reservation benefits are being used by the people in the creamy layer or the dominant class in the backward class. Hence leading the marginalized to remain marginalized.

CONCLUSION

The Constitution of India has only allowed reservations for socially and educationally backward classes. However, at times in India, this has become a caste-based reservation instead of a class-based reservation. In addition to providing reservation systems, there are many other methods like scholarships, funds, and welfare schemes for the upliftment of backward class people and against social oppression. Nowadays, the method of the reservation is widely used as a vote bank politics in India. Providing basic necessities for living including shelter, clothing, food, and medical facilities at fair nominal rates in a range that one could purchase and make use of it will help in the upliftment and rise of the economically backward class of the country. The system is no doubt a good one but should come up with proper rules so that genuinely underprivileged people will get the benefit.

²⁰ Christophe Jaffrelot & Kalaiyaran A., 'Reservation is being undermined by privatisation push and decline in political clout of backward classes' (*The Indian Express*, 8 November 2022) <<https://indianexpress.com/article/opinion/columns/reservation-in-india-privatisation-push-nirmals-sitharaman-backward-castes-6494931/>> accessed 24 July 2022