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# Modernizing India's Caste Reservation System: Divide Without Discrimination

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## ABSTRACT

*This paper explores the complexities and evolving nature of the caste reservation system in India, emphasizing the need for a nuanced understanding of social justice in contemporary society. Using an illustrative scenario of two sisters from the general caste, the paper delves into the implications of caste-based reservations, where one sister benefits from marrying into a backward caste, highlighting perceived injustices. The historical roots and socio-cultural underpinnings of the caste system are examined, referencing Hindu mythology and the Bhagavad Gita to understand its foundational concepts. The paper also reviews the landmark "Indra Sawhney vs. Union of India" case, summarizing the Supreme Court's judgments on the identification of backward classes and the criteria for reservations. Key observations from the Kerala State Commission for Backward Classes are analyzed to illustrate the criteria for social backwardness. The paper argues that the traditional criteria for backwardness, while relevant historically, may not fully address the current socio-economic realities faced by individuals from all castes, including those from the upper caste who now face similar hardships. It calls for a re-evaluation of the reservation policies to ensure they serve their intended purpose of promoting equality and social justice without discriminating against other sections of society. The paper concludes by emphasizing the importance of adapting laws to the modern socio-economic context to maintain fairness and equity in opportunities for all citizens.*

**Keywords:** Society, Caste, tradition, Equality, Discrimination, Reservation, Injustices.

## I. INTRODUCTION

An illustration of 2 sisters who belong to the general caste both get married respectably, the younger one gets married to a backward caste man, and the other one gets married to a general caste man where both women are preparing for the civil services examination and hence younger sister got the seat but not the elder sister even though they score the same was that justice served?

To understand it better let's understand the deeper concept of the caste system of India.

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Caste: It is not just a word; it is a concept, tradition, and custom that has been followed since medieval centuries or even more; it is a division of people based on their work and profession. For example, if a person is good at combating, he might be considered a Kshatriya.

However, according to Hindu mythology,<sup>3</sup> the caste system is divided into 4 groups, namely:

‘Brahmins: one who mainly had work related to teaching, strategists, and scholars.’

‘Kshatriyas: one who were the warriors and the rulers.’

‘Visayas: one who were traders and businessmen.’

‘Shudras: one who indulged in work related to manual jobs such as cleaning the society and ragpickers.’

Outside of this Hindu caste system were the achhoots—the Dalits or the untouchables.

Earlier, the groups belonging to the lowest hierarchy of the caste division had faced a lot of difficulties in their day-to-day lives. Many Jurists and activists like Dr. Bhimrao Ambedkar have tried to raise the concern to uplift these backward caste people by the way of reservation and accordingly, after several protests and political meetings, backward caste peoples and women of the society got the reservation opportunity for their development in the society, although the basic objective to provide the reservation was to help those people who are not able to develop themselves by their own because of their illiteracy, insolvency, and societal thinking about the women, according to earlier society women are subject to household work only but now the things and the situation had been changed with the misuse of this reservation policy. According to Indian policy, women of another caste acquire the caste of their husband after marriage, which can provide an indirect benefit to the women over women of the same caste, which might seem illogical.

However, this research paper aims to relate and analyze the actual concept of the caste reservation system of earlier history with the political ideologies of recent times.

### **What is caste according to Hinduism and custom?**

Let's Clear it up by taking the reference to the<sup>4</sup> Bhagwat Gita Chapter 18, Verse 41:

“ब्राह्मणक्षत्रियविशां शूद्राणां च परंतप | कर्माणि प्रविभक्तानि स्वभावप्रभवैर्गुणैः ||”

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<sup>3</sup> BBC NEWS <https://www.bbc.com/news/world-asia-india-35650616> What is India's caste system? (LAST VISITED 19 June 2019)

<sup>4</sup> GITA SUPERSITE

[https://www.gitasupersite.iitk.ac.in/srimad?language=dv&field\\_chapter\\_value=18&field\\_nsutra\\_value=44&htskd=1&htty=1&htshg=1&scsh=1](https://www.gitasupersite.iitk.ac.in/srimad?language=dv&field_chapter_value=18&field_nsutra_value=44&htskd=1&htty=1&htshg=1&scsh=1)

Translation: “The duties of the Brahmanas, Kshatriyas, Vaishyas, and Shudras are divided according to the qualities born of their nature.” Chapter 18, Verse 42:

“शमो दमस्तपः शौचं क्षान्तिरार्जवमेव च । ज्ञानं विज्ञानमास्तिक्यं ब्रह्मकर्म स्वभावजम् ॥”

Translation: “Peacefulness, self-control, austerity, purity, tolerance, honesty, knowledge, wisdom, and religiousness—these are the duties born of the nature of Brahmanas.” Chapter 18, Verse 43:

“शौर्यं तेजो धृतिर्दाक्ष्यं युद्धे चाप्यपलायनम् । दानमीश्वरभावश्च क्षात्रं कर्म स्वभावजम् ॥”

Translation: “Heroism, power, determination, resourcefulness, courage in battle, generosity, and leadership are the natural duties of Kshatriyas.” Chapter 18, Verse 44:

“कृषिगौरक्ष्यवाणिज्यं वैश्यकर्म स्वभावजम् । परिचर्यात्मिकं कर्म शूद्रस्यापि स्वभावजम् ॥”

Translation: “Farming, cattle-rearing, and trade are the natural work for the Vaishyas, and for the Shudras, there is labor and service to others.”

This verse signifies that caste is something that can be verified with the nature of work, and it does not mean that a newlyborn child also belongs to that caste, which is the same as that of their parents. He/she might be of another caste depending upon the nature of their attitude toward society.

However, as of now the perspective of society has changed because of various factors. As of now, society thinks that people who belong to the general category have their children also belong to that category only. There is a dialogue used in the movie Super 30- ‘RAJA KA BETA HEE RAJA BANEGA’— that means only the King’s son is capable of holding the seat of King, no matter if they can hold that seat or not, and this ideology would be discriminatory for those who are capable of doing such things. Although coming back to our discussion, the factors that have changed the society's perspective on caste recognition in India are as follows:

In India, panchayat elections are conducted where men usually nominate their wives to win the election because of the wife's reservation advantage, and in that due process, the husband usually takes the indirect authority over her wife's position and makes all the decisions on behalf of her; however, this activity seems to be illogical and unlawful, which missuses the reservation system of India.

Secondly, General-category women usually try to get the reservation benefit by marrying backward-category men so that these women also get the caste of their husbands.<sup>5</sup> There was a

<sup>5</sup> THE TIMES OF INDIA <https://timesofindia.indiatimes.com/india/caste-decided-by-birthcant-be-changed-by->

case in the Supreme Court of India in which the fact was about the appointment of a woman teacher who joined Kendriya Vidyalaya 21 years ago taking advantage of reservation on the basis that she was married to a scheduled caste man.

Many students belong to the category of the backward class who are financially rich enough to do their studies and don't need reservation kind of policy as they are capable of doing their studies without any financial barrier, etc., whereas many students belong to the category of general, but they are financially poor and find difficulties in completing their studies, and because of that, they are subject to reservation benefit rather than a rich SC/ST student.

However things have changed, society has been modernized but not the law as it is still the same and to adapt to the new society the law needs to be amended to maintain welfare and equality in the State, it was true that in ancient history, reservation was much needed to the backward class of our society as they have to face a lot of barrier in there development phase but considering the current situation general category people are also facing some barrier in there development phase (barriers like- financial barrier, hard competition over some educated people of backward class) and here the question arises about article 14 of the Indian constitution that is right to equality, was the equality served with the current situation of India?

Article 14 of the Indian Constitution talks about the positive discrimination against women and whether it is relevant to all the women of the state while considering the present situation. The answer is no because, because of many feminist movements, women are now aware of their rights, and today's generation of women are well aware of how to raise their voice for any issue, and now many parents want their daughters to be well educated and get jobs. As we can see, there are a lot of female students in the universities, and there are also many doing jobs like air hostess, doctor, etc.

### **Why Reservation was introduced in India?**

- The primary reason to address the historical injustice and discrimination that existed so long against the backward group was that these groups faced discrimination, social exclusion, etc. due to the rigid caste system. The objective of providing reservations was to give opportunities for education, employment, and representation in government and public institutions by giving reserved seats for them to uplift them socio-economically.
- Secondly, reservation is the arrangement of seats that are provided to all the residents by an equivalent open door regardless of their social foundation, belief, etc. However, a

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marriage-sc/articleshow/62575668.cms. CASTE DECIDED BY BIRTH CAN'T BE CHANGED (LAST VISITED 20 JANUARY 2018)

framework is planned to defeat the barriers and to make a level battleground where legitimacy and capacity are the essential determinants of progress., Last, it is to advance and propel the financial status of these backward classes; however, the government approaches to overcome this issue by giving governmental policy regarding the backward class in society measures.

Reservation is not the only way to upgrade the condition of the backward communities. Providing them with scholarships, coaching, welfare funds, etc. to enhance their intellectual abilities and personal knowledge is a way to elevate the shape of lower castes.

However, as per the reason mentioned, who is the backward class?

Communities that mainly depend on agriculture and other labor work for their livelihood are considered backward communities. Nowadays we can see different people from different classes and backgrounds involved in this agriculture sector and other labor work for their livelihood; here caste doesn't play any role.

Let's analyze the political history behind the reservation policy before coming to the criteria of the Kerala State Commission for Backward Classes.

## **II. <sup>6</sup>INDRA SAWHNEY AND OTHERS VS UNION OF INDIA**

### **(A) Facts of the case:**

Prime Minister Morarji Desai's JANATA Government appointed the second Backward Classes Commission under Article 340, chaired by B.P. Mandal, to identify socially and educationally backward classes and recommend steps for their advancement, including reservations in public employment.

The commission submitted its report, identifying 3743 castes as socially and educationally backward and recommending 27% reservation in government jobs.

The JANATA government collapsed, and the subsequent Congress government, led by Prime Minister Indira Gandhi, did not implement the report.

JANATA DAL came to power again, and Prime Minister V.P. Singh issued a memorandum on August 13, 1990, to reserve 27% of seats for socially and educationally backward classes, causing widespread civil unrest and anti-reservation movements.

A writ petition was filed by the Supreme Court Bar Association challenging the memorandum, leading to a stay order by a five-judge bench.

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<sup>6</sup> Indra Sawhney vs Union Of India And Others AIR1993SC477

The JANATA Government collapsed again, and the Congress, under Prime Minister P.V. Narasimha Rao, formed the government in 1991.

Prime Minister Rao issued a new memorandum introducing economic criteria within the 27% reservation and adding another 10% for socially and educationally backward classes, totaling 37%.

The five-judge bench referred the matter to a nine-judge bench, which demanded the government justify the 27% reservation criteria. Despite multiple adjournments, the government failed to explain.

**(B) Issues of the Case:**

- Whether Article 16(4) is an exception to Article 16(1) and would be exhaustive of the right to reservation of posts in services under the State?
- What would be the content of the phrase "backward class" in Article 16(4) of the Constitution and whether caste by itself could constitute a class and whether economic criteria by themselves could identify a class for Article 16(4) and whether "backward classes" in Article 16(4) would include the "weaker sections" mentioned in Article 46 as well?
- If economic criteria by themselves could not constitute a backward class under Article 16(4), whether the reservation of posts in services under the state based exclusively on economic criteria would be covered by Article 16(1) of the Constitution?
- Can the extent of reservation of posts in the services under the state under Article 16(4) or, if permitted under Article 16(1) and 16(4) together, exceed 50% of the posts in a cadre or service under the state or exceed 50% of appointments in a cadre or service in any particular year, and can such extent of reservation be determined without determining the inadequacy of representation of each class in the different categories and grades of services under the state?
- Does Article 16(4) permit the classification of 'Backward Classes' into Backward Classes and Most Backward Classes or permit classification among them based on economic or other considerations?

**(C) Petitioner Argument:**

The petitioners, represented by Senior Counsel Mr. N.A. Palkhiwala, Mr. K.K. Venugopal, Smt. Shyamala Pappu, and Mr. P.P. Rao, argued the following points against the implementation of the Mandal Commission's recommendations:

- The recommendations reinforce the caste system, which opposes secularism and could harm India's development as a welfare state. The identification of SEBCs based on caste is considered flawed and violates Article 16(2).
- Although the report considers social, educational, and economic backwardness, it unduly prioritizes social backwardness linked to caste.
- The report relies on the 1931 census, making it an inadequate basis for identifying backward classes. A new commission should be appointed to conduct a contemporary survey using current census data.
- Implementing the recommendations would replace meritocracy with mediocrity, lowering standards.
- The recommendations would demoralize meritorious candidates, exacerbate the caste system, divide the nation, and create vested interests in backwardness.
- The implementation would demoralize meritorious candidates seeking public employment.
- The 'Equal protection' clause prevents unreasonable discrimination in providing preferences and facilities to any section of the population.
- The recommendations undermine the ideal of equality in the Constitution and would impair administrative efficiency.

**(D) Respondent Argument:**

The respondents presented the following arguments in defense of the Mandal Commission's recommendations:

- Accepting the petitioner's argument would negate the legitimate claims of SEBCs to benefits under Article 16(4), which is a fundamental right.
- The claim that the report relied solely on the 1931 census is false. The identification of OBCs was based on a nationwide socio-educational survey and the 1961 census, particularly for identifying various tribes.
- The Commission did not rely on the 1931 census for identification. This is clarified in Chapter XII of the report, stating that caste-wise enumeration ceased after 1931.
- The 1931 census was referenced only to understand community-wise population figures, which were grouped into broad categories. This approach was upheld in the



**"BALARAM CASE."**

The Commission considered social, educational, and economic backwardness, following the court's guidelines. The recommendations support affirmative action for historically disadvantaged groups to achieve competitive standards.

Although the Commission suggested reserving 52% of government posts for OBCs, it recommended 27% due to legal constraints, despite OBCs constituting a larger population share.

The argument that implementing the recommendations would lower standards and demoralize meritorious candidates is baseless. Article 16(4) aims to ensure equal employment opportunities and adequate representation for historically disadvantaged groups.

While the 'equal protection' clause prohibits unreasonable discrimination, it also requires the State to provide equal opportunities to those unequally placed.

The Commission acted under the authority of a Presidential notification, so there is no question of rewriting the Constitution.

**(E) Judgment of the Case:**

The 9 judges Constitution Bench of the Supreme Court by a 6-3 majority gave the following judgments: -

- One might identify the backward class of people under Article 16(4) not only based on economics but also based on the caste system.
- Article 16(1) does not exclude Article 16(4). Instance of the categorization, that is.
- Article 16(1) permits the making of reservations.
- Article 16(4)'s backward classes differed from Article 15(4)'s in terms of social and educational backwardness.
- The creamy layer has to be taken out of the courses that are behind.
- Article 16(4) authorizes the division of backward classes into more backward and backward classes.
- It is impossible to define a backward class of individuals only based on economic standards.
- Reservation shall not exceed 50%.

- It is possible to make a reservation through the "EXECUTIVE ORDER." No reservation in promotion.
- Perpetual Statutory body responsible for investigating complaints regarding excessive or insufficient inclusion.
- According to the majority, it is unnecessary to provide feedback about the accuracy or suitability of the MONDAL COMMISSION's exercise.
- Disputes regarding new criteria can be raised only in the Supreme Court<sup>7</sup>.

Although after the judgment, The Kerala State Commission for Backward Classes, considering the criteria for identifying 'backward classes' for Article 16(4) in Kerala, referenced the Supreme Court's judgment in "Indra Sawhney vs. Union of India" (1992). Key observations from the judgment highlighted that social backwardness is the primary focus of Article 16(4). It noted that in India, social backwardness often leads to educational backwardness, which together result in poverty. Therefore, the backwardness under Article 16(4) is mainly social, though social, educational, and economic backwardness are interrelated. Additionally, a class must be inadequately represented in state services to qualify for reservations. The term 'backward class' includes OBCs, SCs, STs, and potentially other groups, with the emphasis on social backwardness over economic criteria alone.

According to the <sup>8</sup>Kerala State Commission for Backward Classes, some of these criteria are as follows: -

1. "Castes and communities are generally considered socially backward.
2. Castes and communities mainly depend on agricultural or other manual labor for their livelihood.
3. Castes and communities under the traditional caste system are identified with traditional crafts or occupations considered to be lowly impure, unclean, stigmatized, or undignified like pottery, fishing, lime burning, toddy tapping, rearing of animals, leather working, hair cutting, washing of clothes, grain roasting, entertaining through songs and dance, jugglery, begging and traditional mendicancy.
4. Castes and communities under the traditional caste system were considered as polluting castes or unapproachable.

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<sup>7</sup> LEGAL SERVICE INDIA <https://www.legalservicesindia.com/article/1457/Indra-Sawhney-&-Others-Vs.Union-of-India.html> (Indra Sawhney & Others Vs. Union of India.)

<sup>8</sup> The Kerala State Commission for Backward Classes <https://kscbc.kerala.gov.in/actsrules/criteria-for-identifying-backward-classes/> (LAST VISITED 16 DECEMBER 1992)

5. Castes and communities under the traditional caste system were subject to discriminatory treatment like denial of entry into places of worship and public offices and use of facilities like public pathways, tanks, and wells.
6. Castes and communities in which the participation of women and children in manual work is at least 25% above the State average.
7. Castes and communities that have no representation or have only poor representation in the State Legislature. Panchayats and other elective bodies at the State or other levels during the 10 years preceding the date of the request or complaint.
8. Castes and communities that do not have a congenial social and cultural environment for their total development.
9. Castes and communities that lack the ability or motivation to secure adequate representation in services under the State.
10. Castes and communities that ordinarily live in rural, isolated segregated, or slum areas.”

However, according to these criteria, only people of that time were considered backward, but as of now people of the general category who belong to another upper caste, such as Rajputs, Brahmans, etc., are also fulfilling the above criteria because of a modernizing society and social economy issues. Since people of the general category also satisfy the criteria, they don't have an equal opportunity as given to Sc/St and other backward classes, and hence, now it would be discriminatory for the people who belong to the upper caste.

However, because of this reason, we can see a type of offense related to misrepresentation of caste to hold the opportunity given to the SC/ST and other backward classes happening in India. Also, earlier it was the thinking of the society that being born into the upper caste family is very respectful, but with the change in time now the society thinks that being born into the upper caste family is nothing but a curse as there will be no any opportunity of support from financial related issues.

It is morally correct to make such laws in favor of those who are unable to develop themselves in society, but it would be discriminatory for those too if those specific laws started dominating the interests and opportunities of other people.

### **III. CONCLUSION**

The discussion on India's caste reservation system highlights significant historical, social, and political contexts that have shaped its implementation. The case of two sisters from the general

caste, where the younger one benefits from marrying into a backward caste, illustrates the complexities and perceived inequities inherent in the current system. This scenario raises questions about the fairness of reservations, especially when both sisters scored equally but only one received the benefit due to her marital status.

Historically, the caste system categorized individuals based on their occupation and qualities, as described in Hindu mythology and the Bhagavad Gita. Over time, the rigid caste divisions led to systemic discrimination and social exclusion of lower castes, necessitating affirmative actions such as reservations to uplift these communities. Key figures like Dr. B.R. Ambedkar championed these measures to address historical injustices and promote socio-economic development.

The landmark "Indra Sawhney vs. Union of India" case further elaborated on the criteria for identifying backward classes and the extent of reservations permissible under the

Constitution. The Kerala State Commission for Backward Classes outlined several criteria for identifying socially and educationally backward communities, emphasizing the intertwined nature of social, educational, and economic backwardness.

Despite these measures, contemporary socio-economic realities reveal that individuals from upper castes also face hardships similar to those of historically disadvantaged groups. The current reservation system, while intended to promote equality, may inadvertently create new forms of inequity, as seen in the case of general-category individuals struggling without access to reserved opportunities.

In conclusion, while the reservation system was initially crucial for addressing historical injustices, there is a growing need to reassess and adapt these policies to reflect modern socio-economic conditions. Ensuring fairness and equity for all citizens, regardless of caste, requires a nuanced approach that balances historical context with present-day realities. Revisiting and potentially reforming reservation policies can help achieve true social justice, ensuring that all individuals have equal opportunities to succeed.

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