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# Reservation Policy in India: A Critical Analysis

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## ABSTRACT

*India is a country with various castes, religion, and languages. People from different religion follow different language in our country. For this the term "unity" is given. But the ground reality is way different. The Constitution made this reservation for 10 years after independence so that the practices against the backward classes should be stopped and these classes can be uplifted. But in the present world the scenario is totally different as the reservation policy is not implemented as it was done in starting. Today this policy is simply used by Politician as a vote bank. In present society the one who need the benefits from the reservation policy are not even aware of their rights. Today this policy is just for the name as it is not being implemented as it should be. This paper covers the origin of the reservation policy and how it was first implemented. It covers how this policy was started and for the betterment of the backward classes. This paper includes the suggestions which puts light on the current situation and what can be done to make this policy to reach to the one who actually needs it.*

## I. INTRODUCTION

*"Slavery doesn't just mean a legalized sort of subjection. It suggests that a state of society that during which within which} some men square measure forced to simply accept from others the needs which management their conduct" -*

Dr. Bhimrao Ramji Ambedkar

The Parliament of India has passed a bill to permit 10% reservations for the poor normally in education and jobs. several applaud the move as a corrective live, even though a petition has already been filed within the Supreme Court difficult its lawfulness, citing which the court has antecedental set a 50% reservation limit. The history of India wasn't thus made and developed that each individuals were thus literate and well developed in terms of equality and accomplishment as a result of for very long time India was below the management of geographic region so that they have not fully fledged an equal treatment within the society,

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however a number of the Indians faced those unequal treatment and tortures at that point and have created their method, a number of them square measure BR Ambedkar, Mahatma Gandhi and UN agency have fought for the others folks that face an equivalent. thanks to these unequal treatment and slavery culture and majority casteism hailing in India it had been abundant necessary to uplift those peoples or those castes UN agency have suffered and UN agency square measure suffering at that point by the allied peoples within the society. Here comes the concept of Reservation within the country however it isn't like that, reservation in India dates to 1902, once the king of Kolhapur instituted reservation in education for non-Brahmins and backward castes. From then onward, it's been the topic of abundant discussion and politico-legal pronunciamento within the country. Reservation could be a strategy that uses academic and money improvement measures to deal with previous perceptions of weaker and minority teams.

Reservation is outlined as "an effort to advance equality in government and academic establishments." it's often enforced to make sure that minorities square measure diagrammatic all told community programs."

The construct of reservation was enshrined in our Constitution so the supposed voteless categories may match the privileged ones. The Indian Constitution permits for such "positive discrimination" to realize equal opportunities and standing within the community. Reservation wasn't a passing part for the foundation fathers. These reservation provisions square measure to be maintained till social and economic stability is achieved. Reservations were created to help the deprived categories in gaining stronger support associated profiting from a freelance country.<sup>2</sup>

## **II. HISTORY**

1902: A king named Shahu of princely state of Kolhapur, he then introduced reservation in order to uplift the non-Brahmin and other backward classed in education sector.

1921: In Mysore, after a decade of social justice against non-Brahmin and other backward classed reservation was implemented for them.

1932: Elections were conducted by the British Government in India regarding Muslims, Buddhist, Sikh, Christian and other backward classed but mainly for Untouchables. Afterward "Poona Pact" between Mohandas Karamchand Gandhi and Bhimrao Ramji Ambedkar, the

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<sup>2</sup> Law relating to reservation Policy in India a critical study, *available at:* <https://shodhganga.inflibnet.ac.in/handle/10603/362739> (Visited on April 10, 2022)

reservation for backward classes was started in Hindu electorates.

1942: 8.5% reservation was recommended for regular castes in civil services by the viceroy's council and it was decided to give reservation for regular castes and tribes. Government order was passed in which converts were excluded except Sikh, Dalit castes however by the nineties, Sikhs and Buddhists castes were included whereas Christian and Muslim Dalits stayed excluded.

1951: In order to legitimize caste-based reservation an amendment in constitution was made in the face of complaints against reservation quota. By restricting the applicability of fundamental rights, the first amendment of the Constitution in 1951 empowered the state to adopt affirmative action for the betterment of any socially and economically backward class or categories of Scheduled Castes and Scheduled Tribes.

1990: Prime minister Vishwanath Pratap Singh (25 June 1931 – 27 November 2008) enforced 27% reservation for the OBC's which was recommended by the Mandal Commission report.

1992: A limit of 50% seats on the caste-based reservation was ordered by Supreme Court, in addition to this it also strikes down Narasimha Rao's government's move for 100% of presidency jobs for the poor in Caste, "Economic Conditions not a Criterion for reservation."

2019: Parliament passes Article fifteen modification bill permitting ten % quota for economically backward people in Jobs and Pedagogy. This Bill was challenged by Supreme Court.

2020: Within the assembly reservation was sole until 1960 however since then it has been extended each ten years. the newest extension was created in 2010 and is valid up to twenty-six Gregorian calendar months in 2020. There was never a point for reservations in education and jobs.<sup>3</sup>

Nothing has been modified within the last seventy years, raising issues concerning our accomplishments. The reservation policy has been criticized by many consultants. They contend that we've got utterly did not bring the poor on par with the remainder of society.<sup>4</sup> Nowadays Reservation System which exists, it was introduced in 1933 in its true sense once British Prime Minister Ramsay MacDonald was given the Communal Award. The Communal award created provision for separate electorates for Muslims, Sikhs, Indian Christians, Anglo-

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<sup>3</sup>Conceptual Analysis of Indian Reservation Policy in Contemporary Times, available at: [http://ijrar.com/upload\\_issue/ijrar\\_issue\\_20543316.pdf](http://ijrar.com/upload_issue/ijrar_issue_20543316.pdf) (Visited on April 12, 2022)

<sup>4</sup>Reservation in India, available at: [https://www.drishtias.com/to-the-points/Paper2/reservation-in-india\\_\(Visited on April 12, 2022\)](https://www.drishtias.com/to-the-points/Paper2/reservation-in-india_(Visited on April 12, 2022))

Indians, Europeans, and the Dalits. wherever it had been decided that there would be one Hindu citizen with reservation beyond any doubt in it. when we were independent, at first, reservations were given fair for SCs and STs, OBCs were encased inside the degree of reservation in 1991 on the suggestions of the Mandal Commission.

During warfare, I, the Govt of India Act, 1919, established a reservation policy in India. The act focused on the enlargement of Indian territory. This act self-addressed many reforms for governmental establishments moreover as minorities' problems, together with communal electorates. Montague- Chelmsford criticized this technique as a system that might stymie self-development policy, however due to Muslims then having communal citizens by the Minto-Edward Morley reform of 1909, it was found that it's impracticable to form different electorates for Muslims. In 1927, Simon Commission was shaped to analyse the Montague Chelmsford reforms.<sup>5</sup>

“In the case of Indra Sawhney in 1992, Supreme Court upheld for the twenty-seven % quota to be given in backward categories whereas overturning a government notification reserving 100% of presidency positions for the economically backward categories in between upper castes. The Supreme Court upheld for the conception that entire range of reservation recipients shouldn't exceed five-hundredths of India's population within the same call.<sup>6</sup> The 103rd amendment in The Constitutional Act of 2019 established a tenth reservation for the "Poverty-Stricken" in unreserved academic establishment and Government Positions. The article 15 and 16 was amended by this enactment to permit the govt to grant reservations supported economic hardship. Economic Reservation of ten percent is added to the prevailing five hundredth reservation limit<sup>7</sup> once Gandhi came to grasp the choice taken by the British people for separate electorates for Dalits, he started “Fast unto Death”. Gandhi believed that this policy was making variations between the Harijans and the remainder of the Hindus however BR Ambedkar stuck to his purpose of reckoning he believed that separate illustration was the sole thanks to uplift the Depressed categories.

But the explanations for the movement launched by Gandhi were against the choice. BR Ambedkar was left with no different choice and had to barter with him which is understood because of the “Poona Pact”. within the Poona accord, Gandhi assured them that rather than

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<sup>5</sup>Reservation system in India with respect to right to equality: A critical study, *available at*: <http://www.academicjournal.in/archives/2018/vol3/issue3/3-3-36> (Visited on April 14, 2022)

<sup>6</sup>Reservation Policy in India, *available at*: <https://lexpeeps.in/reservation-policy-in-india-critical-analysis/> (Visited on April 14, 2022)

<sup>7</sup>Reservation Policy in India, *available at*: <https://lexpeeps.in/reservation-policy-in-india-critical-analysis/> (Visited on April 14, 2022)

separate electorates, additional reservations might be provided for the Depressed categories in joint electorates.

Many people believe that if Dalits had been given a separate voter, their scenario would be terribly totally different from these days. however, of this square measure solely guesses for the folks, we tend to cannot say what would are the scenario.

### **III. RESERVATION POLICY IN THE PRE-INDEPENDENCE ERA**

During World War I, the Government of India Act, 1919, made reservation policy in India. The act centred on the expansion of Indian territory. This act addressed several reforms for governmental institutions as well as minorities' issues, including communal electorates. Montague- Chelmsford criticized this system as a system that could stymie self-sustained policy, whereas Muslims were already in communal electoral by the reform of Minto- Morley in 1909. In 1927, the Simon Commission was formed to investigate the Montague Chelmsford reforms, they made it more infeasible to remove the electorates which was for Muslims should be separated. To investigate the Montague- Chelmsford a controversial commission was reformed known as Simon Commission in year 1927. After touring all Indian places, representatives put forward that there should be separate electorates and reserves seats which will benefit to the poor, and there was a strong demand for a broader franchise because the poor's economic, educational, and social circumstances prevented them from voting properly. In London 1931 Round Table Conference was held to check on the report of the Simon Commission and the reforms which was proposed and told them how to incorporate it into new Constitution. There were numerous Indian delegates representing various interest groups. Prime Minister Ramsay Macdonald presided over the conference.<sup>8</sup>

### **IV. POST-INDEPENDENCE**

After India's independence, the Depressed categories got reservations in India and political reservations in instructional establishments and public employment. this can be the explanation that there are 543 seats within the Lok Sabha, out of those eighty-four seats are for the scheduled Castes and forty-seven seats are for the scheduled Tribes. Also, once the constitution was being written, Article fifteen and Article sixteen were additional to the Indian Constitution. These article within the Indian Constitution which allowed the govt to supply special benefits for the upliftment of backward classes which are educationally and socially deprived. Per the population quantitative relation in India, five hundredth of the seats are fixed for SC and 7.5%

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<sup>8</sup>All About Reservation Policy in India, *available at*: <https://blog.ipleaders.in/reservation-policy-india/> (Visited on April 15, 2022)

for the scheduled Tribes. Before 1993, reservations existed just for scheduled Tribes and scheduled Castes. However, when 1993, reservation in India was extended to alternative backward categories additionally. This was through with the assistance of the “Report of the Mandal Commission”.

In Mandal Commission report, OBCs got twenty seventh reservation in government jobs and later in instructional establishments in addition. This brought the reserved seats underneath the central government to 49.5%. However, if we tend to point out the state governments, they need been given the proper to extend the reservation for the remainder of the communities. This is often the most reason why you'll be able to see state governments talking regarding reservations for the lower categories in their states.<sup>9</sup>

## V. LAWS IN INDIA

Reservation policy in India is the oldest in the world which was started in year 1959. The Supreme Court of India made a rule in 1992 that reservation should be more than 50% and court also said that if it is higher than the prescribed criteria it will lead to the violation of equal access of the Constitution to the other citizens. Due to which reservation is limited. But the ground reality is different as the state laws made the reservation more than 50%. These decisions are being challenged in Supreme Court of India. There are few examples related to this like in Tamil Nadu the caste-based reservation is 69% which is widely affecting the population residing in the state. It is like around 87%. The vacancies in government aided educational establishment were set aside of 15% and 7.5% and in government/public sector which was reserved of SC and ST candidates.

On January 26, 1950, India got the title of Republic India, finished its Territory standing. On this present day a brand-new constitution was created. With a full piece provided for Essential Rights, the Constitution of India compass parcel subject to sex, race, religion, rank, furthermore as birthplace.

Article 15[1] which states that “*The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them*”<sup>10</sup>

In the case “**DP Joshi v/s State of Madhya Bharat**”<sup>11</sup>, a medical school in Indore which was managed by Madhya Pradesh government. The government made a rule for the domicile

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<sup>9</sup>Reservation Policy and Indian Constitution, available at: <https://studymoose.com/reservation-policy-and-indian-constitution-essay> (Visited on April 15, 2022)

<sup>10</sup> Article 15” available at, <<https://www.constitutionofindia.net/>> (Last Visited 18 April 2022)

<sup>11</sup> DP Joshi v/s State of Madhya Bharat 1955 AIR 334, 1955 SCR (1)1215

students who were living in the state will not be needed to pay their “capitation fees”, whereas students who were not domicile had to pay fee of Rs.1300-1500 in the name of taxation fee. This rule was opposed by the students by and instrument within the Supreme Court beneath Article 32 claiming that it had profaned the elemental right bonded beneath Article 14 and 15. After listening to the case court made a judgment that it includes both Article 15 and it states that “Place of Birth”, and “Place of Residence” are two different terms.<sup>12</sup>

## **VI. RESERVATION IN GOVERNMENT**

Reservation in government administrations has been consolidated as a proportion of defensive separation under Indian Constitution Articles 16(4) and 16(5). (6). This specific arrangement falls under the category of Ideal Equality. Forgiving effect under Article 14, to the general right to balance, the Indian Constitution guarantees a right to separation to all residents based on station, race, and religion. Following the guarantee of the general right of correspondence under Article 14, the Constitution characterizes the term equity in terms of equity by the non-separation arrangements contained in Articles 15(1) and 16(1) and continues for consolidating the special treatment arrangements for giving the authorization to the State for accomplishing the balance by giving special treatment to the impeded segments.

*M. Nagaraj v. Union of India*<sup>13</sup> in this case the key remarks made by the five Supreme Court Justices within the reservation were: the 50% maximum limit, the concept of the cream layer and the compelling reasons, i.e., delay, insufficient representation. Overall governance and efficiency are all constitutional requirements without which the equal opportunity structure of section 16 would fall apart. Regarding the “degree of reservation”, in each case the State concerned will have to demonstrate the existence of compelling reasons, namely delays, underrepresentation and overall administrative efficiency before when making reservations. As noted above, a hidden clause is an allowable one. The state is not required to spend SC/ST on promotions. However, if they wish to follow through on their discretion and make such regulation, the state must collect quantifiable data showing the class's backwardness and its under-representation in the database. public authorities beyond respect of Article 335. That even where a State has compelling reasons, as set forth above, it must ensure that the supply of its reserves does not result in a situation where the 50% limit is exceeded or the removal of the

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<sup>12</sup> Naga Snigdha Nemani,”Summary of Article 15 and Article 16 of Indian Constitution” available at <[https://www.google.com/search?q=Summary+of+Article+15+and+Article+16+of+Indian+Constitution&rlz=1C1CHBF\\_enIN990IN990&oq=Summary+of+Article+15+and+Article+16+of+Indian+Constitution&aqs=chrome..69i57j69i60.811j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Summary+of+Article+15+and+Article+16+of+Indian+Constitution&rlz=1C1CHBF_enIN990IN990&oq=Summary+of+Article+15+and+Article+16+of+Indian+Constitution&aqs=chrome..69i57j69i60.811j0j7&sourceid=chrome&ie=UTF-8)>

<sup>13</sup> *M. Nagaraj v. Union of India* (2006) 8 SCC 212

cream or extend the reserve indefinitely. Subject to the foregoing, the House affirms the constitutional validity of the Constitution Act (Seventy Seventh Amendment) of 1995, the Constitution Act (Eighty-First Amendment) of 2000, the Act Constitution (Eighty Second Amendment) of 2000 and Constitution (Eighty-Fifth Amendment) Act., Year 2001.

## **VII. CONSTITUTIONAL PROVISIONS**

- In Indian Constitution Part XVI determines the reservation for backward classes like SC and ST in both level of government.
- Both the Articles 15(4) and 16(4) allows Government in India to provide places to the members of SC and ST in government services at both state as well as central level.<sup>14</sup>
- By amending constitution with 77<sup>th</sup> amendment a new clause 4A was added in Article number 16 of Indian Constitution which allowed reservation in promotion by the government.
- After some time, an amendment was done again to modify clause 4A with 85<sup>th</sup> Amendment to give priority to both SC and ST who were promoted with the help of reservation.
- The 81<sup>st</sup> Amendment to the Constitution Act of 2000 added section 16(4B) which allowed state to fill the vacancies in one year which were reserved for SC and ST in the following year, and thus making it null and void, disable the half reserve limit on the total number of vacancies for that year.<sup>15</sup>
- Both Articles 330 and Article 332 of Indian Constitution gives reservation to SC and ST in State Legislative Assembly.
- In panchayat system reservation is provided by Article 243D of Indian Constitution.
- In municipality reservation is provided by Article 233T of Indian Constitution.
- SC and ST are taken into consideration for the maintenance of the effectiveness of the administration under Article 335 of Indian Constitution.

## **VIII. JUDICIAL APPROACH TOWARDS RESERVATION**

The Indian Judiciary has issued some judgments upholding reservations and others fine-tuning their implementation. Several reservations-related decisions have since been modified by the

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<sup>14</sup> Reservation in India, available at: <https://medium.com/vanicademy/reservation-in-india-cbee269b1870> (Last Modified April 21, 2022)

<sup>15</sup> Pratiksha Singh “Reservation in India” (2019)

Indian parliament through constitutional amendments. Some Indian judiciary judgments have been ignored by central and state government. The major judgments issued in Indian courts that reflect the constitutional status of reservations are listed below.

- Supreme Court in *M. Nagaraj v. Union of India*<sup>16</sup> it was held that reservation policy needs to fulfil 3 requirements which can make it constitutionally valid under Article 16
- The Schedule Caste and Schedule Tribes must be considered backward in both ways i.e., economically, and socially
- In public departments Schedule Caste and Schedule Tribes should not be represented in employment.
- Public Administration efficiency should not get affected by any such reservation policy.
- In the *Jarnail Singh vs Lachhmi Narain Gupta* case of 2018, Supreme Court holds that reservation in promotions doesn't need the state to gather quantitative knowledge on the slowness of the scheduled Castes and the scheduled Tribes.<sup>17</sup>
- Court also gave command that from SC and ST should be excluded from creamy layer and state is not allowed to give reservation within the promotion of SC and ST people.
- Law of Karnataka was revoked by Supreme Court in 2019 which allowed reservation which promotes SC and ST in consequential seniority.

In *Ajay Hasia v. Khalid Mujib*<sup>18</sup>, the regional engineering faculty created admissions of the candidates supported oral interviews once the written look at. The look at the oral interview was challenged on the bottom that it was whimsical and unreasonable because of a high proportion of marks were allotted for oral tests and candidates were interviewed just for 2-3 minutes. The court affected down the rule prescribing a high proportion of marks for oral look at reallocation of a simple fraction of the full marks was whimsical and unreasonable and offending Article fourteen of the constitution. it's the same that the oral interview looks at cannot be considered a satisfactory look at for addressing and checking the ability of the students as it is subjective and supported 1<sup>st</sup> idea, and its outcome are regulated by several unsure factors and it's capable of abuse. It cannot be the exclusive look. It ought to be resorted to solely as an extra or supplementary look and should be conducted by persons of high integrity, calibre, and qualification. The court advised that the interview be recorded to gauge

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<sup>16</sup> *M. Nagaraj v. Union of India* AIR 2007 SC 71

<sup>17</sup> *The Aboriginal Population of India*, available at: <https://www.jstor.org/stable/41377645> ( Visited on April 20, 2003)

<sup>18</sup> *Ajay Hasia v Khalid Mujib* (1981) 1 SCC 722

whether it was conducted haphazardly. within the instant case, an oversized variety of candidates were admitted supported high marks obtained on the interview though they'd obtained low marks on the written look at the court declined to quash admissions given a lapse of eighteen months once students had virtually completed 3 semesters. A mere suspicion that some candidates had obtained high marks in interviews however terribly low marks in written tests didn't establish malafide on the part of selectors.

## **IX. PRESENT SITUATION IN INDIA**

Reservation policy in India is given to Schedule Caste, Schedule Tribes, and rest of the backward classes at the percent of 15%, 7.5% and 27%. Once introducing the reservation provision, it connected to vote bank for politics and later government and the Indian Parliament habitually spread this era with nonfree and truthful revision. Reservation was lately intercalary to different sections in addition. This reservation system can harm the economic structure of the country by making labour efficiency. This reservation policy only serves to break the society, and which result in discrimination and chaos between different section of society. It is oppressive in nature, and it is wholly based on casteism. Which is totally opposite of communal living. This current reservation policy is potentially harming the country's future in economic and educational sectors. This policy in present situation only works in dividing the society and which result in discrimination and create chaos between sections of society.

## **RECENT AMENDMENTS RELATED TO RESERVATION**

Many Amendments have taken place within the Indian Constitution regarding Reservation. The last 3 huge Amendments created during this respect were the 102nd, 103rd, and 104th. All 3 were associated with Reservation.

- **102nd Amendment**

This change came within the year 2018 and supplemental Articles 338B and 342A to the Indian Constitution. Article 338B got wind of the National Commission for Backward Classes (NCBC) for Socially and Educationally Backward categories and outlined its structure, duties, and powers of it. The commission was already got wind of in 1993 however wasn't granted constitutional standing earlier. Article 342A gave the facility of specifying a specific category as Socially and Educationally Backward to President and created it required to possess Parliament's approval before creating any amendment to the list of Backward categories.

Recently, the Supreme Court while striking down the Maharashtra Government's law of providing 16% reservation to the Maratha community, cited this Amendment and made it very

clear that the 102nd Amendment took away the power of States to identify any class as Socially and Educationally Backward for providing Reservation.

- **103<sup>rd</sup> Amendment**

This amendment that came in 2019 allowed 10% reservation for “Economically Backward Section” of the unreserved class of individuals in Government sectors and academic establishments, no matter the very fact whether they area unit assisted by the State or not. Articles 15(6) and 16(6) were added in the Constitution. Also, the Economic Weaker Section were defined by the state based on income and other situations.

- **104<sup>th</sup> Amendment**

This Amendment in year 2020 applied to the ending period to reserve seats for schedule castes and schedule tribes in people's homes and State Legislative Assemblies. The last time it was amended by Ninety-Fifth Amendment was in 2009 and it extended the reservation till 26 January 2020. Therefore, the reservation was to end on 26 January 2020 which now by this Amendment has been extended to the next 10 years. This Amendment also abolished the reservation of two seats that were given to the Anglo-Indian community in the Lok Sabha.

## **X. SUGESSTIONS**

Reservation plays an important part in our country or the upliftment of the backward classes. It has become integral part of our country, even the criticism it faces. Inspite of the good intentions of this policy, many are there who are not getting the benefits of it and the reason is just the faulty implementation. For past years it has been made with idea to improve weaker section of society. Why continue with such an ineffective arrangement if the reservation have made no difference in their conditions so far? The main reason is the creamy layer has a monopoly on the benefits. The reservation policy is only for those who are actually in need of it but this section being from that caste or tribe use it for their own betterment even if they are well qualified in every sector for an example, if the person is from schedule caste and his family is well sustained even then also that person gets the reservation because of its caste background and it takes away the opportunity from the one who is in actual need of that. Because of this also general category people face a big problem. The cut-off for different competitive exams varies form caste as per the reservation policy. The person who is in general category and is well known of the subject is not selected because of the cut-off for backward classes is very less and even though he or she tires so hard couldn't get the opportunity. As per the suggestion the policy should be amended in various ways keeping in mind for every caste or class. It should reach the person who is in actual need of it only then this country can grow and make

progress in different sectors and stand Infront of whole world.

## **XI. CONCLUSION**

In the present world the reservation policy is only limited to the vote bank. It being implemented to benefit the whole caste or class but today it is just being used by politicians for their own benefit. This policy now does not provide benefits to the whole caste it just provides to an individual who is not in mandatory need of this policy. The one who needs are still deprived from it. Today in our country the reservation is an issue instead of a solution. The people who need are not getting it and those who don't want it are using it for their own benefits. The reservation policy is not the permanent cure to this solve the problem of backwardness. Government should take steps to make sure that the benefits should reach to the needy people, and they should be made the priority for the upliftment. The concept of creamy layer as mentioned in this paper should be applied in the case of SC and ST. The one who are weaker should get benefits in government sectors and as well as in economic sectors. To resolve all the problems happening in the name of reservation policy should be relooked and new steps should be taken, and normal people should be made aware of all the positive as well as negative aspects of this policy. Reservation in present time should be considered by looking who is weaker in education and who is economically weaker section.

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