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Reservation for OBC in AIQ Medical Seats

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ABSTRACT

“Equality of opportunity is the essence of Social Justice”

Reservation has always been a disputable topic with divided opinions among the people. It is often seen as a hindrance to the merit system. On the other hand, it is a reflection of Social Justice enshrined in the Preamble of the Constitution. Reservation is the cure for discrimination, which has haunted our society for years and such cruel practices of caste-based discrimination could be seen in some places even till date. Most of the citizens, particularly students, are not aware of the reason for the existence of reservation in the constitution and they often see it as a tool used by political parties to gain votes. This wrong notion in young minds has to be changed and the ideology behind this concept should be deeply understood, so as to ensure future governance is in good hands and social justice is served. In this article, the authors have dealt widely about the reservation in medical seats in the All India Quota category with its historical background. Medicine is considered to be the leading profession chosen by students as their career in India. With the development of NEET and centralising the entrance exam, let us also view how seats are being allotted. This manuscript is aimed at removing the confusions behind providing reservations and addressing the current issue of 27% OBC reservation. A proper and in-depth understanding of reservation is the need of the hour to carry forward the constitutional values as the makers have envisioned.

I. PREFACE:

A child got good scores in the board exams but he couldn't get into the desired college due to the reservation system. If he is asked about the reservation, he will be dissatisfied with it and will feel like an injustice has been done to him. Is this an injustice to him? Is reservation demeaning the value of the merit system? Does it halt the process of development? The answers to these questions will be addressed in this article.

II. OBJECTIVES OF THE STUDY:

1. To understand the rationale behind providing reservations.

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2. To dissect and analyse the reservation system in medical colleges.
3. To make suggestions on the OBC reservation.

III. LIMITATIONS OF THE STUDY:

The scope of the study is restricted mainly in analysing the reservation policy in *medical colleges* alone and not in any other field. The study is exclusively about Government Colleges and does not deal with private colleges.

IV. IDEOLOGY BEHIND PROVIDING RESERVATION:

Non-Brahmins must get highly educated and occupy the strategically important places, which has remained the monopoly of Brahmins for long.

- Dr.B. R. Ambedkar.

The reservation was provided to *undo* the caste discrimination which has ruled our societies for years. It started in India over 1500 BC, when Aryans classified Hindus into **Brahmins**, **Kshatriyas**, **Vaisyas**, and **Sudras**. In addition to this, there were **Harijans** or **untouchables**. One was supposed to do the work his class was destined for. The lower castes had been subjected to untold sufferings and discrimination all their lives. And the worst part is, it exists even in the present time in many villages and towns. The idea behind providing reservation to the socially backward classes is to *repair the mistakes and injustice done to them*, and it is a way of achieving equality among everyone. Consider the situation of two children. One who lives in the city, studies in renowned schools and able to access all the books and tuitions, and scores **95** marks. While the other lives in the village, goes to school miles away, has no proper books or tuitions but still scores **75** marks. Both the children in the abovementioned scenario are *equally talented* though their marks differ because if the second child had all the facilities to read, he would have scored more. Hence, the reservation system uplifts them.

V. HISTORICAL DEVELOPMENT OF RESERVATION:

William hunter and Jyotirao Phule had first introduced the caste-based reservation system in 1888. **The Communal Award** of 1932 by *Ramsay Macdonald* was of great significance where electorates were separated on the basis of caste which faced huge criticisms by Gandhi and other leaders. However, by the **Poona Pact**, a single Hindu electorate with reservations was adopted. In the education sector, the first instance was when *Champakam Dorairajan* had challenged Communal Government Order in Tamil Nadu, while she could not get into a medical course despite scoring high. The Supreme Court had found the Government Order as violating and subsequently parliament amended *Article 15* to include reservation in educational

institutions.³ Then to identify *OBC*, a Commission under **Kaka Kalelkar** had been introduced in 1953, but its report was considered a failure. One of the breakthroughs was the report by the **Mandal Commission** for Backward Classes in 1978 which proposed **27% reservations** to *OBCs*. This was subsequently introduced in 1989 by former Prime Minister *V.P.Singh* followed by widespread protests which lead to the landmark judgement where 27% reservation to *OBCs* was upheld by the Supreme Court and also creamy layer concept was introduced. It also capped that reservation should not cross 50%. This was also referred to as the Mandal Commission case.⁴ **The 93rd Constitutional Amendment** Act gave power to the Government to make special provisions for the advancement of any socially and educationally backward citizens which also included admissions to both aided and unaided private institutions. This was challenged and was held that it is constitutionally valid and as far as “**private unaided**” institutions were concerned; it had to be decided on a case by case basis. It was also decided that the Creamy layer should be excluded from the socially and educationally backward classes.⁵ *A case requiring the implementation of OBC reservation in AIQ in state-funded medical institutions has been filed and is currently pending before the Supreme Court.*⁶ *The Madras High Court on 28th July 2020 has declared that OBC reservation will be provided and gave the centre to decide on the percentage within three months. It has also stated that since only those who clear the NEET are subject to reservations, it is not against merit.*⁷

VI. RESERVATION IN AIQ MEDICAL SEATS:

A candidate after completing the 12th board exams should appear for **NEET** (*National Eligibility and Entrance Test*) to get qualified to be a medical student. NEET has been made the single qualifying exam for as much as 82926 MBBS seats in 532 medical colleges all over India from 2017. 15% of the seats are surrendered by the states to the AIQ quota and 85% of seats are filled based on the state’s reservation policy. Students from the Union Territories of Jammu and Kashmir and Ladakh are not eligible for this 15% AIQ as these UTs have opted to stay out of All India Schemes. However, these students by filing self-declaration form can apply for NEET.⁸

Now taking into the picture of Central medical Universities and institutions, the following

³The State of Madras v. SrimathiChampakamDorairajan, (1951) A.I.R. 226 (India).

⁴IndraSawhney v. Union of India, A.I.R. (1993) S.C. 477 (India).

⁵Ashok Kumar Thakur v. Union of India, (2006) W.P. 265 (India).

⁶SaloniKumari v. Department of Health Service, (2015) petition number 596 (India)

⁷AIADMK v. UOI, (2020) W.P.No.8324 (India).

⁸NikkilVisha, NEET 2020 Reservation for State/ Defence quota and Other Reserved Categories, COOLEGEDUNIA (July 2, 2020, 04:04 PM) <https://collegedunia.com/exams/neet/reservation>.

percentage of reservation exists now,

Central institutions like JIPMER, AIIMS, etc. have the following reservation percentage.

Reservation percentage	Class
15%	Schedule Castes (SCs)
7.5%	Schedule Tribes (STs)
27%	Other Backward Classes (OBCs)
10%	Economic Weaker Sections (EWS)

The Person with Disabilities is also given a 5% reservation.

Now coming to the **Government colleges in the state**, the Central Government has cleared that implementation of the **10% EWS** reservation in the 85% state surrendered states is left to the states to decide. Not to forget, Education is in the **Concurrent List**.

Out of the **15% AIQ** Seats, the reservation is as under,

Reservation Percentage	Class
15%	SCs
7.5%	STs
10%	EWS

The reservation in the remaining 85% of state seats is to be decided based on the State's reservation policy. Tamil Nadu Government has recently included a 7.5% reservation to those who studied in government schools from 6th to 12th and has cleared NEET. It was also mentioned that it is not a separate quota, but a quota within the quota. This is also due to the falling number of students who pursue medicine by studying from government schools.⁹

(A) CREAMY LAYER

Creamy layer generally refers to the group of people in the backward classes who are economically well off and in the higher position of socioeconomic hierarchy. It is of the idea

⁹FINANCIAL EXPRESS ONLINE(July 3, 2020, 10:04 AM),<https://www.financialexpress.com/education-2/neet-tamil-nadu-reserves-7-5-quota-in-medical-admissions-for-govt-school-students/2024998/>.

that these people receive all the opportunities and hence there is no need of reservation. The following persons are not eligible to apply for an OBC certificate:

1. The individual or family whose total annual income exceeds eight lakhs.
2. Certain castes which come under BCs and MBCs.
3. Children of parents under Group A services of Central Government.
4. Children of parents under Group B and C services of Central Government.
5. Children of parents who are Grade 1 officers of the State Government.

Thus this is the eligibility criteria to obtain an OBC certificate and those who are not eligible for the OBC certificate will come under the general category. The creamy layer concept was made applicable to SCs and STs also.¹⁰

VII. AUTHOR'S SUGGESTION ON WHETHER OBC RESERVATION IN STATE SURRENDERED AIQ MEDICAL SEATS IS NEEDED OR NOT:

The current issue is whether 27% reservation for OBCs in the 15% AIQ should be provided or not, for which petitions are pending in the Supreme Court. A report has been filed by All India Federation of Other Backward Classes, in which it was stated that since 2017, around 11000 OBCs have lost their seats. Before jumping onto any conclusions it is important to know why the reservation for medical colleges started in the first place. While it was started, many states had hardly a few medical colleges, and to extend the medical facility and doctors to be available in all the states, this AIQ category was introduced. But now almost every state is provided with a good number of medical colleges. Also, having given a reservation for SCs and STs, and neglecting OBCs in this criterion is an injustice done towards them as most of the OBCs had also been deprived of many basic facilities. *EWS* was given reservation, but one should remember that the concept of reservation for which it was introduced was to develop the **socially and educationally backward** people. Thus the reservation was created to address socially and educationally backward classes and not economically weaker sections per se. And thereby providing 27% reservation in the AIQ category for state surrendered seats would cater to the larger interest of the society and the constitutional mandates of social justice.

VIII. HARDSHIPS IN IMPLEMENTATION:

1. The undeniable accusation is that reservation is not being enjoyed by the deserved people. Many people who are not qualified are enjoying it and on the contrary, truly

¹⁰ Nagaraj v. Union of India, (2006) 8 S.C.C. 212 (India).

deserving ones are being denied. This is due to the poor administration and lack of proper stats on the number of people per castes. To overcome this, a **caste-based counting of the population** for reservation will surely reduce the misuse of these provisions and prevent denial of admission to the rightful person.

2. There have been many instances of people changing their community and getting **fake community certificates** for the sake of reservation. So, to avoid this, the procedure for the grant of community certificates should be scrutinised properly.
3. Implementing reservation based on **economic position** is a far difficult one because there has been no proper statistics to say if an individual is wealthier or not and even if there is any, the *correctness* of it cannot be guaranteed.
4. Wealth is dynamic. One who is rich today may become poor the next day. And it is necessary to understand that our society has been divided by caste for years and not by wealth, which means even a wealthy lower caste person would not have access to many rights like a poor higher caste person enjoys.
5. Dr. B. R. Ambedkar, himself has stated that reservation should be for a limited period until the inequalities and differences are removed, but the improper implementation of it continues to drag and extend the reservation period from time to time.

One of the most highlighted arguments is that reservation is against the **merit system** and it slows down the development process. Having established already how two individuals with different facilities and with different scores are equally talented, reservation ensures the development of the whole society and attempts to achieve *equality among individuals*.

IX. CONCLUSION:

Article 14 of the Constitution enshrines “*likes should be treated equally*”. Reservation is thus the major step to achieve the level of sameness in the society. When there is no caste or caste-based discrimination in the society, when every individual born is provided with equal access to the education, when the basic education as already stated in **Article 21A** is made free and compulsory in all the schools including private ones, then there will be no window for discrimination as all will be in the same page and there will be no need for reservation at all. Nevertheless, we should accept that caste-based discrimination are prevalent in our country till date and the fact is that we are nowhere near that situation right now where there will be no caste based discrimination which makes the reservation a mandatory tool in developing these backward communities and putting an end to the discriminations. We shall understand the need

for reservation and aim at effective implementation of it and thereby achieve our goals at the earliest. *We shall strive to attain the level of equality by constantly working towards it.*
