

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Right to Reservation in the Special Reference of Jaishree Lakshman Rao Patil v Chief Minister, Maharashtra SLP(C) 15737/2019

ABHAY KANT KAUSHIK¹

ABSTRACT

The Indian constitution grants citizens of the country right to reservation as a right which insures a guarantee that every citizen is treated equally and no discrimination would take part in anyway possible. The reservation right is given to the weaker section of the society which includes any discriminated persons who is discriminated on the basis of religion, sex, colour, caste, creed, and economic backwardness. This paper is regarding different case studies and precedents which will elaborate people's mindset about reservation policies in India, then there is an analysis about opinions of different jurists in lieu of our main case Jaishree Lakshmi Rao Patil v Chief Minister, Maharashtra SLP(C) 15737/2019 and some other major cases. In the end I will define my opinion regarding the developments that should be made by government and society to promote weaker sections of the society and make sure that no one is getting undue advantage of it.

Keywords: Right to Reservation, SLP(C) 15737/2019, indian constitution.

I. INTRODUCTION

(A) Meaning of reservation

Reservation basically means to preoccupy someone seat or place somewhere. In today's time the reservation is place given to schedule casts, schedule tribes and economic weaker section of society in different parts of education and jobs. According to preamble of constitution every citizen of the country must be treated equally, So, to ensure that right to reservation is given in Article 15(4)² which talks about that nothing can prevent state from making laws for reservation for the people socially and educationally backward, Article 15(5), Article 15(6), Article 16(4) and 16(1) when read with Article 14 of the Constitution.

II. HISTORICAL BACKGROUND

¹ Author is an Advocate and Solicitor at Lex Chambers, New Delhi, India.

² Constitution of India, 1951 (first amendment)

The history goes beyond as caste system is defined in Rigveda³ in its tenth mandal's purushaukth in which it is written that in a man "the head" is considered to be Brahmin as it contain brain of human , "hands" are considered as Kshatriya as it contain all the strengths for fighting, "Stomach" which is considered as wealth and *vasishya* in older times, "legs" which can be seen as balance of whole body if it not maintained then the man or in our case society will not stand. Our holy book" Mahabharata" also gives an example of discrimination where there was warrior named "Karna" who was not allowed to show this skills in the ceremony of *Dronacharya* marely on the basis that he was "Shudra". In 2nd century BCE to 3rd Century CE which was the period of manusmriti where the whole conflict arises. Manu(Svayambhuva) has given his teachings in the topics related to duties, rights, laws, conduct, virtues, and which type of work is done by which kind of people. He defined that there are four "varna" in which he described, "Brahmins" as thinkers, scholars and teachers, "Kshatriya" as rulers, warriors, and administrators, "Vasishya" as merchants or traders, and "Shudra" as labourers and service providers. This whole system of "Varna" was totally based on the basis of work the people do, but as the time passed the interpreters stated misusing the system which resulted in non discrimination of people by their work but by their birth.

Then by the due time the people started disrespecting their work as they believed they are working under them. So, after exploitation of SCs, STs, and economic weaker sections of society for centuries the idea of reservation was introduced by William Hunter and Jotirao Phule in the year 1882 to provide relief in caste based discrimination amongst people⁴.

In 1902 An order was passed for the people of Kolhapur stating that there would be 50% reservation for their social and economic welfare this reservation was granted for only backward people and depressed backward people.

A 1908 a provision was made for the families of administrative persons at the time of British that they would also get reservations.

At the first time reservation was is mentioned in communal award which was presented by prime minister of United Kingdom in the year 1913 and in this award the prime minister made several provisions for reservation amongst Muslims, Sikhs, Indian Christians, Anglo-Indians and Dalits. Mahatma Gandhi was in opposition of this award and threatened English Prime Minister that he will sit on fast without water until this award is taken back but after meeting and discussion with Dr.Ambedkar, he negotiated with British government and came to the

³ Rigveda 10.90

⁴ PP Rao "Right to equality and the reservation policy", Journal of Indian law Institution vol.14, No.2/4,2000

conclusion that there would be an Hindu wing which would be further divided into several forms containing reservations in it.

After independence Dr B.R Ambedkar as a knowledgeable person and promoter of all schedule castes and scheduled Tribes and other backward people helped in making of constitution of India in which he assured that there should be proper opportunities for every people who are the citizens of this country⁵. The reservations after independence were only given to SCs and STs, then after sometime OBCs were also added to it after there were some suggestions given by Mandal Commission in their report⁶.

Then there was a commission settled up by Indian Prime Minister which deals with monitoring that there is no discrimination on the bases of caste, creed, sex, religion and of any other type. The chairman of this commission was B.P Mandal and on the later successful achievements of the commission it was known as Mandal commission. This commission not only made 27% of reservation for backward amongst Hindus but also other religions which are minority India such as Muslims, Sikhs, Cristians, and buddhists. In India there were three thousand seven hundred and forty thee backward castes and two thousand one hundred and eight depressed backward castes.

III. CONSTITUTIONAL BACKING TO RIGHT TO RESERVATION

(A) Article 14⁷

Article 14 is the basic fundamental right given by constitution of India, in this article it is stated that every person irrespective of their caste, creed, sex, religion, place of birth is equal before the eyes of law established by legislature of union of India.

This article provides equal right to every citizen that he/she can avail the benefits that are given to then under the persuasion of law.

As it was seen in *Shayara Bani v. Union of India* that triple talak practice was followed by Muslim men but it was nowhere codified under their customary law so it was direct infringement of rights of Muslim women and the 5 judge bench also ruled in favour of Sharaya Bano by 3:2 majority that there Article 14 was infringed. The court said that Article 14 is basically divided into two parts 1) equality before law and 2) equal protection by law and they also mentioned some major case laws which describes article 14 in detail.

⁵ Constituent Assembly Debate, vol.11, pp.979 to 980

⁶ Report of the backward classes, chapter IV, V, VII 1980

⁷ Constitution of India, 1949 art14

(B) Article 15⁸

Article 15 provides a negative right, a negative right is a right which prohibits citizens to do something. In this article it is stated that-

Clause 1) deals with that the state will not discriminate any any person on the basis of their caste, sex, creed, religion, place of birth.

Clause 2) deals which that no citizen of India shall discriminate another citizen on any basis of their caste, creed, sex, religion, disability.

Clause 3) states that state has to make special provisions for women and children and no one can prevent them from doing so.

Clause 4) it was added after the case of *Champakam Dorairajan*⁹, as a conflict was created before Supreme Court that whether reservation is right provided by constitution or not and in the judgement it was stated that it was not. So, after that article 15(4) came by first constitution amendment act, 1955.

It states that there is nothing in article 29 or in clause 2 of this this article that prohibits state from making law in welfare of socially and economically backward class.

(C) Article 16

Article 16 basically deals with that every person in government job get equal opportunity for enhancing their career in the field they were pursuing their job.

Clause 1) it deals with that no citizen of our country should be deprived of getting government job on the ground that he or she is discriminated on the basis of ya religion, caste, decency, place of birth and any such other way may deem seem fit.

Clause 2) it deals with that every voters Rights should be protected in a way that every voter should get one vote and the value of every vote should also be equal to one. The voter should not be discriminated on the basis of their job, economic background, religion and they must Not create any environment where the voter out afraid to get their vote registered.

There's also a landmark judgement *State of J&K v. K.V.N.T Kholo* in this case The state of Jammu and Kashmir was doing a screening test for every government employee which was appointed by central government into their state so in this case the Supreme Court describe the article 16 in which they said that every citizen has right to equal opportunity for getting government job in state So there would be no screening test done additionally by states

⁸ Constitution of India (first amendment), 1951

⁹ AIR 1951, SC 1962, p. 226

government.

There was also one more case which is set to be a landmark case of article 16 *N.M Thomas v. State of Kerala* in this case the court elaborated the term “Matters related to appointment and employment” they described that a guarantee has to be made which will include initial appointments, promotion, salary, periodic increments, termination of employment, age of superannuation and other things which are seen to be important to describe.

IV. CASE LAWS RELATED TO RIGHT TO RESERVATION

1. *State of Madras v. Champakam Dorairajan*¹⁰

Facts and decision of the case are as follows;

There was a Brahmin female named Champakam Dorairajan who was a medical aspirant of Medical Colleges in Madras, there were only four medical colleges in Madras which contained a total of three hundred and thirty seats. So, when she goes to take admission in college they refused in granting admission on the ground that the seats have been filled of all Brahmin category and only non-Brahmin category seats are available. The medical college could not grant the admission because there was a Government Order which provided guidelines for reservations for all socially and educationally backward castes in which 14 seats are to be reserved in the manner that non-Brahmin get 6 seats, 2 seats for backward classes, 2 seats for Harijans, Muslims and Anglo-Indian must vest each 1 seat, and at last 20% reservation for seats of women.

Then, Ms. Champakam pleaded in court that the court should file a writ of mandamus or any such writ which will provide justice since she conferred in front of court that her fundamental right is violated in which she mentioned the Article 15 and Article 29(2).

The high court made the decision in her favour on the argument that government order does not stand above Articles of the constitution and especially the fundamental rights provided by constitution.

After High Court the case moved forward to Supreme Court, there arguments were made on the basis of that the Supreme Court asked state of Madras that how do they follow their guidelines of making reservations and promoting backward classes in return they answered that they follow Article 37 which obligates state to follow the directive principle of state policy and for implementation of Article 46 we have to bring these kind of reservation policies and concluded their argument by saying that *if someone's right is violated by our following of Article 37 and*

¹⁰ State of Madras v. Champakam Dorairajan AIR 1951 SC 226

46 then we cannot do anything in it.

The Supreme Court held decision on a very narrow point of view that Article 29(2) provides fundamental rights to all citizens irrespective of that they are in minority or not, secondly- Article 46 is a directive principle of state policy so it cannot overpower Article 15 which is a fundamental right, thirdly the court said to state that if you are denying admission to Ms. Champakam on the basis of that she is Brahmin then it would be treated as infringement of Article 15(1), and lastly the court said that the Communal Government Order is in the violation of Article 13. By this decision the communal government order got quashed and its functioning stopped.

After this decision the answer has to be given by Parliament of India, since the reservation is very good tool for uplifting the backward and depressed backward class. So, the government in lieu of this decision passed First Amendment Act, 1951. In this amendment the most important part was the addition of Article 15(4) in which they stated that there is nothing in Article 15(1),(2) or Article 29(2) which prevents state from making provisions for uplifting the socially and educationally backward class of citizens of schedule castes and schedule tribes.

2. M.R. Balaji v State of Mysore¹¹

Facts of the case are as follows;

A Government Order was enacted by Mysore Government under Article 15(4) which deals with the reservation for the admissions of state medical and engineering colleges. The state in this order mentioned that the 75% reservation is provided for educationally and backward classes which excluded Brahmins.

On July 31, 1962 state decreased the reservation of minorities to 68% but it was still in tremendous high amount and only 32% seats were left for meritorious students. This order benefits only two classes which are called backward class and more backward class.

According to meritorious students this order was in infringement of their fundamental rights so they challenged this order under Article 32, the petitioner in his argument said that this government order is fraud and he also claimed that the first amendment of constitution which added article 15 clause 4 is also fraud since it is being used to undermine their community by not giving proper chance to get admissions in colleges.

Issues before court;

The first question which arises in front of court is that *is Article 15(4) contain the power which*

¹¹ M.R Balaji v State of Mysore 1963 AIR 649, 1962 SCR Supl.(1) 439

grants the state to make such irrational accounts for reservation.

Secondly, Article 15(4) talks about socially and educationally backward classes so where did the concept of backward class and more backward class come from and there is nowhere defined that which category of people will come under backward class and which category people will come under more backward class.

If the state reserves 2/3rd of the seats for the backward class and more backward class then what will remain for the meritorious students.

Decision of court;

The court in its decision said that the only criteria for reservation should be socially and educationally backward class. And the reservation should be on the basis of poverty and it should not create any discrimination or any discriminatory practice between the castes. And the court asked state to define which category people according to them comes under backward class and more backward class which is defined by them in their government order.

Court said to state that according to them the Brahmins are in minority since they are only getting 32% of seats in admission whereas non-Brahmins or minorities are getting 68% of seats and admission of engineering and medical colleges so after that the court has capped reservation to 50% so that no government can provide reservation more than 50% to minorities. Court also mentioned that the state should also see weaker sections of the society and their state to ensure that there should be proper upliftment of their state's society.

3. T.Devdasan v Union of India¹²

Facts of case;

In this case the government conducted an examination in which they provided reservation of 12.5% to schedule castes and 5% to schedule Tribes, at the time of selection there were 45 vacancies out of which 29 vacancies are to be filled with candidates of Schedule castes and scheduled Tribes so by the carryforward rule the government had given 65% of reservation to both SC and ST respectively.

The petitioner was Central Secretariat assistant and was eligible for promotion to next level but due to 65% of reservation to SC and ST he could not get promoted.

Issues in front of court ;

The main question in front of court is that is their mis use of carry forward rule by the state in

¹² T.Devdasan v Union of India 1964 SC179

order to promote a single section of class that is schedule caste and schedule Tribes if it is true then the state has conducted violation of article 16.

Judgement;

The court explained that in carry forward rule the previous year vacancies up schedule caste and scheduled tribe at to be filled in next year if not fill in the current year but in this case the vacancies are filled in the third year so the court said that it is not permissible to carry forward vacancies in third year.

Court also said that in Balaji case The reservation was limited to 50% but in this case it was gone up to 64.4% which is a violation of article 15 clause 4 and article 16 clause 4 The court also amended the carry forward rule in 1955 by the majority of 4 to 0.

Court also mentioned that the article 15 (4) is not applicable on promotion, salaries, pension, age of superannuation and no exceptions to be made regarding these terms.

Court said that there cannot be exploitation of any particular caste on the basis of reservation to as in this case the general category people were marginalised and suppressed since they were only getting 46% of seats instead of 50% of their share.

In this case it is seen that how overlooking of one factor could diminish the opportunity for the people of other cast and provide an undue influence for the other caste people, as the judges in this case particularly elaborated that no reservation should be granted for promotion and no reservation should be granted for seeking any undue influence on the other cast this was a very crucial decision and the jurists put took part in this decision were very broad minded since they did not care of reaction of schedule castes and scheduled tribe after their decision in the case of T.Devdasan.

4. Indra Sawhney and others v. Union of India¹³

Facts of the case;

There was a commission set up by Janata party government in 1979 , this commission was also called as socially and educationally backward classes commission. This commission was set up to identify different castes in India which require reservation and explore the field that if the reservation can be given on the basis of poverty and to deter mine how much reservation is to be given to backward classes.

This commission generated a report around 1980s in which they stated that 27% reservation

¹³ Indra Sawhney and others v. Union of India AIR1993 SC477, 1992 SUPP 2 SCR 454

was recommended by them to the backward classes which included 3743 castes and 2108 suppress backward castes but since the government has changed so no action Was taken on the report of this commission. In 1989 Janta Dal tried to implement the provisions for reservation but for some reasons it could not be implemented, year 1991 Narsimha Rao government implemented the report of this commission And as soon as it gets executed it got challenged in the court of law(Supreme Court).

Issues before court;

The first question which arises is that the mandal commission has given the reservation solely based on caste which directly infringes article 15(4) of the Constitution which states that the reservation has to be given on the basis of socially and educationally backwardness not on the basis of castes within castes .

According to Indra Sawhney the reservation Mark exceeded 50% and got nearly up to 60% which should not be exceeded more than 50% which resulted in less than 40% of seats for the general category people and they should not be any economic criteria or economic provision for the reservation as it is clearly mentioned in our Constitution that the reservation should be made on socially and economically backwardness only.

Thirdly the most important thing is that is article 16 clause 1 is an exception to article 16 clause 4 since And article 16 clause 1 it is defined that they should be equality amongst every citizens of the country and on the second hand the article 16+4 talks about bringing reservation by the state for the upliftment of the backward people so is it fair that on one hand we talk about equality and on the other we talk about reservation.

Court's decision;

There was a nine judge bench which was sit in deciding the matter and the judgement was passed On the proportion of 6 to 3, The judgement was mixed since some of the points was in the favour of petitioner and some of the points were in the favour of state.

The court upheld that the 27% reservation for the OBC on the basis of caste which was made by mandal commission was right but court made A close that if an OBC has Taken reservation one time then they would be coming under Creamy layer and further they cannot demand reservation since they have availed the benefit one time.

The court said that the reservation should be capped at 50% and reservation for economically weaker section (EWS) is considered to be invalid, They also said that they should be no reservation process followed for the promotion in the jobs and a carry forward rule for the

unfilled vacancies of the OBC should be followed which will allow government to Carry forward previous unfilled vacancies for the future upcoming vacancies i.e addition of previous unfilled vacancies to the vacancies which will come in future.

5. CASE DISCUSSION: JAISHREE LAKXMANRAO PATIL V Chief Minister, Maharashtra¹⁴

Facts of the case

Maharashtra government was seeing that there were not equal opportunity for the Maratha community and in the field of Government jobs and government educational institutions so they came up with a plan to make an act which will favour the Maratha community by granting them 16% reservation in government jobs and educational institution situated in Maharashtra. So for executing this plan the Maharashtra government on 29th November 2018 came up with a hat named ass Maharashtra socially and educationally backward classes act, in this act they set up A commission which is called Gaikwad committee which has to recommend that how much reservation is to be made for which Marathi community, so in the report of the Gaekwad committee they recommended 12 and 13% reservation for Maratha and educational institutions and appointments in government job for their better upliftment.

This came in the light of High Court of Bombay in which they argued that the Maharashtra government has exceeded the recommended cap off 50% reservation which is given by landmark judgement of Indra Sawhney.

Issues in court;

Since the Bombay High Court has made the judgement in the favour of state of Maharashtra Then the matter goes into Supreme Court's notice where the Supreme Court decided to send this matter to a higher bench or larger Constitutional bench.

It is to see that whether the report made by Gaekwad committee was in lieu of any extraordinary circumstances which was made in Maharashtra to provide Maratha's extra 13% or 12% of reservation.

It is also of great point to see that the latest 102nd amendment of the constitution Is not well enough to define which category of people should get reservation.

Is it a state's power to deter mine any category of Backward class as mentioned under article 15(4) and article 16(4).

¹⁴ *Lakshmi Rao Patil v Chief Minister, Maharashtra SLP(C) 15737/2019*

Findings by court;

Supreme court has listened to the point of views of both the parties for 10 days and delivered the judgement which is expressed as follows :-

The Supreme Court has set up a 5 judge bench which gave a 570 page of judgement, which inclined to see the validity of 1992 judgement of Indra Sawhney Case which held that reservation should be capped at 50%, the court then said that the act made by Maharashtra Government had violated Article 14 by exceeding reservation limit without giving any reason for their condition.

The five judge bench maintained the validity of 102nd amendment which granted the reservation for economically weaker section of the society.

The advocate on the side of Maharashtra government needed to prove that the Gaikwad committee has justified the conditions in which Maharashtra government has made extra 13% of reservation for Maratha community but they are unable to do so.

The judges agreed to Justice Bhushan and Justice Abdul Naseer that the reservation for Maratha community was unconstitutional where the other judges on the bench didn't agree to it and said that A list should be made by President which includes the category of people belonging to socially and educationally backward class.

This judgement can be formed as good president as the Supreme Court struck down Maharashtra law which gave reservation to only Maratha community and sets an example for other states that the Supreme Court is keeping a keen eye on every state That they did not misuse their powers in order to gain votes of their communities.

But this judgement has conflicted opinions of judges Since three judges are in favour of the judgement and other judges are trying to make a statement that it is not fault of the state but the union should make a list of the backward people and forward it to states of the union.

V. OPINIONS OF DIFFERENT PEOPLE

Different jurists has given different opinions on the topic of right to reservation;

Dr Shailendra Nath Jha he said that the reservation policy in India needs to be changed from time to time as it will be beneficial for backward classes or the real backward classes to overcome their poverty and backwardness and become a part of today's society since the society changes from time to time the method for upliftment of it Has also to be changed from time to time since we're following very old method of reservation policy it should be changed and reformed In order to continue uplifting every backward class whether it's economically

backward or socially backward or educationally backward.

Dr Ashish Singhal an associate professor in University of Dehradun has given their opinion by saying that the reservation policy has to be mandated with the preamble of the Constitution so that it cannot be changed by any upcoming government or by any previous government and the reservation policy should be embedded into the basic structure of the Constitution And reservation should be granted a status of fundamental right which will empower the backward citizens to avail their rights more peacefully without any hindrance.

Akash Dubey in his paper named a study on reservation mentioned that the very idea behind reservation is discrimination and caste distribution and to maintain a secular society which will embody into every citizens of the country and by the time passes the citizen will forget who They were and which caste did they belong to so weak position of discrimination will be scattered and after two or three generations it will be faded away.

Dr Manjula SR of Karnataka University in her paper wrote that untouchability was a concept which is prevailing also in modern times and it doesn't matter how hard we try not to discriminate people but it is impossible to uplift in society without discriminating or dividing basic category of people to measure their requirements and to fulfil their requirements by providing amenities Like preserving a particular number of seats in educational institutions and in government jobs and providing the right that new public institution can discriminate them on the basis of their caste, creed, sex, religion, economic status.

Singh in 1996 defines the term other backward class on the basis of Their household traditional occupations for example milk supplier, waste collector, blacksmith etc. he defined that not only schedule caste and scheduled tribe should get reservation but also the person who are in need of getting reservation for the uplifting the society should get the reservation.

(A) Literature Rivew;

Singh and Bal (1996) in their book "Strategies for social change in India"¹⁵ defined that if backward people get equal opportunity and government jobs so they cannot only develop themselves but their community too, they can do that by in an administrative position where they can tell the real problem which are faced by backward classes in order to improve their education and economic backwardness they can also help in making the laws since there are seats reserved in Parliament for the schedule caste and scheduled tribe communities.

Rudolf C. Heredia in his book "Taking Sides reservations quotas and minority rights in India"¹⁶

¹⁵ Paramjit S. Judge, Gurpreet Bal, *Strategies of social change in India*, New Delhi, 1996

¹⁶ Rudolf C. Heredia "Taking Sides reservations quotas and minority rights in India", Penguin India, 2012

he criticised that in India we talk about granting reservations uplifting our society but in real life the discrimination happens in rural as well as in urban areas, he also said that the law is made but there is the people who enforce the law but they are not aware that they how should they behave to the backward class people and they tries to Undermined them and suppress them and today's time too.

Shah (2004) in a study "caste and democratic politics"¹⁷ said that it is the Hindus who created discrimination amongst people and they should be held responsible for doing so they embedded discrimination into deep roots which will be very difficult for our today's society to remove so in order to remove discrimination The process of upliftment should be carried forward in the way of reservation.

Rao(1979) in his book "Social movements and social transformation: A study of two backward classes moment"¹⁸ talks about social movements of particular to different classes in the region of north India and he talks about that how successful they were in the terms of their education, employment, economy, politics and culture and the post-independence period.

Kuppuswamy (1990) he was a great scholar who studied the differences between higher and lower classes and tensions between them which widens by the span of time and enlarges significantly after 2000 and by the time the government was made and the reservation policies were got into place for uplifting their community but in spite of which the higher class of people undermines them regularly and suppresses them in which ever way possible. The study was done by Kuppuswamy In particular reference with the state of Madras.

In the book " Reservation Policy in India" by Dr. Bijoy Chandra Mohapatra and Dr. Sudhansu Ranjan Mohapatra they described how reservation policy should be made in India and they describe that it has to be developing in nature by providing proper upliftment for every person who is in need of it, they defined the categories in which we should divide people for making them eligible for reservation.

They divided people according to poverty line, The people should be measured below poverty line people then border poverty line people and lastly above poverty line people. The poverty line should be defined on the basis of economic welfare of the society and in the region where educational development is neglected the poverty line should also be considered according to educational development.

¹⁷ Ghanshyam Shah, caste and democratic politics in India, Athem, University of Edinburgh, 2004

¹⁸ M.S.A Rao "Social movements and social transformation: A study of two backward classes moment", Macmillan, 1979

In the book “Discrimination, caste system and reservation policy of modern India” by SK Modi he defined that discrimination has took place in the modern times and how it concluded the developing of caste system in India, he elaborated that how upper class people suppress lower class and fight between them persists since the ancient time and continue in the modern time he relates every aspect that are in need of reservation for backward people in India and describes how they should get proper opportunities in the field of government job and government educational institutions.

In the book “Baahubalis of Indian politics” by Rajesh Singh¹⁹ he discussed about how some politicians in India are gangsters who manipulates the election and made their party win on the bases of power and suppress every backward people in order to maintain their power. They are the most vicious part of our society since they are in our government so we cannot do much about it except writing in book.

VI. CONCLUSION

Since I studied on various aspects of reservation, my point of view can be defined in various ways;

(A) Current situation:

The current situation of reservation is that people are getting undue influence and getting reservation by providing fake certificates of castes and taking advantage by it. Since in my paper I have made an analysis about how people who are not getting reservation or being suppressed and people getting reservation are the one oppressing them.

People getting reservations are now at the places where they can make law so the age old practice of reservation is not getting developed or reformed Because they are getting full advantage of it and people of general section of society are now being going into backward class.

The Brahmins who were in the elite class in the pre-independence period are now in the backward class in economic weaker section of people. I am not saying that every Brahmin is being oppressed but the percentage is increasing day by day and a day will come when all the Dalits Will overcome their backwardness at the cost of suppressing all the so called elite classes.

People in India are not educated It is the main reason that there is discrimination in our country which is spreading and making it routes in the mind of children as well, as elders who are orthodox teach their children that they should not properly behave to the person belonging to

¹⁹ Rajesh Singh ,Baahubalis of Indian politics, Rupa, Delhi, 2020

lower caste or who is lower position than them it can be financially or by caste.

There is a creamy layer Provision in OBC and there should be this provision of creamy layer in reservation of SC and ST as well because If we talk about a particular family then a person who got reservation by SC and ST then that person's children would also get same reservation without getting excluded in this policy and on later stage the exploitation of the people who are in real need of this reservation will get diminish.

(B) Future Remedies;

They should be proper education for children in villages that can teach them that every person in our society has some important value to its work and every work in our society is equal because if one category of people stop doing their work then the system of whole country will fail.

In order to develop India we have to make a balance by making a regular check at which category is developing and which is getting weaker day by day by, in order to do that the government has to make a proper discretionary body which regulates the formulation of reservation at per year basis that which category of people has to get which amount of reservation and that particular year.

The discretionary body should contain people of every class of people in a proportionate manner that not a single class of people can dominate this body, The chairperson of this committee or body should be president of India since he is the first citizen of the country.

As in the case above it was mentioned by one of the jurist that President should make a list of people coming in the category of backwardness and I found it very relevant because it should be described that in every state the category of people who are in need of reservation is different so every state shall contain a particular list of categories of people which would come under its reservation in order to develop whole India equally.

The People who were coming into reservation today cannot remain there forever as our constitution doesn't allow it. So, lastly I would like to say that I have studied the point of view of different jurists and read several books and their point of view I found that they consider reservation a developing tool which is very necessary for nation to develop but in my point of view the reservation if it is stagnant will be a tool of destruction for nation and not its development.

The term 'backward class' is mentioned several times in article 15 and 16 and it should be removed because it creates confusion that it doesn't include women who are considered as

backward class of people so my suggestion the term 'backward class' to be replaced with other word which have same ambiguity as previous term and have much more elaborated form.

In the above discussion all authors focuses upon a precise use of reservation And proper execution of it should be monitored since there is a lack in execution of reservation for the class which is in need of reservation.

VII. BIBLIOGRAPHY

1. Academicjournal.in/2018/vol3/issue3/3-3-36
2. Allstudyjournal.com/article/373/2-4-66-114.
3. Caste based reservation in India by Seema Pasricha, 2006
4. Caste, Reservations, Atrocity Law and Discrimination by Sthabir Khora.
5. Ijar.com/upload_issue_20543425.pdf
6. Ijlmh.com/paper/a-study-on-reservation
7. Irjet.net/archives/v6/i4/IRJET-V6I4894.pdf
8. Nation of idiots by Daksh Tyagi
9. Parliamentary government in India by B.P. Pnadya.
10. Reservation, affirmative action and inclusive policy by P.C. Hadia
11. Reservation in India: recent perspective in higher education by R.K Suri,2009.
12. Taking Sides: Reservation Quotas and Minority Rights in India by Rudolf C. Heredia.
13. The cases that India forgot by Chintan Chandrachud
14. The half has Never Being Told by Edward E. Baptist
