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# The Reservation Policy: India's Timeless Conundrum

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## ABSTRACT

*Each time the Reservation Policy in India is debated upon, the discourse as to whether it should continue or not has always prevailed. This research paper aims to deliver a deep understanding of the socio-economic-political phenomenon called "Reservation" by critically analyzing the events that transpired and led to its inception. The authors identify, address and elucidate the rationale behind the need for its existence, concomitantly, examining the feasibility, viability and desirability of reservations altogether. The paper offers its readers with unconventional ideas and jolts them into consciousness by reflecting on subjects such as substantive and formal equality, equity and equality, caste-system, and further goes on to ascertain if reservation is a fundamental right or a constitutional mandate.*

*Interestingly, the authors invite the individuals to think afresh without siding with either sides of the spectrum in this contentiously perpetual debate by provoking its readers into unlearning the notions that previously served them. The idea is to look at the crux of the matter with utmost objectivity without being overly affected by the accident of birth in either the "reserved category" or the "unreserved category", which all of us are, substantially affected by, while scrutinizing the Reservation Policy in India.*

**Keyword:** *Substantive Equality, Formal Equality, Equity, Caste-Based, Economic Reservation.*

## I. INTRODUCTION

Whenever one deals with something as sensitively sensational as Reservation, one needs to be open to learning and unlearning, examine the presuppositions of public policy, not be quick at dismissing others' viewpoints, and most importantly distance oneself from established notions and settled beliefs.

John Rawls, in his book, Theory of Distributive Justice described it best, "Those who are at the same level of talent and ability, and have the same willingness to use them, should have the

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same prospects of success regardless of their initial place in the social system.”<sup>3</sup>

Equality does not always imply similar treatment; in fact, equality might sometimes imply varied treatment. Equal treatment does not always imply the same treatment; it may necessitate, and in some cases does necessitate varied treatment. Hence, what we desire is not formal equality, it is substantial equality!

“Equality gives everyone a shoe, while Equity gives everyone a right shoe that fits in”

It is the need of the hour to draw a thick line between equality and equity or else our nation will continue to crib on how to stop the “brain drain”. There may be a time when the USA will have more Indians than Americans. Why? because everybody wants a secure place where their talent is respected, and condemned with justified eyes, remunerated based on their capabilities, and neither by the meagre income of the family nor by the family background.

In the times where gender equality, sexism, feminism is a hit, reservation remains a topic that needs actual change, we need to realize collectively that, it's an issue, that's worth fixing. Acknowledgment and acceptance are the keys to diluting the struggle of people to be the top horses in the race of achievement.

The matter at hand needs to be dealt with the utmost civility, for the youth, the faces, who will contribute to the growth of the nation.

Hard work, smart work, and equity are the golden triangle that determines the success of the youth of this nation. But when equity gets replaced by equality, who will emancipate unreserved from this oppression.

Nowadays for students and parents, it's all about those coveted IITs and AIIMS. But for those 16-20 lacs of students, who go through a “roller-coaster facade” of competition know the real struggle they face due to the reservation.

Just because they don't have the misused Armor of "quota" but have the talent, they can't get into a certain college. How unfair, sick, and inhumane could that be?

Reservation demarcates the sceptical territory that was defined to protect the classes that were compromised but with so much resource laundering the idea behind this has changed, the armor is now being harnessed as a weapon against real talent.

The reservation system serves as an overprotective measure to fill in the indifferences that paralyzed the Indians ages ago.

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<sup>3</sup> John Rawls, *A Theory of Justice* (Belknap Press 1971).

People with SUVs are enjoying the silent privilege of being "reserved" just because once their ancestors needed an upliftment. The state cannot ignore others while strengthening certain sections on leverage for the brunt of "animosity" and "injustices" inflicted against their forefathers.

Many people might counter-argument this matter of topic to be a valuable asset to society. The very variety of castes that exist in India more often than not benefit from this.

"Efficiency is very much on the lips of the privileged whenever a reservation is mentioned."

It would be incurably ignoramus and terribly naïve of a person to perceive the people belonging to the reserved category as necessarily incompetent and inefficient.

Meritocracy is meaningless without equity. People from different sections must be brought to the equal or same level thereby, elevating certain sections or decelerating the other, regardless of their merit.

Reservation may in a literal sense aim to preserve the socio-economic mobility within the strata of society but intended to aggrandize the social diversity at various sectors whether it be a workplace, educational institutions, and government jobs. It flows from the concept, "There is nothing more unequal than the equal treatment of unequal people".

Reservation is a conscious preference, based on ascriptive criteria like ethnicity of a place, gender, or even on basis of geographical location. It aims to compensate for the incessant discrimination, historical oppression, or inequality in the social or geographical system of the country. In the Indian context, reservation is an act of reserving a certain fixed number of seats for socially and educationally backward sections of society in government jobs, legislative bodies, and enrolment in educational institutions.<sup>4</sup>

Reservation Policy in India was introduced as positive discrimination, with an idea of assuring equality and adequate representation of "oppressed" and "depressed" classes in different functions and roles of society.

## **II. UNRAVELING THE HISTORY OF RESERVATION IN INDIA**

The reservation system in India traces its roots from 2 B.C.E. wherein the Hindu religion, people according to caste system were divided into four categories or varna, Brahmins, Kshatriyas, Vaishyas, and the Shudras in descending order of hierarchy. Brahmins acquired the top position in the field of social recognition, were considered intellectuals and were highly

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<sup>4</sup> Maheshwari, S. R. (1997) 'Reservation Policy in India: Theory and Practice', *Indian Journal of Public Administration*, 43(3), pp. 662–679. doi: 10.1177/0019556119970335.

revered in society. They worked as teachers, priests, and intellectuals. Kshatriyas, who is considered to be originated from the arms of Brahmas. They were warriors, rulers of the kingdom. Vaishyas, considered to be originated from the thighs of Brahmas, were majorly artisans, traders, and farmers. At the bottom of the position were Shudras, considered to be originated from the feet of Brahmas, A class of society who bore the major brunt of injustices in the society, the victims of social oppression, untouchability, and societal discrimination.<sup>5</sup>

The idea of reservation policy in India was originally propounded by William Hunter and Jyotirao Phule in 1882. The basic premise of the reservation policy is caste and malpractices such as untouchability in India. But the reservation system in today's was introduced in 1933 by British Prime Minister Ramsay Macdonald as a form of a "Communal Award".

Under the Communal Award, the separate electorates were allotted to Europeans, Indian Christians, Anglo-Indians, Sikhs, Muslims, and Dalits, this was opposed by M.K Gandhi on the suspicion of crumbling the unity of the nation, while whole-heartedly supported by B.R Ambedkar. To this address, Poona Pact was signed, which demanded a separate Hindu electorate with seats reserved for 'Dalits'.

### **III. TRACING THE EVENTS LEADING TO RESERVATION POLICY IN INDIA**

In 1953, the Kaka Kalelkar Commission was established with the sole purpose to assess the situation of the socially, economically, and educationally backward classes. Reports were accepted for scheduled castes and tribes. The proposals and recommendations for the OBC were rejected.

Second Backward Class Committee (Mandal Committee) January 1, 1979, to investigate the conditions of social and educationally backward Classes and proposed a criterion to define such classes of citizens. Measures should be taken for their advancement and upliftment providing a reservation in jobs or positions to citizens not adequately represented in public services and positions related to the affairs of the Union or any state. This commission estimated 1257 communities as backward with 52% of India's Population as "Other backward classes". The OBCs were accorded 27 percent of the quota.<sup>6</sup>

The Mandal Committee argued that 52. percent of all positions in the central government

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<sup>5</sup> Rajat Kumar, The Concept, Origin and Evaluation of Reservation Policy in India, Legal Services India (Jan. 12, 2022, 7:45pm), <https://www.legalserviceindia.com/legal/article-6526-the-concept-origin-and-evaluation-of-reservation-policy-in-india.html>

<sup>6</sup> Puja Mondal, Reservation System in India: Concept, Arguments and Conclusions, Your Article Library (Jan. 12, 2022, 7:30pm), <https://www.yourarticlelibrary.com/essay/reservation-system-in-india-concept-arguments-and-conclusions/24973>

should be reserved for BCs. As the 52% recommendation may go against the previous decision of the Supreme Court of India, in the case of *Indra Sawhney vs Union of India*<sup>7</sup>, which ruled that the rate of reservation of positions should be less than 50%. In 1980, the commission recommended increasing the existing quota in government jobs, educational institutions from 22% to 49.5%.

In 2003, the Sachar committee headed by Justice Rajinder Sachar was constituted to prepare a report on the social, economic, and educational status of the Muslim community in India for the “inclusive growth” of the nation. Also, the duty and sole responsibility of the majority community is to protect and implement policies to ensure the welfare of minorities in India.<sup>8</sup>

Reservation on basis of caste is a preferential treatment that sets in motion the endless chain of consequences spawning in the process endlessly. Though we look at reservation through the lens of Casteism, it shouldn't be neglected that it is also implemented through the prism of gender, linguistic, and language. Social structure is an important factor where the differentiation is grounded on race or occupation, this perpetuates the roots of mutual distrust and enmity, which makes it hard for such people to co-operate or recognize equal rights to the other.<sup>9</sup>

#### IV. LANDMARK JUDGEMENTS THAT SHAPED THE JURISPRUDENCE OF RESERVATION POLICY IN INDIA

In the case of *State of Madras v. Srimathi Champakam Dorairajan*<sup>10</sup>, the Madras High Court struck down the reservation in engineering and medical colleges. This led to the first constitutional amendment to protect reservations. Clause (4) was incorporated in Article 15, which states, “Nothing in this Article or Clause 2 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes.”<sup>11</sup>

The Constitution provides quotas for SC and ST regardless of the economic situation, thereby, assuming their extreme social backwardness. More recently, this was pursued by the 77th and 85th Amendments of the Indian Constitution, where SC and ST were granted quotas in

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<sup>7</sup> *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 210

<sup>8</sup> Puja Mondal, Reservation System in India: Concept, Arguments and Conclusions, Your Article Library (Jan. 12, 2022, 7:30pm), <https://www.yourarticlelibrary.com/essay/reservation-system-in-india-concept-arguments-and-conclusions/24973>

<sup>9</sup> K R, Gopalan. (2020). A Study on Reservations in the Educational Sector for the Economically Weaker Sections. IX. 6175. 10.6084/m9.figshare.12073404.

<sup>10</sup> *Champakam Dorairajan v. State of Madras*, 1950 SCC OnLine Mad 197

<sup>11</sup> INDIA CONST. art.15, cl.4 ., amended by The Constitution (First Amendment) Act, 1951

promotions. In two cases *Nagaraj v. Union of India*<sup>12</sup> and *Jarnail Singh v. Lachhmi Gupta*<sup>13</sup>, the Supreme Court of India also extended the doctrine of "cream layer" to these categories, leading to regime change.

In *M. Nagaraj and others vs Union of India*<sup>14</sup>, questioned the insertion of Arts. 16 (4A) and 16 (4B) by way of the **Eighty-fifth Amendment Act**, the act inserted Art. 16 (4A) retrospectively, and gross defiance to the basic structure doctrine.

**Seventy-seventh Amendment Act, 1995** permitted the State to make reservations for the Scheduled Castes and Scheduled in promotions, this led to an uproar and commotion between different sections of society in the country, as it was claimed to bring such provision into force to garner the support of the said communities and therefore, attract the voters from the same.

**Eighty-first Amendment Act, 2000**, the cap of fifty percent, which the Supreme Court expounded in the *Indra Sawhney* case was negated by the Act of the Parliament.

The Constitutional validity of **Article 16(4A)**<sup>15</sup>, **16(4B)**, and amendments 77<sup>th</sup>, 81<sup>st</sup>, and 85<sup>th</sup> were upheld. The court uttered that the "doctrine of equality" comes under the ambit of the doctrine of basic structure.

The Court had time and again uttered, to instruct and mandate the government to come up with quantifiable and justiciable data to support their findings and provide, "accelerated promotions". The idea of "accelerated promotions" cannot be equated with principles of equality. Thereby, the courts are not bound to provide reservations for SCs and STs in promotions unless quantifiable and relevant data is sustained.<sup>16</sup>

Also, determine the adequate/inadequate representation of socially backward classes in the administration or government employment and the effect on the efficiency of the state when the reservation is incorporated.

The Nagaraj judgment was remarked as erroneous on demanding quantifiable collection of data to prove the backwardness of SCs, which is already taken into account in article 341 of the Indian constitution. Also, the judgment was fallacious on the issue of the 'exclusion of creamy layer' in promotions.<sup>17</sup>

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<sup>12</sup> M. Nagaraj v. Union of India, (2006) 8 SCC 212

<sup>13</sup> Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396

<sup>14</sup> M. Nagaraj v. Union of India, (2006) 8 SCC 212

<sup>15</sup> INDIA CONST. art.16, § 4, cl. A., amended by The Constitution (Eighty-Fifth Amendment) Act, 2000

<sup>16</sup> Tushar Arora, Case Comment: M. Nagaraj and Others v. Union of India 2007, Legal Bites (Jan. 12, 2022, 8:15 pm), <https://www.legalbites.in/case-comment-m-nagaraj-v-union-of-india-2007>

<sup>17</sup> Faizan Mustafa, *Questions of Promotion*, The Hindu, ( Jun 09, 2018, 00:02), <https://www.thehindu.com/opinion/op-ed/questions-of-promotion/article24116633.ece>

In the case of *Jarnail Singh vs Lachhmi Narain Gupta*<sup>18</sup>, the court uttered the concept of the creamy layer as a part of the equality principle under Articles 14, 15, and 16. Arguments were made which aimed to include the true nature of a class of people socially backward and to exclude the socially and economically advanced individuals. Secondly, it was seen that exclusion of the creamy layer is important to ensure that the truly backward can have access to reservations and the individuals of the creamy layer do not confer all the benefits of reservation. Thirdly, if the creamy layer is not excluded then it will transgress the principles of equality as it will treat the two equals differently.

However, the court concluded that the provision in the Nagraj decision is contrary to the Indra Sawhney case as it stated that, the State has to collect quantifiable and reasonable data showing backwardness of the Scheduled Castes and the Scheduled Tribes thus, making the provision invalid. Also, it is relevant from the Indra Sawhney Case that the 'creamy layer has no relevance in the context of Scheduled castes and Scheduled tribes.

Thus confirmed the application of a creamy layer to promotions for Scheduled castes and Scheduled tribes. It had resulted in thousands of employees being denied their justified promotions. Also, viewed the principle of the creamy layer as the principle of identification and not as the principle of equality.<sup>19</sup>

## **V. EWS RESERVATION, A PANACEA FOR 'THE UNDERPRIVILEGED UNRESERVED'**

Imagine the mental state of mind of someone who has come from a family that has witnessed or has been subjected to oppression for thousands of years and then he is suddenly pitted against the rest of the community and told that the competition is open to him, it would not be a level playing field because mentally he is not the same. There is a certain sense of confidence that comes from being part of a certain community or background which has always been comfortable with education. It is going to take a certain amount of time for the depressed to come at the same level as the general category, in terms of confidence not necessarily in terms of aptitude.

Certainly, if and when the situation comes when the depressed classes are fully emancipated. Rather than the state forcing people in the reserved category to give up their reservations, it is preferable if it comes from within the community because it would be a powerful statement, a sign that we are all integrated, and a signal that the caste card could never be used by

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<sup>18</sup> Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396

<sup>19</sup> Diganth Raj Sehgal, Jarnail Singh v. Lachhmi Narain Gupta- A case study, ipleaders, (Jan. 12, 2022, 8:30 pm), <https://blog.ipleaders.in/jarnail-singh-vs-lachhmi-narain-gupta-case-study/>



anybody from within or outside the community.

To serve the underprivileged general category, the 124th Amendment Act, 2019 was enacted, which aimed to allocate the quota of 10 percent to the economically weaker sections (EWS); and those that qualify are the remaining population excluding SC, ST, and OBC. Including all the high caste Hindus and Sikhs, all non- Muslims and Christians listed as ST and OBC, non-SC Buddhists and all Zoroastrians and Jains will be eligible under this quota provided they meet certain economic criteria. The amendment ascertains the 8 lakhs as income cut off for the avail of EWS quota, but it is vague that the specified amount is post or pre-taxed. If it is post taxed, then it will practically enable all households and individuals to fall under the criteria of Economically Weaker Section, also those with less than 5 acres of agricultural land or residential land less than 1,000 square feet or less than 100 yards of residential land in a city or less than 200 yards of residential land in a notified non-metropolitan area will be eligible.<sup>20</sup>

There must be a set of indicators that may lead to automatic exclusion of certain people falling under the EWS reservation category so that the real needy, and depressed classes can avail the real benefit.

**(A) The list of Indicators for automatic exclusion may be as follows:**<sup>21</sup>

- Households owning 2 hectares or more of non-irrigated land and 1 hectare or more of irrigated cultivable land.
- Households owning quarters for living of the area above 1000 sq feet in Class I cities and 1500 sq. feet in other towns.
- Households owning Cars for personal use.
- A household that owns a gun or firearm.
- Households are taxpayers.
- Households who had Holidays abroad for the past 3 years.
- Households with at least one member having Group A or B work under the central, state government, or within a PSUs.

**(B) The following indicators will generate a composite index and a ranking, which will facilitate the selection of applicants to the EWS quota.**

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<sup>20</sup> Shariff, Abusaleh & Bhat, M. Mohsin. (2019). Economically Weaker Section quota in India: Realistic Target Group and Objective Criteria for Eligibility. 10.13140/RG.2.2.17298.91847.

<sup>21</sup> Shariff, Abusaleh & Bhat, M. Mohsin. (2019). Economically Weaker Section quota in India: Realistic Target Group and Objective Criteria for Eligibility. 10.13140/RG.2.2.17298.91847.

- Individuals/households located in notified slums within the city/urban interior  
Individuals/households whose primary source of income is from manual labor, both in rural and urban areas. All those who have participated in NREGA qualify as such.
- A household headed by a woman.
- Applicants whose parents both have a lower educational level at the time of admission.
- Applicants from rural areas and cities, grades C, D.
- Applicants from the states of Uttar Pradesh, Bihar, West Bengal, Orissa, Jharkhand, Madhya Pradesh, Rajasthan, Assam, Jammu and Kashmir, North-eastern State
- Applicants belonging to immigrant households from the states of Uttar Pradesh, Bihar, West Bengal, Orissa, Jharkhand, Madhya Pradesh, Rajasthan, Assam, Jammu and Kashmir, All North- Eastern States.

This composite index will provide the rationale and level-headed method for the selection of candidates for the EWS quota.

## **VI. IS RESERVATION A FUNDAMENTAL RIGHT?**

B.R Ambedkar remarked the drafting committee to “produce the formula” which reconciles three perspectives:

- There should be equality of opportunity for all citizens.
- There should be “no reservations of any sort for any class or community at all”.
- There should be reservations for “certain communities which have so far been inadequately represented in the administration.”

For the seats to be reserved must be confined to a minority of seats, reservations were an exception to the rule of equality of opportunities in public employment, but the exception must not eat up the rule altogether.

The Supreme Court created two rules, concerning reservations,<sup>22</sup>

1. Reservations cannot exceed 50% of all available posts.
2. Reservation is not the Fundamental right, the citizens of India have the enshrined fundamental right to equality of opportunity in Article 16 of the Constitution. If the

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<sup>22</sup> Abhinav Chandrachud, *Is There a Fundamental Right to Reservations?*, The Bloomberg Quint, ( July 27, 2020, 11: 10 am), <https://www.bloombergquint.com/opinion/is-there-a-fundamental-right-to-reservations>

government scraps quotas or reservations, then backward classes have no fundamental right to enforce the state or central government.

In the case of *State of Kerala v. NM Thomas*<sup>23</sup>, the contention was that Article 16(4) is an enabling provision and an exception, thereby the reservation is an exception to the fundamental right of equality. The Supreme Court uttered that Article 16(4) is substantive equality, and not an exception but an extension of Article 16(1), thereby, a facet of equality of opportunity and a part of the right to equality. The court extended the benefit of reservations to promotions and an exemption of two years to SC/ST candidates in passing the tests.

The Supreme Court uttered in the case of *Ajit Singh v. the State of Punjab*<sup>24</sup> that Articles 16(4) and 16(4A) are enabling provisions, where the state has discretionary power to whether or not provide reservations, thus can neither be compelled to make reservations nor collect quantifiable and reasonable data determining the adequacy or inadequacy of the representation of SCs and STs in government jobs.

## VII. THE CONVENIENT CONFLATION OF "DALIT" WITH "SC"

In writing and conversation, the terms "Dalits" and "SCs" are often used interchangeably but they have very distinctively specific meanings. They have two different histories and trajectories, therefore we can't utilize them interchangeably.

"DALIT" is a category that dates from the late 1960s and early 1970s, and it was created as a result of people's struggle. Thus, a Dalit person is not somebody who is trampled upon, somebody who is afraid, Dalit, on the other hand, is somebody who is resisting. Adivasis, laborers, and the so-called "ex-untouchables" are among them.

Furthermore, "**SCHEDULED CASTE**" is a caste that is listed in the Constitution and has existed since 1935 (it was previously known as "depressed classes"). As a result, it is a very government-controlled category, whereas Dalit is a very politically articulable category. The former is a "consciously adopted category" and is borne out of a movement. While the latter is considered as a "designated category".

## VIII. A CONTEMPORARY IMBROGLIO: RESERVATION IN INDIA'S MEDICAL COLLEGES

In 1984, the Supreme Court issued an order stating that all state governments may contribute 15% of all undergraduate seats in their medical colleges to the central pool and 50% of all

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<sup>23</sup> State of Kerala v. N.M. Thomas, (1976) 2 SCC 310

<sup>24</sup> Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209

postgraduate seats to the central pool. This central pool was called the "AIQ" ( ALL INDIA QUOTA). It was popularly known as "Merit Quota" because SC, ST reservations did not apply to it. Surreptitiously, this was done in a way that these seats came to be reserved for what is called the "General Category".

After years of constitutional and legal challenges, the Supreme Court declared in 2009 that "AIQ" would be subject to reservation as well.

Further, in 2019, 27% of the OBC quota and 10% of the EWS quota were brought into the fold of AIQ by the government of the day. As that happened, a bunch of doctors went and challenged it in the SC of India. They contended that it should not be applied retroactively after the NEET exam notification was issued.

According to Section 14 of the National Medical Commission Act, all admissions to government medical colleges in India would be based on a single national examination, the NEET (National Eligibility cum Entrance Test ). This is organized by CBSE and follows the CBSE Syllabus, and hence is unfair to students who have graduated from government-run schools, which are typically attended by the most vulnerable/ underprivileged families. And that is what leads to the proliferation of coaching classes across India, making them indispensable, which is brutal to the poorest.

The Supreme Court had put it on hold, preventing medical admissions in India, and we were on the verge of losing a year of medical education. In the midst of all of this, some people went to court to question how the Rs 8 lakh annual income cap for the EWS was set. Once again, the justices questioned how the OBC and EWS quotas could have the same limit, which did not appear to be equitable. By definition, OBCs have been more disadvantaged and backward.

As a direct consequence, the Government of India established a committee led by Ajay Bhushan Pandey, the former Revenue Secretary and former CEO of Aadhaar, which included Sanjiv Sanyal, the Government of India's principal economic advisor, and Mr. VK Malhotra, a member secretary of the Indian Council of Social Sciences Research. For the time being, the SC has accepted the committee report for expediency in counseling, while the larger debate in the court case is yet to unfold.

## **IX. CASTE-BASED RESERVATION IN INDIA- A CONDUIT TO EQUAL REPRESENTATION**

In the case of *KC Vasantha Kumar vs State of Karnataka*<sup>25</sup>(1985), Justice O Chinappa Reddy

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<sup>25</sup> K.C. Vasanth Kumar v. State of Karnataka, 1985 Supp SCC 714

of the Supreme Court famously said, "Reservation is for parity, not charity."

It would be callous to live in an ivory tower of bliss when one's fellow beings were victims of oppression, injustice, poverty of spirit and mind and body. One's destiny lies in participation in the life of others, in joining the "great fair of common human Life" by constantly and perpetually allotting to every human being his due without any discrimination. Nevertheless, those who haven't learned the lesson from history are condemned to repeat it.

Contrary to popular opinion that the reservation policy is now being used by minorities as an excuse, there are various reasons why they still deserve and need it. While everyone may have a different opinion on reservation, many are still unable to understand its significance and how it can benefit the society at large.

While several acts are helping in combating the historical injustices faced by the underrecognized communities, we must not overlook the injustices that take place even now. Dalits and OBCs are still exposed to numerous forms of violence and discrimination just because they belong to a supposedly "lower class".

Discrimination is still rampant in many parts of our country and if one refuses to accept that fact it is to their detriment because that very refusal to accept that fact is helping somebody else to exploit them, so it is in your interest to accept and do something about it.

Every day, various incidents of harassment, persecution, and atrocities against them including violent acts of gang rapes and murders are reported and countless go unreported and somehow people still question the need for special treatment for them. Dalit activists have recognized the loopholes in our flawed caste system and are actively voicing their opinions against the preconceived notions about them. As a society, we must use our platform and privilege to amplify their voices and contribute towards pushing them forward rather than inspecting if they deserve equal recognition or not.

As for the people constantly contemplating the necessity of quota, are the ones who usually belong to the upper caste that have been privileged since birth. The problem often is that they haven't faced the barbaric caste system, which makes it easy for them to ignore the obstacles faced by the oppressed ones. People need to understand that we aren't violating anyone's rights by giving special treatment to the disadvantaged communities rather we are only trying to establish and enhance equality within our country. They too are the citizens of this nation and have the right to be represented just as much as anyone else. Their needs and requirements are as valid as anybody else's, and it is our responsibility to not only recognize this but also call

out the discrimination they have been facing all along.<sup>26</sup>

Reservation's only goal is not to alleviate economic inequity, that is only incidental. The reservation as it was intended originally in the Constitution was to remove the social disabilities. There is quite a lot of empirical evidence showing the encounter of caste with modernity and urban life which shows that social inequality continues to persist in very many ways, including for research in the IT Sector, where they ran a double-blind experiment, sending out CVs with caste specific surnames being sent across to employers and there was a bias in how people were called for the next level of interview. So, to presume that somehow vanity or modernity takes away the existence of caste is questionable. Is this a relic of the past? No, this holds now as much as it did back in the day. So, we're dealing with massively unequal access to desirable opportunities, which is amplified by prejudice, and where the underprivileged are rendered invisible.

The aspects of modern life continue to amplify biases along caste lines. The amount of privilege it takes to say that "I am caste blind" is often taken for granted. One does so because they can afford to be caste blind. Reservation, as well as the rationale behind it, speaks to this. It is a common misconception that modern Indian society has eliminated some of the barriers around caste. This is highly problematic because they do not acknowledge the existence of caste.

Furthermore, it is a popular misconception that reservations, in general, were meant to continue only for 10 years, it could not be farther from the truth, it's only the political reservations that require extension through a constitutional amendment each time after 10 years. Reservations in jobs and education, on the other hand, do not have a time limit. The point is that as long as untouchability and caste-based discrimination persist, so would reservation. It is the structural conditions that justify reservation.<sup>27</sup>

## **X. CASTE-BASED RESERVATION IN INDIA- SUBTERFUGE SUBVERTING COMPETENCY**

India had just gained independence in 1951, and its Constitution had only been in place for a year. Because only 18.33% of Indians were literate and about 80% of Indians were poor, India needed to make significant progress, so it approved caste-based reservation. The goal was to elevate particular sections of society and bring them to par with others. Seats were reserved for certain backward and historically depressed communities at schools, higher educational

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<sup>26</sup> Alok Prasanna Kumar, *Let's talk something else, Sarsanghchhalak ji*, Deccan Herald, (AUG 25, 2019, 00:31am), <https://www.deccanherald.com/opinion/comment/let-s-talk-something-else-sarsanghchhalak-ji-756765.html>

<sup>27</sup> Alok Prasanna Kumar, *Let's talk something else, Sarsanghchhalak ji*, Deccan Herald, (AUG 25, 2019, 00:31am), <https://www.deccanherald.com/opinion/comment/let-s-talk-something-else-sarsanghchhalak-ji-756765.html>

institutions, jobs, and legislature.

The popular term is “Quota”, which remains a bitter truth of India. The growing percentage of reservations is eating into dreams, it is becoming a nightmare for those in the unreserved category. There lie certain fundamentally serious problems with the Reservation System in India.

If the reservation is about creating a level playing field, why do we need it after a certain point? Say, a student from a backward class wishes to study medicine so she can avail quota at the country’s most premier institution like AIIMS, it has a 15% **reservation** for SCs, 7.5% for STs, 27% for OBCs, 10% for EWS, and 5% reservation for PWD. That’s, 64.5% of the seats reserved. With this, an Indian Medical college is supposedly creating a level playing field for all medical aspirants.

5 years later, a batch of doctors from diverse socio-economic backgrounds graduate as equals, and yet when the same batch of equal students apply for MD the level playing field vanishes, certain students get an undue advantage because there is reservation in the master's course too. The same AIIMS has lower cut-off scores for SC, ST, OBC, EWS, so on and so forth, the cycle continues. Then there is reservation in jobs, even in the promotion. The system is designed for equality is nurturing inequality and encouraging mediocrity.

Moreover, India has a reservation for certain castes and tribes, that are clubbed under the category of SCs and STs. Now the issue is that caste is a permanent attribute so is a tribe and it will neither change with one's financial nor social status. So, on what basis are we reserving seats for them? Yes, they may have been backward during independence, but it's been 70 years and more. The world has evolved and so has India.

Every major election in India features reservations, with one side promising additional quotas and the other championing equality. It is brazenly used for vote bank politics and that's not news if you're in India, reservation stereotypes certain sections. An SC, ST student, no matter how meritorious, is always viewed through the lens of quota, her achievements are always attributed to quota.

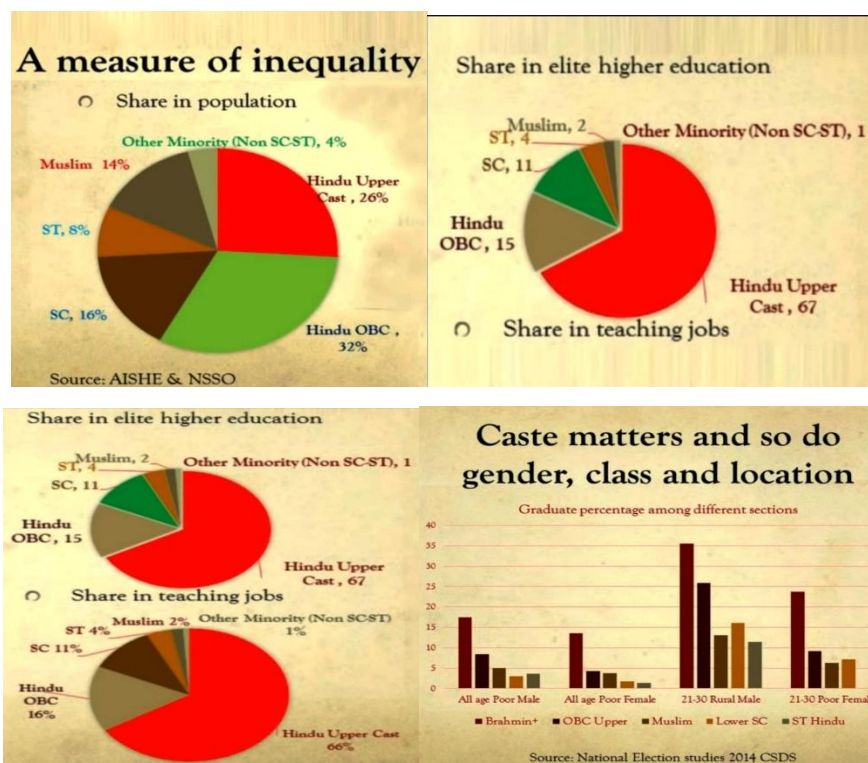
Reservation is divisive, and anyone who misses out on a college seat as a result of it is certain to harbor resentment against the reserved group. This aids politicians in their divide-and-rule policy. However, it is of no use to voters, students, or job seekers, among others. India is being harmed rather than helped. Reservation, for example, is holding India hostage amidst the pandemic; India's healthcare system is operating at 66% capacity; an entire batch of post-graduate students has yet to enroll in medical schools; their admission/counseling is on hold

due to an ongoing case in India's top court challenging quotas in medical seats. Who does this crisis benefit?

India's reservation system is antiquated and out of date; it's time to revisit it and reconsider who the system's true beneficiaries are. It's about time we ensured that the fundamental right to education is protected without hoarding of seats and that the right to equality is protected without giving an unfair advantage to a select few.

Reservation was designed to compensate for the injustices inflicted by the Caste System; nonetheless, it has now produced its social divisions, spawned a new type of structural crisis, and certain seats have become "untouchable." The constant increase of quota is nothing short of oppression, it is a kind of punishment for people born to non-reserved categories. It violates every sense of fairness, equality, and merit. It was a policy designed to accommodate people rather than exclude them.

## XI. CONCLUSION



As a result, around a quarter of our country holds two-thirds of the seats in top institutions; the problem is that they complain loudly about being denied opportunities and having doors shut in their faces, which is ludicrous.

With the rampant privatization taking place in Indian society, how will the state accommodate the aspirations of those marginalized groups if it does not have a public system that can impartially accommodate them? The private sector will always have stringent recruitment



specifications or regulations, effectively excluding them from the system and forcing them to engage in purely obnoxious occupations such as scavenging. The question is what type of society do we really desire?

Society has to be built in terms of some decency that you assign to the labor of the people. If the labor is degrading and defiling, what kind of inhuman society are we going to build?

Reservations are designed to make people more competitive by providing a level playing field, or equality of opportunity. The second step is to ensure that the findings are equal. To execute efficiency through competition, one needs certain circumstances.

The reservation was built on the organizing/grounding premise of "community", which faces social unacceptability. However, in actuality, reserved seats are filled in such a way that only the "individual" benefits, but she/he still carries the stigma. She/he may be economically and residentially separated, but they can't escape their caste; it accompanies them everywhere they go.

At the same time, the Supreme Court has reasoned and ruled in its favor several times, but legal reasoning is not the same as moral reasoning. It is sometimes described as constitutional or legal; nevertheless, it is not constitutionally mandatory, but it is constitutionally permissible.

In various sections of the country, political parties have utilized reservations or the promise of reservations in various ways to mobilize voters or signify the inclusion of certain communities within their fold.

Yet another argument is that why has it persisted this long? Now, the question is, if there exists a problem or not? Is it being addressed? Is there any succour? Are we progressing in the right direction or not?

The answer to these questions is that reservations alone are insufficient to address a problem as multifaceted, complex, and nuanced as inequality of opportunity in our country. We need to identify and track privileges, address inherited economic inequalities, ensure high quality of schooling for the rural poor, a girl child. All underprivileged groups should be given preferential treatment in terms of education and employment, both in the public and private sectors. Ensure that all disadvantaged are fairly represented in political and administrative offices. For economically emancipated OBC, the exclusion of the "creamy layer" is justified. Sub-classification within SC, ST, and OBC is the need of the hour. Exclusion of castes that have crossed the threshold of "backwardness" is a must. Aim for a multi-dimensional disadvantage index. To suggest a mechanism, a fair mechanism for evidence collection and analysis is required.

Reservation cannot be a solution in perpetuity. It is not a matter of pride. It is a testament of pathology, but it cannot be given up until gross inequality of opportunities prevail.

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