

# TOPIC : RESERVATION LAW AND POLICIES IN INDIA : A SUPREME COURT OUTLOOK

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**ABSTRACT:** *Affirmative efforts by a state are a set of policies to provide special opportunities to a certain section of society who have face adversity, discrimination and socio-economic operation through large part of history. In India this kind of biasness deprived the backward section from main stream of the society. This backward section of society is far behind the major core of the society. For this kind of discrimination, government set to implemented reservation system to determinate this gap and helps to reach the major core of the society which is as education, livelihood, and government job opportunity etc. Government set to fix the goals and objective to curtail this adversity and hinderness of their growth. The aim of this reservation system is to bring them in the main segment of the society. The constitution of India reserves 22.5% of seats and quotas in public sector of government for schedule castes and schedule tribes. By this system government kept various welfare scheme to uplift their livelihood like education system, land allotment, edifice making, agriculture land etc. Mandal commission was set up in 1979 by the Morarji Desai Government then gave it recommendation to increase the access to 49.5% by including those weaker section of the society which are as (OBCs). The idea was to create fissure of in the hegemonic hold of the immutable status of higher caste over public services. Reservation has brewed some controversies in the country which obstruct path of national growth and importance. Country needs to make some other effective mechanism and basis for the reservation system.*

**Key Words:** *Reservation, backward section, constitution of India, discrimination, societal part of Indian Constitution.*

## INTRODUCTION

The system of reservation of India comprises a series of actions taken up by the government to uplift the weaker section of the society<sup>1</sup>. The spirit of equality pervades the provision the constitution of India, as the main aim of the founder aim of the constitution was to create an egalitarian society where in social, economic and political justice prevailed and equality of status and opportunity for all. This reservation system is unique and was conceived as temporary measures to uplift the all on one stand. In India reservation is provided for historically backward and suppresses class of Hindu society this includes the SC, ST & other backward classes. Later on, in the category of OBS several modification has been done. In the Indian society certain classes of Indian citizens are under severe social and economic disabilities due to this they cannot effectively entertain either equality of status or of opportunity. The idea was that a vast majority of the poor were from a very small caste group and they needed a social net and so that they can be accommodated into society as full fledged members. An ordinary form of long ago discriminated into society as full fledged member, inside human kind is the carry out of untouchability. SC, ST are the main target in the society, and untouched human being is measured, contaminated or lesser human<sup>2</sup>. It was small means of compensating the millions of unfortunate who suffered daily the inequalities and nomination of untouchability.

Aftermath of all the discrimination and biasness in the society, the constitution guarantees various provisions and laws has been made through legislation to protect and provide safeguards in the society, The supreme court also made various ruling and precedents to favor the conditions of deprived classes. The provision available in the constitution of India based on which orders relating to reservation and services for SC's & ST's and other backward classes have been issued by department of personnel and training and ministries of social justice of government of India. The provision made in article (16,335,338,340,341,342) of the constitution relates to reservation protection and safeguard in public employment in respect of the person belonging to the SC, ST's and other backward

<sup>1</sup> BM.SHARMA;PANCHAYATI RAJ AND RESERVATION POLICY

<sup>2</sup> B.NARENDRA KUMAR;CONSTITUTION LAW OF INDIA

classes<sup>3</sup>. The most important stated aim of the Indian reservation system is to boost the opportunity for under privilege communities to improved their social and intrusive position in the society

### **HISTORICAL BACKGROUND:**

The idea caste based reservation was very old. Their were various question and demand has been raise against the then Maharaja and government for the equal and adequate representation of these communities in the state. Firstly, in 1980 the Maharaja of Mysore received the petition from the depressed class of people for the adequate representation in the service of the state<sup>4</sup>. Although after First World War in 1914, the British government bringing some constitutional reform to elicit class of people. But in India the reservation policy which launched in 1959 is the oldest programme in the world. However the reservation system that exist today, in its true sense was introduced in 1933 when British PM Ramsay Macdonald presented the communal award<sup>5</sup>. This made a provision for separate electorates for Muslim, Sikh, Indians, Christians, Anglo-Indian, European and dalits. This system was opposed by Mahatama Gandhi who even fasted in protest against it. In the Puna pact their was provisions made for the depressed class could get 18% of the seat in central assembly. This pact was stamped by the government of India act 1935 where the term depressed classes replaced with schedule caste. Thereafter Ambedkar become the member of Vice Roy executive council as a minister of labor. He tremendously used their position for the further interest of depressed classes. he demanded reservation not only in legislative seats but also education and government employment. The advantage of these reservations is that they allow these depressed classes a chance to move ahead in the society with the equitable outset and the opportunities.

After Independence there were various legislation have been passed for the protection and safeguard of depressed class of the society. Constitution guarantees under provision of article 14,15,16 where equality as a policy is implied in those provisions that ensure reservation for the socially and economically backward class of people which inevitably include SC's and ST's<sup>6</sup>. The three categories of people who deserved the benefits of protective discrimination the backward classes SC & ST. SC's & ST's are defined in constitution but the constitution does not have a proper explanation for the backward classes. in spite of all this provisions available for the depressed class of the people, the hon'ble supreme court have been passed the land mark judgment in the context of reservation which plays a imperative role to push this marginalize class towards the development and growth in the field of occupation and livelihood. To the case of Ashok Thakur vs. Union Of India <sup>7</sup>. The Supreme Court laid down there emphasis on the new concept of 'creamy layer' in other backward classes which was challenging the conclusion of Mandal Commissions report. As we will see this scenario in two aspects of the society.

1. **Before Ashok Thakur case** – there were various questions had raised in the society and introduced before parliament for the advancement of depressed class of the society. In 1953, the kelkar committee was set up which recommended that the caste should be the basis for backward classes, union government did not accept this report. In 1965 M.R Bala Ji vs. State of Mysore<sup>8</sup> court held that backward class should be backward both socially and economically and not just socially and educationally. Supreme Court said that caste cannot be solely consideration for determining backwardness; other factors like poverty, habitant occupation can be relevant for the legislature to consider what is backwardness. In 1979 second backward classes commission was kicked off under the chairmanship of B.P Mandal by the Mandal Commission<sup>9</sup>. The recommendation of B.P Mandal was accepted that caste should be the basis for reservation and there should be 27% reservation in central and state services to the other backward classes. This recommendation of B.P Mandal was accepted by the government and implemented in 1993. In the case of Indira Sawhney vs. Union Of India<sup>10</sup> the supreme court upheld the implementation of separate reservation for OBC in central and state government jobs. The apex court also ordered the exclusion of creamy layer of OBC from enjoying reservation facilities. Supreme Court

<sup>3</sup> CONSTITUTION OF INDIA; BARE ACT

<sup>4</sup> Quora Digest

<sup>5</sup> Macdonald Report

<sup>6</sup> J.N pandey; Contitution of India

<sup>7</sup> (2008)6 SCC

<sup>8</sup> AIR 1963 SC 649

<sup>9</sup> MANDAL REPORT

<sup>10</sup> AIR 1993 SC 477

also directed to restrict reservation within 50% limit and also declared that reservation would not avail on the basis of economically poor section of the society.

2. **After Ashok Thakur Case** – at present the constitution provide 15% and 7.5% of vacancies to government aided educational institutions and for jobs in the government public sector as reserved quota for SC, ST candidate. It also bestowed the 27% of seats to the other backward classes in educational institutions and job opportunities. This provision was made for the period of 5 year after which the circumstances was to be reviewed. Prior to the introduction of reservation system for the purpose of vote bank politics and the following government of the Indian Parliament routinely extended this period without any free and fair scrutinization.

The present reservation system can become dreadful for the economic structure of the country as it could degraded the efficiency of its labor. Now we have seen that the government had kept various welfare scheme for the SC, ST in India. If we take few examples than the reservation in educational system, land allotment for residents, agriculture land for farming etc. The reservation system is only schism the society leading to discrimination and conflict between different class of the society

### CONSTITUTIONAL FRAMEWORK

The Government has spent a lot of funds on various schemes of SC, ST development during last six decades. This massive fund flow has helped in building up infrastructure of the depressed class of society. The preamble of the constitution places enormous emphasis on justice liberty and equality all of which resonate positively regime which emphasis the well being of the disadvantage group. The constitution set out the provide justice, social, economic and political liberty of the thought, expression believe faith and worship. Fraternity assuring the dignity of the individual and unity and integrity of the nation.

**ARTICLE 15 & 16** – These Articles basically prohibits discrimination. It is obvious that any provision for affirmative action will violate this provision, so 16 (4) depicted in the constitution nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favor of any backward class of citizen which in the opinion of the state<sup>11</sup>.

**ARTICLE 19(5)** – It allows the state to impose reasonable restriction in the interest of general public or for the protection of the interest of any schedule trib.

**ARTICLE 38 & 46** – These Articles are DPSP as distinguished from Fundamental Rights are justifiable. Article 38 run as follows:

The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice, social, economic and political shall inform all the institutions of national life.

It enjoins the state to promote with special care and education and economic interest of the weaker section of the people as particular of the SC, ST and to protect them from all form of exploitation.

**ARTICLE 164** – It says that there shall be minister in charge of tribal welfare in the state of Chhattisgarh, Jharkhand, MP and Orissa who may in addition be in charge of the welfare of schedule caste or backward classes.

**ARTICLE 335** – It says that the claim\’s of the members of the SC & ST shall be taken into account consistently with the maintenance of efficiency of administration, in the making of appointment to the services and post in conviction with the affairs of the union or of a state.

**ARTICLE 340** – This Article is related to the appointment of commission to report on the socio economy aspect of the life of SC, ST and other backward classes. Two commission have so far been appointed, the first backward class under Kelkar in 1953 and the second backward classes commission under B.P Mandal in 1978.

### JUDICIAL PRONOUNCEMENT

Indian judiciary has pronounced some judgment upholding reservations and some judgment became instrumental for its implementations. Most of the judgments regarding reservation have been failed subsequently by Indian Parliament through Constitutional amendments. These are the landmarked judgment in chronological order given by Indian courts.

<sup>11</sup> BARE ACT ;CONSTITUTION OF INDIA

**State of Madras vs. SMT Champakan Dorai rajan**<sup>12</sup>

It is a landmark decision of the supreme court of India. This judgment laid to the first amendment of the constitution on India. It was the first revolutionary judgment regarding reservation in the republic of India. In its ruling the Supreme Court upheld the Madras High Court judgment, which in turn had struck down the government order passed in 1927 in the Madras presidency. The government had provide caste based reservation in government job and college seat. The Supreme Court verdict held that providing such reservation was in violation of Article 16(2) of the Indian Constitution.

**M.R Balaji & others vs. State of Mysore**<sup>13</sup>

The challenge here was the government order issued by the state of Mysore, were in backward classes were identified exclusively on the basis of caste. The five judge bench of Supreme Court struck down these classification for several reason. The chief of which is the courts interpretation of the word in Article 15(4) has being 'class of citizen' not as a caste of citizen.

**R Chitralakha & Anr vs. State of Mysore & Ors.**<sup>14</sup>

Court upheld an order of the government that define 'backwardness' without any reference to caste such as occupation, income and other economic factors. The court rule that while caste may be relevant to determine backwardness, the mere exclusion of caste does not impair the classification of it satisfied other test.

**Indira Sawhney vs. Union of India**<sup>15</sup>

The nine judge constitution judge of the supreme court held that, valid by 6:3 majority to the decision of the Union government to reserve 27% government seeds for backward classes. The reservation is confined to initial appointments and not in promotions and total reservation not to exceed 50% instead of creamy layer among them being eliminated.

**M Nagraj vs. Union of India**<sup>16</sup>

the court held that the constitutional validity of the 9<sup>th</sup> schedule laws could be adjudged by applying the direct impact and effect test that is Right test which require that it is not the form of law, but its effect, that would be the determinative factor.

**Ashok Kumar Thakur vs. Union of India**<sup>17</sup>

The constitution (93rd) Act, 2005<sup>18</sup> does not violate the basic structure of the constitution so far as it relates to state maintained institutions and aided educational institutions. Equality is a multi colored concept incapable of single definition. The principles of equality cannot be completely taken away so as to leave citizens in a state of lawlessness. The court held that Article 15(5) is constitutionally valid and Article 15(4) & 15(5) are not mutually contradictory.

**Jarnail Singh vs. Lachhmi Narain Gupta & Ors**<sup>19</sup>

A five judge constitution bench of the Supreme Court held that the 2006 judgment in Nagraj case, relating to reservation for SC/ST in promotions, need not be referred for consideration of larger bench. However the judgment by justice Nariman clarified that there is no requirement to collect quantifiable data or backwardness of SC/ST to provide reservation in promotions. The dictum in Nagraj was held contrary to Indira Sawhney decision to the extend it prescribed collection of quantifiable data of backwardness as a pre requisite for providing reservation in promotion.

**Conclusion and suggestion**

Now we have seen as aptly mentioned that government had kept various welfare scheme for the SC & ST in India. If we take few examples then reservation in educational system, land allotment, edifice making, agriculture land etc. in the 21<sup>st</sup> Century, it is quite questionable issue that the caste of person is a sole basis for reservation in education and jobs. This system provided better opportunities to the reserved category a[applicants who are fewer in number than the general category applicants. The idea was to create fissures in the Hegemonic hold of the immutable status of the higher caste over public services. In spite of giving

<sup>12</sup> 1951 SCC (276)<sup>13</sup> AIR 1963 SC 649<sup>14</sup> AIR 1964 SC 1823<sup>15</sup> AIR1993 SC 477<sup>16</sup> AIR 2007 SC 71<sup>17</sup> (2008) 6 SCC 1<sup>18</sup> Constitution (Ninety third amendment)act,2005<sup>19</sup> 26 sept,2018

opportunities to less efficient candidates , reservation should provided better chance of study to weaker section of the society to compete with the unreserved class by way of offering the resource to the weaker class. Now a days, reservation are just a vote bank banks for politicians. They are hindering the countries growth and development. The deprived sections from within the reserved segment are hardly aware about how to get benefited from the provisions or whether there are such provisions. Tough the reservation systems works in favor of backward class of the society, the existing system has not been fulfill the equality clause of the constitution under Article 14. Country needs a better basis of reservation which includes the poor and the backward groups and excludes the rich and dominating section among all caste.

Whether to have a reservation system or not is still a debatable question in India. The Indian Constitution has a law for the same and according to this; reservation has been made to bring under privilege classes at par with privileged ones. Tough reservation system is an evident system discrimination but it had been started with a very good objective of uplifting the socially backward society. But with time its meaning and the way it has been taken by the people has left many of us to believe that it has stopped delivering for what it was made. People have stated misusing it. The deep routed caste system in India is the actual cause of reservation system. This laid to the total segregation of our society and to equalize this, the idea of reservation came into existence after independence.

So, I think reservation system should be synchronised again and first of all such section of the society should be clearly identified that need development and financial aids. If government really want to uplift under privileged section of the society then a well decorated laws and policies should be formulated. They should be uplift with free education and other incentives which is helpful to make them capable and infuse them up fighting spirit to face the true competition.