

# “Reservation System” in India after 75 years of Independence

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**Abstract:** *Reservation in the Legislature, in Government Jobs, Educational Institutions, Public Sector Undertakings, Public Service Commissions, and Other Government Profiles has always had staunch supporters and staunch opposers, and we find very few who bridge the gap between the two support groups. The purpose of this research paper is to bridge the gap between the two, attempts to understand the institution of reservation, the implications of Articles 330-334, Sections of Articles 15, 16, and 21 of the Indian Constitution, and whether the reservation falls under Equality or Inequality towards the unreserved, and to what extent. The Legal Maxim: DOMUS SUA CUIQUE EST TUTISSIMUM REFUGIUM” translated as: “Every man’s house is his castle”. Caste in India is more of an identity, a sense of security, a sense of belongingness, and a sense of pride. People will give up their homes before giving up their castes and beliefs.*

**Keywords:** Recruitment

## I. INTRODUCTION

### 1. Broader Perspective of Equality.

Equality is a broader perspective, an umbrella term for equality within castes, genders, creeds, economic status, religion, politics, and social aspects of the human race. This paper focuses dominantly on the Equality achieved through Reservation for Scheduled Castes, Scheduled Tribes, Economically Backward Classes, Women, and Other Backward Classes.

### 2. Discrimination.

Discrimination is prevalent in 2 main subgroups.<sup>1</sup>

- a. **Exploitative:** when discrimination aims at exploitation of the one being discriminative. For Example, the Discrimination against the African Community.
- b. **Protective:** when discrimination aims at protecting the rights of the marginalized, socially and economically backward classes to raise their social and economic status, with the help of many affirmative steps.
- c. The Legal Maxim “*SALUS POPULI EST SUPREMA LEX*” translated to “**regard for the public welfare is the highest law**”. When it is necessary, an individual’s property and liberty may be placed in jeopardy, or even sacrificed, for the public good.<sup>2</sup> **Buller J.** held this for accession of property by the kingdom to be legal for the protection of the king, but this applies to the system of reservation very well.

### 3. Types of Reservation in India.<sup>3</sup>

- a. **Horizontal Reservation:** This is class wise reservation. This ensures that adequate class is represented as a percentage of the total seats allotted. This type is available for SC, ST, OBC, and EBC, and ensures that their respective percentages of the total available positions are filled.

<sup>1</sup> <https://www.legalserviceindia.com/legal/article-11383-concept-of-protective-discrimination-reservation-and-it-s-importance-in-current-world.html>

<sup>2</sup> As observed by Buller J. in Plate Glass Co. Vs. Meredith 4T. R. 794.

<sup>3</sup> <https://www.drishitias.com/daily-news-analysis/vertical-and-horizontal-reservations>

- b. **Vertical Reservation:** This type of reservation works throughout the merit list. It is available to women and differently-abled people. Their percentage of representation is calculated irrespective of the caste/class they belong to.

**4. History of Reservations.**

- a. Reservation at a national level can be traced back to 1909 in Morley-Minto Reforms where Religion Based Electoral was introduced.
- b. 1919 Montagu Chelmsford Reforms also awarded communal electoral.
- c. Simon Commission, Mac Donald Award, and Poona Pact, Reserved Seats for Depressed Classes up to 18%.
- d. Constitutional Debates had incorporated 10 Year Limit for Article 334 which subsequently was amended to 70 Years.

**5. Definitions.**

**1. Scheduled Caste.**

- a. The Castes/Races/Tribes/Part of or Groups within Castes/Races/Tribes, for the consideration of Constitution of India, specified by the President for respective Union Territories or State (after consultation with Respective Governor), by public notification, shall be deemed Scheduled Caste in respect to that State or Union Territory.<sup>4</sup>

**2. Scheduled Tribe.**

- a. The Tribes/Tribal Communities or Parts of Groups within tribes or tribal communities, for the consideration of the Constitution of India, specified by the President for respective Union Territories or State (After Consultation with Respective Governor), by public notification, shall be deemed to be Scheduled Tribes in respect to that State or Union Territory.<sup>5</sup>

**3. Economically Backward Class.**

- a. A group of people not belonging to any reserved castes, having an annual income of less than Rs. 8 Lakhs, is considered to be Economically Backward Class.<sup>6</sup>

**4. Other Backward Class.**

- a. It is a group of people who belong to a class that is socially and economically deprived and do not belong to the SC or ST specifications.

**3. Aims and Objectives of this Research Paper.**

**1. Aim 1.**

- a. To understand how the reservation is justified as equality of opportunity.

**2. Aim 2.**

- a. To identify possibilities of improving the existing pattern of reservation.

**4. Research Questions addressed in the Paper.**

- a. Is the institution of Reservation biased towards the Unreserved?
- b. Can there be an improvement in the existing structure of reservation?

**5. Hypothesis.**

**1. Contradiction.**

- c. There is constant contradiction amongst the two support groups, both for and against. There has to be a comprehensive study that ensures the efficacy of the system and implementation in a way that ensures absolute equality.

<sup>4</sup> Art 341- Scheduled Castes – Indian Constitution.

<sup>5</sup> Art 342-Scheduled Tribes – Indian Constitution.

<sup>6</sup> Def. Given by bankbazar.com.

**2. Equality Under Article 14.**

- a. An attempt to understand how the policy of reservation doesn't interfere with equality as per Article 14 of the Indian Constitution.

**6. Research Analysis.**

**1. Constitutional Provisions for Providing Reservation.<sup>7</sup>**

- a. Art 243D – Reservation of Seats for Scheduled Castes and Scheduled Tribes in Panchayat
- b. Art 243T – Reservation of Seats for Scheduled Castes and Scheduled Tribes in Municipality.
- c. Art. 330 – Reservation of Seats for Scheduled Castes and Scheduled Tribes in the House of the People.
- d. Art 332 – Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.
- e. Art 334 – Reservation and Special Representation to cease after 70 Years.
- f. Art 335 – Claims of Scheduled Castes and tribes to Services and Posts.
- g. Art 338 – National Commission for Scheduled Castes.
- h. Art 338A – National Commission for Scheduled Tribes.
- i. Art 338B – National Commission for Backward Classes.
- j. Art 15 – Prohibition of Discrimination on Grounds of Religion/Race/Caste/Sex/Place of Birth
- k. Art 16 – Equality of Opportunity in matters of Public Employment.
- l. Art 17 – Abolition of Untouchability.
- m. Art 38 – State to Secure a Social Order for the Promotion of Welfare of the People.
- n. Art 46 – Promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribes and Other Weaker Sections.

**2. Case Studies That Provided Clarification and Benchmarks.**

- a. **M.R. Balaji vs State of Mysore AIR 1963 SC 649**, SC Squashed the government's decision to allow 68% in reservation and capped the limit at 50%.
- b. **Mandal Commission 1979.<sup>8</sup>**
  - i. Determining criteria for socially and educationally backward classes
  - ii. Recommended 27% OBC Reservation.
  - iii. Identified backward classes amongst Muslims, Sikhs, Christians, and Buddhists.
- c. **Indira Sawhney & Others vs, Union of India AIR 1993 SC 477**, in this judgment, the social and economic backwardness was considered, but not the economic backwardness. Also, in the case of OBCs, the Economically backward were considered for reservation.
- d. **M.G. Badappanavar vs. State of Karnataka 2001 (2) SCC 666**, Here the SC Enforced that Articles 16 (4) and 16 (4A) are not fundamental or obligatory, but at the discretion of the State in the provision of Reservation.
- e. **M. Nagraj and Others v. Union of India AIR 2007 SC 71**
  - i. SC laid down that inadequacy of representation and backwardness were to be kept in mind for providing reservations.
  - ii. Separate cadre to be in effect to ascertain adequate representation.
  - iii. Provision for direct recruitment to ensure representation.
  - iv. Backlog vacancies were not subject to 50%
  - v. The reserved category can compete for posts of the Unreserved category, and they will not be considered as part of the quota percentage.
  - vi. Made way for consequential seniority.

<sup>7</sup> From the Constitution of India.

<sup>8</sup> <https://www.drishtiiias.com/daily-updates/daily-news-analysis/mandal-commission-1>

- f. **Suraj Bhan Meena v State of Rajasthan Government 2011 1 SCC 467**, SC ruled that without any quantifiable data, the government cannot amend the provisions of the reservation.
- g. **Janhit Abhiyan vs Union of India Writ Petition Civil No(S). 55 of 2019**. SC ruled in favor of a 10 % Reservation for the Economically Weaker Section in education and public employment. It also ruled that this 10% is over the existing 50%.

**3. Population Status and Reservation Percentage.**

- a. The Population Data published by the SECC 2011, reveals the following things<sup>9</sup>.

Sr. No	Caste/Category	Percentage Population	Percentage Reservation
1	Scheduled Caste	21%	15%
2	Scheduled Tribe	10%	7.5%
3	OBC	44%	27.5%
4	EBC	15%	10% (Above 50%)
5	Unreserved	10%	

**4. Making the Case for Reservation.**

- a. We can observe from the above data that, about 90% of the Population falls under the purview of socially and economically backward class. Out of the remaining 10% Unreserved population, 4% are women, who are also entitled to some quota as reservation. This essentially implies that, out of the total population of India, about 94% population is either socially, economically, or socially and economically backward, and needs some affirmative action on the part of the government for their upliftment.
- b. There is still evidence from news sources that, the institution of untouchability though abolished through the Constitution of India, its effect can still be seen in rural pockets, to the extent where they are marginalised, their colonies to this day are formed outside the village boundaries.
- c. There is exploitation on one side of the spectrum by the higher classes, and in places, it is observed that there is acceptance of such exploitation assuming belongingness to “CHOTI/NEECHI JAAT”.
- d. **Defining Cultural Capital<sup>10</sup>**: Cultural Capital is the term coined by Professors of Ethics. Capital is what is necessary for material development, similarly, cultural capital is what is necessary for the growth of the individual intellectually. If I am a Civil Engineer born into a family whose Business is Construction, the first day of my employment is going to be way different than what it would be for someone who would have been the 1<sup>st</sup> person to go to school. My training in the construction field begins before I even graduate, while this person has to go through tremendous hardships to even attempt to get insights into this industry. This case is true for all walks of life. Taking a simple example, if I belong to a generational educated family, my basic doubts in say English, can easily be cleared by my grandparents or parents, but for a 1<sup>st</sup> generation student, this doubt can only be resolved by a capable teacher, to which he may/may not have access to. This knowledge, this Education that is passed through the generation of education and growth, is known as cultural capital. The socially backward classes are deficient in such capital.

**5. Justification of Less Merit for Reservation.**

- a. In consideration of the above cultural capital, it is also known that socially and economically, the SC, ST, OBC, Women, etc do not enjoy the freedom that the constitution envisages. Therefore, there is difficulty in obtaining the right study material, the right training, the right information, the right approach, the right confidence, the right guidance, and most importantly, the right acceptance. The

<sup>9</sup><https://www.pewresearch.org/religion/2021/09/21/population-growth-and-religious-composition/>

<sup>10</sup><https://study.com/academy/lesson/what-is-cultural-capital-definition-examples-theory.html>

lower merit and the Lower Cut-off marks only ensure that this disparity in the resources at hand is mitigated and therefore a lower cutoff is justified.

- b. A lower cut-off also encourages people from reserved categories to understand that their limitations are being taken care of, and the government understands that completely. Therefore, it's seemingly easy to crack certain examinations because they are no longer competing with the unreserved privileged class, but they are competing among themselves. And this gives them a fair chance at representation.

#### **6. Making the Case Against Reservation.**

- a. The 1st argument that is always put in is lower merit, which means a lower understanding of the subjects, which implies that people with lesser efficiencies will be taking part in developmental programs.
- b. The Indian Military doesn't consider reservation for the very same reason, because there is no scope of loss in efficiency due to lack of merit, fitness, knowledge, or any other matter considered by the military.
- c. In the 1960s, when such reservations were promoted, there was a disparity between the socially backward classes and the then already affluent classes, a similar disparity can be seen today, within the castes, with the already uplifted and still socially backward. This has become a vicious cycle. Now there is generational availing of quota and therefore there is disparity within the quota.
- d. SC in the Indira Sawhney Case, applied the filter for a creamy layer for OBCs, to mitigate such disparity.
- e. There is no reservation for Socially unaffected classes. Their financial condition and access to resources are also limited, but they are not considered for the reservation. This is a bias against such a marginal population.

#### **7. Conclusion and Suggestion**

##### **1. Conclusion**

- a. It is evident that reservation is a necessary aspect for our country to achieve equality in its crude sense.
- b. The way it is implemented sure needs some change.

##### **2. Suggestion**

- a. There has to be a merit-based top cadre. Developmental Authority should not be compromised with lesser merit.
- b. There should be classification based on how many generations have availed the reservation facilities, and the 4<sup>th</sup> generation should not be allowed to avail of the benefit under Caste Reservations. If it so happens that the family is still economically backward, then they should be able to avail the benefits under Economically Backward Classes.
- c. There have to be reforms in the Education Sector as well, and a curriculum that enforces good ethics and morals, that embraces all castes and religions, is necessary to create a culture of brotherhood amongst all.
- d. There also needs to be a law that prohibits emancipation after such implementation to stop fraudulent separation from the family to avail reservation benefits.
- e. Eventually, the system should move towards generic equality to achieve the efficiency of the Military Forces, but that's a long way to go.

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