



Reservation in India

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Introduction

- **The age-old caste system** of India is responsible for the origination of the reservation system in the country.
- In simple terms, it is about **facilitating access** to seats in the government jobs, educational institutions, and even legislatures to certain sections of the population.
- These sections have faced **historical injustice** due to their caste identity.
- As a **quota based affirmative action**, the reservation can also be seen as positive discrimination.
- In India, it is governed by government policies backed by the Indian Constitution.

Historical Background

- **William Hunter and Jyotirao Phule** in 1882 originally conceived the idea of caste-based reservation system.
- The reservation system that exists today, in its true sense, was introduced in 1933 when British Prime-Minister Ramsay Macdonald presented the '**Communal Award**'.
- The award made provision for **separate electorates** for Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans and the Dalits.
- After long negotiations, Gandhi and Ambedkar signed the '**Poona Pact**', where it was decided that there would be a single Hindu electorate with certain reservations in it.
- After independence, initially reservations were provided only for SCs and STs.
- OBCs were included in the ambit of reservation in 1991 on the recommendations of the **Mandal Commission**.

Mandal Commission

- In exercise of the powers conferred by **Article 340** of the Constitution, the President appointed a backward class commission in December 1978 under the chairmanship of B. P. Mandal.

- The commission was formed to determine the criteria for **defining India's "socially and educationally backward classes"** and to recommend steps to be taken for the advancement of those classes.
- The Mandal Commission concluded that India's population consisted of approximately 52 percent OBCs, therefore **27% government jobs should be reserved** for them.
- The commission has developed **eleven indicators** of social, educational, and economic backwardness.
- Apart from identifying backward classes among Hindus, the Commission has also identified **backward classes among non-Hindus** (e.g., Muslims, Sikhs, Christians, and Buddhists).
- It has generated an all-India other backward classes (OBC) list of 3,743 castes and a more underprivileged "depressed backward classes" list of 2,108 castes.
- In the **Indra Sawhney Case of 1992**, the Supreme Court while upholding the 27 percent quota for backward classes, struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes.
- Supreme Court in the same case also upheld the principle that the combined reservation beneficiaries should **not exceed 50 percent** of India's population.
- The **concept of 'creamy layer'** also gained currency through this judgment and provision that reservation for backward classes should be confined to initial appointments only and not extend to promotions.
- Recently, the Constitutional (**103rd Amendment**) Act of 2019 has provided 10% reservation in government jobs and educational institutions for the "economically backward" in the unreserved category.
- The Act **amends Articles 15 and 16** of the Constitution by adding clauses empowering the government to provide reservation on the basis of economic backwardness.
- This 10% economic reservation is over and above the 50% reservation cap.

Constitutional Provisions Governing Reservation in India

- **Part XVI** deals with reservation of SC and ST in Central and State legislatures.
- **Article 15(4) and 16(4)** of the Constitution enabled the State and Central Governments to reserve seats in government services for the members of the SC and ST.
- The Constitution was amended by the **Constitution (77th Amendment) Act, 1995** and a new **clause (4A)** was inserted in **Article 16** to enable the government to provide reservation in promotion.
- Later, **clause (4A)** was modified by the Constitution (85th Amendment) Act, 2001 to provide consequential seniority to SC and ST candidates promoted by giving reservation.

- Constitutional 81st Amendment Act, 2000 inserted **Article 16 (4 B)** which enables the state to fill the unfilled vacancies of a year which are reserved for SCs/STs in the succeeding year, thereby **nullifying the ceiling of fifty percent reservation** on total number of vacancies of that year.
- **Article 330 and 332** provides for specific representation through reservation of seats for SCs and STs in the Parliament and in the State Legislative Assemblies respectively.
- **Article 243D** provides reservation of seats for SCs and STs in every Panchayat.
- **Article 233T** provides reservation of seats for SCs and STs in every Municipality.
- **Article 335** of the constitution says that the claims of SCs and STs shall be taken into consideration concurrently with the maintenance of efficacy of the administration.

Judicial Scrutiny of Reservation

- The **State of Madras v. Smt. Champakam Dorairajan (1951) case** was the first major verdict of the Supreme Court on the issue of Reservation. The case led to the First amendment in the constitution.
- The Supreme Court in the case pointed out that while in the case of employment under the State, **Article 16(4)** provides for reservations in favour of backward class of citizens, no such provision was made in Article 15.
- Pursuant to the Supreme Court's order in the case the Parliament amended Article 15 by inserting Clause (4).
- In **Indra Sawhney v. Union of India (1992) case** the court examined the scope and extent of Article 16(4).
- The Court has said that the **creamy layer** of OBCs should be excluded from the list of beneficiaries of reservation, there should not be reservation in promotions; and total reserved quota **should not exceed 50%**.
- The Parliament responded by enacting **77th Constitutional Amendment Act** which introduced Article 16(4A).
- The article confers power on the state to reserve seats in favour of SC and ST in promotions in Public Services if the communities are not adequately represented in public employment.
- The Supreme Court in **M. Nagaraj v. Union Of India 2006** case while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:
 - The SC and ST community should be **socially and educationally backward**.
 - The SC and ST communities are **not adequately represented in Public employment**.
 - Such reservation policy **shall not affect the overall efficiency** in the administration.
- In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018**, Supreme Court holds that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes.

- The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.
- In May 2019 the Supreme Court upheld the **Karnataka law** that allows reservations in promotions for SCs and STs with consequential seniority.

Why reservation needed?

- To correct the **historical injustice** faced by backward castes in the country.
- To provide a **level playing field** for backward section as they can not compete with those who have had the access of resources and means for centuries.
- To ensure **adequate representation** of backward classes in the services under the State.
- For **advancement** of backward classes.
- To **ensure equality** as basis of meritocracy i.e all people must be brought to the same level before judging them on the basis of merit.

Argument Against Reservation

- Reservation in state services led to **divisions and enmity** among government employees, vitiating the atmosphere at workplace.
- Eradication, not perpetuation of caste was the objective of the reservation policy but Caste Based Reservation only **perpetuate the notion of caste in society**.
- Reservation was introduced to ensure that the historically underprivileged communities were given equal access to resources but irrespective of the economic progress they **continue to remain socially disadvantaged**.
- Reservation destroys self-respect, so much so that competition is no longer on to determine the best but the most backward.
- Reservations are the **biggest enemy of meritocracy** which is the foundation of many progressive countries.
- It has become **a tool to meet narrow political ends** through invoking class loyalties and primordial identities.
- The **dominant and elite class** within the backward castes has appropriated the benefits of reservation and the most marginalised within the backward castes have remained marginalised.
- Reservation has become the **mechanism of exclusion rather than inclusion** as many upper caste poors are also facing discrimination and injustice which breeds frustration in the society.

Reasons Behind Increasing Demands of Reservation

- Reservation is increasingly seen as a **remedy for the adverse effects** of ill-thought out development policies.
- In developed states like Haryana, Gujarat and Maharashtra, in spite of their economies being relatively better, three things have been worrying the people:
 - **Acute agrarian distress,**
 - **Stagnation in employment growth** and
 - **Distortions in the development trajectory.**
- In this backdrop, for governments, it is easier to talk of reservation than to make a **course correction.**
- Increasing reservation demands among upper castes also arising from the **fear of losing privilege** and the inability to cope with change
- Upper castes have begun to feel disadvantaged especially in context of **government jobs** as they don't get similar advantages like backward classes.

Suggestion

- The reservation benefits should flow to the vast majority of underprivileged children from deprived castes; not to a few privileged children with a caste tag.
- High ranks officials families, high income professionals and others above a certain income should not get the reservation benefits especially in government jobs.
- **Fair and practical ways** to help needy person from each community through reservation is possible and necessary.
- The process of reservation should **filter the truly economically deprived** individuals and bring them all to justice
- Revolutionary changes in the **education system** at the grass-roots level is need of the hour.
- There is also need for **awareness generation** because while the unreserved segments, keep on opposing the provision, the neediest sections from within the reserved segments are hardly aware about how to get benefited from the provision or even whether there are such provisions exists.
- The **radical solutions** like excluding the entire creamy layer among all castes from reservation and developing their capabilities instead of offering them reservation for admission to higher education or jobs on a platter.

Way Forward

- Reservation is fair, as far as it provides **appropriate positive discrimination** for the benefit of the downtrodden and economically backward Sections of the society.
- But when it tends to harm the society and ensures privileges to some at the cost of others for **narrow political ends**, it should be done away with, as soon as possible.
- The communities excluded from reservations harbour **animosity and prejudice** against the castes included in the reservation category.

- When more people aspire for backwardness rather than of forwardness, **the country itself stagnates.**
- Meritocracy should not be polluted by injecting relaxation of entry barriers, rather than it should be encouraged by offering **financial aid to the underprivileged.**
- A **strong political will** is indispensable to find an equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system.