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Table of Content:-

Beneficiaries under Indian Reservations....1
Controversy Surrounding Other Backward Classes (OBCs)....2
Reservations for Additional Groups....3
Reservations in Various Sectors....4
Quota Limits....5
Reservations in Promotions....6
Constitutional Logic of Reservations in India....6
Landmark Cases on Reservation....7

Few debates in India elicit as much passion as those surrounding reservation policies. Alongside contentious issues like land redistribution and judicial independence, reservations have been at the centre of intense battles between the courts and legislatures. These disputes often oscillate between two extremes.

On one hand, discussions may delve into abstract ideals, sometimes obscuring the practical reality that reservations represent tangible policies with profound effects on the public sphere. On the other hand, debates may become mired in minutiae, losing sight of the larger constitutional narrative that underpins the reservation system.

Beneficiaries under Indian Reservations

The original recipients of reservations according to the Indian Constitution are SCs and STs. SCs were initially acknowledged in British India's Government of India Act 1935 and received privileges from both the British colonial government and certain Princely States.

Post-independence, SCs and STs are explicitly addressed in twelve distinct Articles of the Indian Constitution. SCs represent 16.6 percent of the population and encompass 1,206 primary castes historically labelled as untouchable within the Hindu caste system.

These castes, formerly known as 'Depressed Classes' and 'Harijan', are presently identified as 'Dalits'. While there exists substantial scholarship on Dalits as a social and political entity, 'Scheduled Caste' is a legal classification for reservation beneficiaries, limited to Hindu, Sikh, or neo-Buddhist Dalits. Christian and Muslim Dalits are excluded from this designation, pending a Supreme Court ruling on its constitutionality.

On the other hand, STs comprise 8.6 percent of India's populace, comprising 701 tribes predominantly residing in central, southern, and northeastern regions. Unlike SCs, STs can belong to any religion. The Constitution confers upon the Union executive the authority to categorise castes and tribes as SC or ST, a power deemed beyond judicial review by the Supreme Court.

Over the years, the central executive has expanded the SC and ST lists by incorporating multiple castes and tribes, with rare instances of removal. Given the unequivocal recognition of SCs and STs as legal categories, coupled with their distinct social identities, their classification has been relatively less contentious.

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Controversy Surrounding Other Backward Classes (OBCs)

The third category eligible for reservations, Other Backward Classes (OBCs), is a subject of heightened controversy. Unlike SCs and STs, OBCs do not constitute a distinct social group. They are often conceptualised as middle castes, primarily within Hinduism, positioned between upper castes and SCs. While some of these castes wield significant numerical strength and influence in agriculture, they are notably underrepresented in higher education and professional domains.

The social positioning of OBCs is a topic of considerable confusion, exacerbated by estimates suggesting they comprise 52 percent of India's population. Sociologists contend that OBCs encompass socially and economically diverse castes, further complicating their classification.

The term 'Other Backward Classes' (OBCs) is delineated by different phrases within various sections of the Constitution. Article 15(4) alludes to special provisions for 'Socially and Educationally Backward Classes', whereas Article 16(4) simply mentions 'Backward Classes'.

While some judicial interpretations view this discrepancy as inconsequential, others accentuate the distinction, asserting that Article 15(4) pertains to 'educational' backwardness, while Article 16(4) addresses 'social' backwardness. Furthermore, debates persist regarding whether a group classified as backward under Article 15 could represent a numerical majority, whereas Article 16 mandates inadequate representation. However, government policy has generally treated these

phrases interchangeably, establishing a unified criterion for Backward Classes concerning education and employment.

A second complexity arises from the disparity between Union and State definitions of OBCs. The Union List, typically associated with OBCs, governs reservations in Union employment and education. However, States also have the authority to define 'other' backward classes for reservations in State education and employment. Consequently, numerous caste groups categorised as backward in one State may not receive similar recognition in another State or by the Union government.

Moreover, these lists have been compiled at different points in time, with Southern States like Tamil Nadu pioneering State backward class reservations in the 1950s, while Union employment reservations for OBCs were introduced only in 1991. Although courts assert that these lists necessitate regular revision, this is seldom actualized in practice.

The pivotal issue concerning OBCs is the predominant role of caste in determining backwardness. Presently, both Union and State Governments define 'backward class' solely in terms of caste, despite the Constitution not mandating such an approach. Judicial opinions vary on the constitutional validity of this caste-based definition, leading to divergent judicial standards regarding the use of caste in defining backward classes. These standards range from considering caste as a 'relevant' factor to allowing caste as the 'sole' or 'dominant' criterion.



Reservations for Additional Groups

In addition to reservations for SCs, STs, and OBCs, the Constitution also allows for reservations for other demographics, such as women. While reservations based on religious affiliations are constitutionally contentious, they remain a subject of debate. These categories serve as examples; the State retains the authority to institute special provisions for groups not explicitly mentioned,

provided there exists a 'reasonable classification'. Reservations for women and religious groups, particularly Muslims, are outlined below.

A. Women

Article 15(3) of the Constitution empowers the State to enact 'special provisions' for women and children. The judiciary has construed this Article broadly, permitting various forms of affirmative action for women, including reservations. However, in practice, the implementation of reservations for women has been limited. This could be attributed to the relatively lesser political salience of gender compared to caste identities in India, despite women constituting 48 percent of the population. An exception to this trend is the Women's Reservation Bill, which advocated for 33 percent reservations for women in the Lok Sabha and State legislative assemblies, albeit with a sub-quota for women within the SC/ST quota. Despite judicial sanction, the Bill has lapsed without enactment.

B. Muslims and Other Religious Groups

While reservations based solely on caste have garnered governmental and judicial approval, reservations grounded solely in religion have encountered resistance in the courts. Nonetheless, reservations do extend to certain members of non-Hindu religions. Several State governments classify select Muslim sub-groups as 'backward castes', making them eligible for reservations, on the premise that caste dynamics transcend Hinduism to encompass other religions in India. The courts have generally upheld OBC sub-quotas for specific 'backward' Muslim groups, albeit overturning particular policies on technical grounds.

More contentious are reservations solely predicated on religion. Despite the constitutional framers' apprehension regarding special provisions for Muslims due to historical precedents, some State governments post-Independence have pursued reservations for all Muslims, driven by electoral considerations and the recognition of Muslims' underrepresentation in government services and inferior socio-economic indicators compared to SCs and STs. However, courts have typically opposed such blanket reservations for Muslims, with the Andhra Pradesh High Court repeatedly deeming them unconstitutional, a ruling unchallenged by the Supreme Court.

Unlike caste-based reservations, which enjoy broad political consensus, religion-based reservations are politically contentious, with several parties, notably the BJP, opposing them. This divergence of opinions renders it a pivotal subject of both political and legal discourse in the years ahead.

Reservations in Various Sectors

1. Public (State) Education

Article 46 of the Indian Constitution emphasises the State's responsibility to safeguard the educational and economic interests of the weaker sections, including SCs and STs. The constitutional provision enabling reservations in education, primarily Article 15(4) and now (5), permits 'special provisions' for SCs, STs, and 'socially and educationally backward classes'. The insertion of Clause (4) into Article 15 as part of the First Amendment in 1951 was a response to the Supreme Court's ruling in State of Madras v Champakam Dorairajan, which invalidated the Madras

State's communal order reserving seats in educational institutions. Since then, reservations for these groups in education have been judicially recognized, subject to certain exceptions:

a. Minority Institutions: Minority educational institutions, protected under Article 30, are exempted from reservations.

b. Superspecialty Posts: Reservations are opposed in superspecialty posts due to their significance for efficiency under Article 335.

c. Gradual Extension: Reservations in public education have expanded from State to Central institutions, from SC/STs to OBCs, and from higher education to primary education.

2. Public (State) Employment

Constitutional provisions allowing reservations in public employment include Articles 16(4) for SCs, STs, and 'Backward Classes', and Article 335 for SCs and STs. These provisions grant discretionary power to the State, primarily utilised for reservations. However, reservations are subject to certain limitations:

a. Efficiency of Administration: Reservations are prohibited in public services requiring the highest level of intelligence, skill, and excellence.

b. Single-Post Jobs: Reservations are disallowed for single-post jobs.

c. Judiciary: Reservations in the judiciary, especially in the higher judiciary, are limited to uphold judicial independence.

3. Private Sector

Reservations in the private sector remain a contentious issue in India:
a. Private Colleges: The Ninety-third Amendment introduced Clause (5) to Article 15, enabling reservations in private educational institutions, overriding previous judicial decisions opposing reservations in unaided professional institutions.
b. Private Schools: The Right of Children to Free and Compulsory Education Act 2009 mandates reservations in private unaided schools, subject to certain exemptions for minority educational institutions.

c. Private Employment: While political advocacy for reservations in private employment exists, there is no constitutional provision or Supreme Court judgement on the matter. Industry groups have implemented voluntary affirmative action measures, but reservations in the private sector remain a topic of debate due to concerns about economic impact and global competitiveness.

Quota Limits

1. Fifty Percent Rule

The 50 percent rule regarding reservations in India is based on various interpretations of constitutional provisions:

- Vision of Balance: Some view reservations as an exception to formal equality, with reservations not exceeding 50 per cent to maintain balance between competing constitutional principles.
- Vision of Substantive Equality: Reservations are seen as an elaboration of the principle of substantive equality, implying that a 50 per cent limit has no constitutional basis.
- Harmonised Vision: The Supreme Court, as seen in the Indra Sawhney case, seeks to balance these perspectives, limiting total quotas to 50 per cent while recognizing reservations as an elaboration of constitutional equality provisions.

2. Carry-forward

The concept of 'carry-forward' pertains to unfilled reserved seats in institutions from previous years:

- Initially deemed unconstitutional, the concept was later permitted with limitations, subject to the 50 percent rule.
- Parliament amended the Constitution to allow carry-forwards even if they exceed 50 per cent, acknowledging the challenge posed by increasing quotas, especially after the introduction of OBC reservations.

3. General Seats for Reserved Candidates

Reserved candidates who secure seats in the general category are not considered as reserved:

- This practice expands seats for reserved groups, particularly OBC candidates, while limiting opportunities for non-reserved individuals.
- It raises questions about the representation and backwardness of reserved groups, especially if they consistently secure general category seats.

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Reservations in Promotions

Reservations in promotions are one of the most controversial aspects of affirmative action policy in India, shedding light on its underlying rationale. The judiciary has generally opposed reservations in promotions. While the Court initially permitted reservations in promotions in the Rangachari case, the matter was decisively settled in the Indra Sawhney case, where the Court unequivocally

declared such reservations unconstitutional. However, Parliament overturned this decision by introducing clause (4A) to Article 16, allowing reservations in promotions.

In response, the Supreme Court in Nagaraj upheld these amendments but required individual promotion policies to pass constitutional scrutiny, considering factors like backwardness, representation, and efficiency. Despite this, a bill introduced in 2012 aimed to invalidate Nagaraj and limit judicial review but has since lapsed.

a. Consequential Seniority: There's ongoing debate over whether reservations in promotions should extend to consequential seniority. The Eighty-fifth Amendment to the Constitution expressly grants accelerated seniority to promoted reserved candidates without caveats, overturning judicial decisions in this regard.

b. Relaxation of Minimum Standards: Amendments, notably the Eighty-second Amendment, permit relaxation of minimum standards for reserved candidates during promotions. The Supreme Court confirmed the constitutionality of this amendment in the Rohtas Bhankhar case, overturning previous rulings.

c. Organisational Efficiency: Reservations in promotions uniquely impact organisational hierarchies and efficiency. They often result in unequal treatment among colleagues, solely based on caste, contrary to principles of organisational efficiency mandated by Article 335.



Constitutional Logic of Reservations in India

In delving into the constitutional rationale for reservations in India, it's essential to navigate beyond utopian ideals and instead focus on deciphering the existing constitutional vision that underpins the policy. The debate transcends mere discussions of correctness; it's about comprehending the principles that both enable and justify the policy.

1. **Balancing Equality, Social Justice, Efficiency**
The early understanding of reservations policy in India revolved around achieving a delicate balance among competing constitutional goals of formal equality, social justice, and administrative efficiency. While certain articles emphasised formal equality, others provided exceptions in pursuit of social justice.

However, this theory of balance, rooted in the framers' vision, has proved inadequate over time, challenged by judicial pronouncements and legislative actions that have largely sidelined principles of formal equality and efficiency in favour of social justice objectives.

2. **Substantive Equality**
A more nuanced perspective on reservations in India emerges through the doctrine of substantive equality entrenched in the Constitution. This doctrine prioritises recognizing and addressing caste-based inequalities rather than transcending caste altogether. Proponents argue that reservations policy has been instrumental in mitigating caste disparities and fostering social mobility.

However, substantive equality faces challenges, including its failure to address other forms of inequities, the inability to differentiate within beneficiary groups, and the lack of comprehensive data on caste-based inequalities.

Moreover, its appropriation by certain groups contradicts its essence, especially in the absence of a clear articulation of this vision in parliamentary debates.

Landmark Cases on Reservation

M. Nagaraj v Union of India (AIR 2007 SC 71)

In this landmark case, the Constitution (85th Amendment) Act, 2001 was challenged. The amendment introduced Article 16(4A) allowing for 'reservation in promotion with consequential seniority' for SCs and STs from June 17, 1995.

The Supreme Court held that this clause is an enabling provision that requires the existence of 'backwardness' and 'inadequacy of representation' to be activated.

The court also upheld the constitutionality of the Constitution 81st Amendment Act, 2000, and the 82nd Amendment Act, 2000, which introduced Article 16(4B) and a proviso in Article 335, respectively.

These are also enabling provisions, designed to function within the bounds of the 50% ceiling on reservations, the exclusion of the creamy layer, and the sub-classification among backward classes. The court concluded that these amendments do not alter the basic structure of the Constitution.

Ashoka Kumar Thakur v Union of India (2008) 6 SCC 1

This case revolved around the constitutional validity of 27% reservation for OBCs in State-aided Central Universities under the Central Educational Institutions (Reservation in Admission) Act, 2006, following the Constitution (Ninety-Third Amendment) Act, 2005. The Supreme Court held that the 93rd Amendment does not violate the basic structure of the Constitution regarding state-maintained and aided educational institutions.

The decision emphasised that while affirmative action must be harmonised with fundamental freedoms, it does not inherently conflict with the principles of equality or the basic structure of the Constitution. The court also validated the exclusion of minority educational institutions from the purview of Article 15(5) and upheld that affirmative action provisions like Articles 15(4) and 15(5) are constitutionally valid enabling provisions, reinforcing the concept of equality through positive discrimination.

Jagdish Negi v State of U.P (AIR 1997 SC 3505)

In this ruling, the Supreme Court observed the need for periodic review of reservation policies by the government. It acknowledged that reservations must not continue indefinitely without limits, as this would counteract the objective of achieving true equality. The court emphasised that affirmative action is meant to be a temporary measure to level the playing field for disadvantaged groups, suggesting that without regular assessment and adjustments, such policies might cement divisions rather than dissolve them.