

# Reservation – how and why ?

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The Constitution of India prohibits discrimination based on caste, religion, sex or language by the state in matters of education and employment. However, it provides for preferential treatment to scheduled castes and tribes and to other backward classes in matters of education and employment. These preferences or reservations, have been an apple of discord, right from the time of their conception. Reservations are “minimum quotas” available to members of disadvantaged groups for Government jobs and educational institutions provided qualified members of such groups apply for those positions. In case of scheduled castes and scheduled tribes, reservation is provided for seats in the House of the People (Article 330), in educational institutions (Article 46) and for public employment (Article 335). Regarding the other backward classes, they have been provided reservations only in educational institutions and public employment.

Now the question arises as regards the criteria for determining the specific groups and categorising them to fit into any of the available slots provided by the constitution. This precisely is the centre of all attractions and has led some people to even label reservations as some sort of a Frankenstein. Scheduled castes are identified on the basis of caste; the latter on the basis of administrative policies, which are subject to judicial scrutiny. Even these administrative policies are tilted usually in favour of caste as the criteria for identification. The caste status among scheduled castes is important considering the provisions of the constitutions.

The constitution of India, by nature, is egalitarian. Article 14 of the Indian Constitution guarantees equality before the law and equal protection of law to all persons. Article 15 and 16 prohibit discrimination against any citizen for public employment

and other activities of the State on the grounds only of religion, race, caste, sex or place of birth.

Whether preferential treatment of members of disadvantaged groups is in tune with the concepts of 'equality before the law' and equal protection of the law depends on the concept of equality used by those who judge. The concept that lies behind this system of quotas is that of proportional group equality. The key figure here is not the individual but the group. If the individual is a member of a group, preferential treatment is granted if that group is proved to be under-represented or systematically unable to compete on an equal basis with other groups for the position being sought.

The advocates of proportional group equality often explain it as a tool to rectify the existing unequal distribution of positions, the consequence of systematic discrimination on a group basis. It is a collective approach to a group problem. In India, supporters of reservations contend that the best way to rectify this inequality is by redistributing the benefits to the poor and/or the backward on a caste or group basis.

The Indian Constitution provides Articles 16(4), 46, 330, 332, 335, 340, 341 and 342 to enable the Government to grant special preferential treatment to certain categories of people. Article 16(4) provides that the prohibition under Article 16 on discrimination in employment shall not prevent such preferences – "Nothing in this article shall prevent the state from making any provision for the reservation of appointments in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in the services under the state". In the famous case *State of Madras Vs. Champakan Dorairajan*<sup>1</sup> the Supreme Court held that the provision allowing reservation in employment did not extend to educational institutions. In Madras, a system of quotas has been started to select members of all caste groups for public employment. In *Venkataramana Vs. State of Madras*<sup>2</sup> the Supreme Court struck down the quota system and held that only 'backward classes' (Article 16(4)) could receive the benefit of reservations.

A very important case in this area was *M. R. Balaji Vs. State Bank of Mysore*<sup>3</sup>

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(1) AIR 1951 S. C. 226  
(2) AIR 1951 S. C. 229  
(3) AIR 1963 S. C. 649

In this case six applicants to medical college and 17 to Engineering College filed Writ Petitions contending that they were not admitted because of the excessive and irrational reservations for backward classes in the Government Order. Candidates with lower scores belonging to these backward classes were admitted instead of the petitioners. The court held that the order was invalid because "the basis adopted by the order in specifying and enumerating the socially and educationally backward classes of citizens in the state is unintelligible and irrational and hence outside Article 15(4)". The court also held that the extent of the reservation was unreasonable and a fraud on the power conferred by the Article 15(4). According to the court, 15(4) is an exception to 15(1) and 29(2) and it must not therefore be interpreted so as to nullify the rights guaranteed to all citizens by these Articles. Reservations under 15(4) should not exceed 50 percent of the seats.

The important factor to be noted in Article 15(4) is that it does not speak of castes but only speaks of classes. If the framers of the Constitution wished classes to be one of the determining criteria for the social and educational backwardness, then it would have been expressly stated in that

form. It may be suggested that the word 'classes' is used as there are communities without castes. Thus the conclusion may be that caste may be one of the criteria for determining backwardness of a group of citizens but it is not the sole one. This interpretation helps the really backward classes instead of further promoting the interests of individuals or groups who actually belong to a class which is socially and educationally advanced. If we interpret the expression 'classes' as castes then the whole meaning behind the constitutional provisions would be defeated. Those who do not deserve such benefits will get them at the expense of those who do.

In *T. Devadasan Vs. Union of India*<sup>4</sup> another facet of this discussion was looked into by the Supreme court. A 17.5 percent reservation of the promotions to Assistant Superintendent was made for Scheduled Castes and Scheduled Tribes and the reserved positions remaining unfulfilled one particular year, were carried forward into the subsequent year and added to the percentage reserved for each year. The cumulative number of positions reserved rose to a rather high 65 percent when the case was filed. The petitioner was passed

(4) AIR 1964 S. C. 179

over though he secured almost double the marks secured by the SC/ST categories. The court held that "The ratio of the Balaji decision appears to be that reservations of more than half the vacancies is *per se* destructive of the provisions of Article 15(1). In his judgment, Mudholkar J. remarked regarding Article 14:

"Where the object of a rule is to make reasonable allowance for the backwardness of members of a class by reserving certain proportion of appointments for them in the public services of the state, what the state would infact be doing would be to provide the members of backward classes with an opportunity equal to that of the members of the more advanced classes in the matter of appointment to public services". The court further went on to specify that it is individual not group equality that Article 16(1) intends to protect.

Thus reservations are necessary for giving equal opportunity to every citizen in educational institutions and public employment regardless of social and economic background. However, reservations have been recognised as an exception, limited in point of time. Thus, the short term goals of protective discrimination cannot be allowed to affect adversely the permanent features of the Constitution. Further the caste test should be comprehended to be obsolete as it affects adversely the vulnerable sections both in the backward and forward classes. This can be minimised by the adoption of a test on the basis of class for the grants of benefits of reservations, which must further be based on multiple factors like income, actual occupations pursued by the parents and literacy levels, etc. Unless this change does not come about, reservations will continue to portend the considerable social tensions prevailing in the society.

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*A man should never be ashamed to own he had been in the wrong, which is but saying, in other words, that is wiser today than he was yesterday.*

— JONATHAN SWIFT