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VISTAS

3rd Year, BBA LL.B. (Hons.)**RESERVATION UNDER THE INDIAN CONSTITUTION – A CRITIQUE**

*“RESERVATION SYSTEM SHOULD BE A KIND OF RESPECT FOR ALL INDIVIDUALS AND
WORTHY ONES”*

ABSTRACT:

*Inequality is always started with the motive of helping one particular group of people. This system is brought because of the old-caste system in India that only gave preference to upper class people such as Brahmins, Kshatriyas and Vaishnavas and ignored the lower caste. But now this system ignores knowledge, upper caste, and wealth and only prefers lower caste people. The reservation under Indian Constitution is also one of the systems that are brought with motive of helping under caste people but now it has become a heated debate topic in the society. This reservation system is dealt with **articles 341 and 342 of chapter XI under Indian Constitution**¹. This article contains what is reservation under Indian Constitution? Its origination, which are benefited from this system? And its criticism.*

KEY WORDS:

Inequality, Caste system, Reservation, Amendment, Mandal commission.

INTRODUCTION:**“Reservation is an image of INEQUALITY****In the nations which speaks of EQUALITY”**

Reservation is a system of affirmative action. It gives power to Indian Government to reserve certain percentage of seats or slots in education, power and jobs in the form of quota to particular group of people. Originally this quota that belongs to particular group of people is from Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs).

Equality means giving an equal opportunity to every people and, not taking away an opportunity from one person and giving it to other person. Dr.B.R. Ambedkar has favored this reservation system in India with the aim of abolishing inequality and giving opportunity to the people who had given no chance for education, power and jobs. This system was created for the benefit of lower caste but main critique of this system is that it gave main preference to caste and ignored the knowledge and wealth. This system is all about giving huge preference for certain caste such as SC, ST and OBC and giving less preference for general caste. That's why reservation under Indian constitution is said to be the image of inequality that speaks about equality in nation. This system is also sad to the positive discrimination system.

RESEARCH METHODOLOGY:

The descriptive and secondary-data based analysis is use to find the impact made by the reservation policy in India. The data contained in this paper is collected from various Journals, reports and statistics.

ISSUES DISCUSSED:

- ❖ Whether reservation system is violative of Article 14?
- ❖ Whether the constitution gives importance to knowledge or caste?
- ❖ How many quotas are reserved for backward caste under Indian constitution?

HISTORICAL BACKGROUND:

The reservation system in India was started even before the Independence. In the year 1882 to 1889 there was a high demand for this system in India and later in **1902 Shahu, the king of princely state in Kolhapur²** has brought this system in favor of lower-class people in his state. King Shahu provided free education and opened number of hotels for them. He favored class-free India and he was against untouchability. King Shahu led to 50% of reservation for lower caste during his ruling.

In the year 1909, **British Raj** introduced the elements of reservation system in Government of India Act, 1909.

During **Round Table Conference³** that took place in **1932**, people of lower caste were barely assigned number of seats for elections. This led Mahatma Gandhi to protest against it. Dr. B.R. Ambedkar was also joined hands with Gandhiji to protest and they also reached an agreement to have single Hindu electorate with reserving seats for Dalits also. This was known as **Poona Pact**.

After Independence in 1947, there were lots of support rising on the side of STs and SCs. Later, in **1950 the countries first affirmative action was launched** and in 1954 the provision allotted 20% of seats for SCs and STs in education with minimum qualifying marks and in 1982 the reservation percentage was divided as 15% and 7.5% vacancies in public sector and government aided educational institutes.

In **1979**, a new commission was started in favor of lower-class people with the name of **Mandal commission** or socially and Educationally Backward classes (SEBC) commission.

MANDAL COMMISSION:

This commission was started by Janata Party government under Prime Minister Morarji Desai. The head of the commission was B.P. Mandal, an Indian parliamentarian. He used nearly 11 indicators such as educational, social and economic indicators to find the backwardness of the country. In 1980, the indicators found up to 52% of Indian population as OBCs. Thus, the reservation provisions were extended to OBCs from SCs and STs and 27% of seats were reserved for them (OBC). All together SC, ST and OBC the total number of seats reserved are extended to

49%. In a case called, **Indra Sawhney & Others v. Union of India**⁴ a public litigation case, an issue was raised stating that reservation system violated the right of equal opportunity and it also stated that caste was not a reliable indicator to find the economic backwardness. Supreme Court held that, the caste is a good indicator for finding economic backwardness of the country and the extension of reserved quota for OBCs is also valid. This case was upheld again in 1992 and sealed the reservation quota for 50% and introduced a concept called **creamy layer**.

CREAMY LAYER:

This creamy layer is a qualitative exclusion method introduced by Supreme Court in a case called, **Ashoka Kumar Thakur V. Union of India**⁵. In this case, the court introduced creamy layer concept and also held that this concept will only be applicable for OBC and not for SC and STs. Creamy Layer is a political term that is used for referring backward class people who are economically above average. Even though 27% of quota is fixed for OBCs, this quota will not be applicable for creamy layer people. This creamy layer criteria were introduced at Rs 1 lakh in 1993, and revised to Rs 250,000 and again in 2004, Rs 450,000 and in 2008, Rs 600,000 in 2013 and finally **8 lakhs in 2015**. Those people of OBC whose annual income are above these criteria will be excluded from reservation policy.

CONSTITUTIONAL PROVISIONS:

Article 331 and 332 of the Indian constitution says about which person belongs to SC and ST caste. It is the introductory article for the caste system. There are many special provisions under Indian Constitution favoring SC, ST and OBC caste in reservation system and some of them are⁶,

<u>ARTICLES</u>	<u>CLASSES/COMMUNITIES</u>	<u>POWERS/SEATS RESERVED</u>
330 and 331	SC, ST and Anglo-Indian Community	Reserved seats in House of the People
332 and 333	SC, ST and Anglo-Indian community	Reserved seats in Legislative assemblies of the state
335	SC and ST	Claims to services and posts

336	Anglo-Indian community	Claims for services
337	Anglo-Indian Community	Educational grants
338	SC	New commission called National Commission is formed by SCs
339	SC and ST	Control of the union over the administration of Scheduled areas and welfare of ST
243(d)	SC and ST	Seats in Panchayats
233(t)	SC and ST	Seats in Municipalities

Many amendments are made in Indian Constitution for reservation system and the system is being extended over decades. Some of the amendments are,

<u>AMENDMENT NUMBER AND YEAR</u>	<u>AMENDMENT MADE</u>
76 TH Amendment, 1994	Policy of reservation of seats in educational institutions and reservation
77 th amendment, 1995	Article 4(a) was inserted to ensure that no such law framed under article 4 shall be an amendment for the purpose of article 368
81 st amendment, 2000	Article 16(4)(b) was inserted to carry forward the unfilled vacancies from the previous year.
85 th amendment, 2001	Article (4)(a) was modified to provide consequential seniority to SCs and STs candidates promoted by reservation
108 th amendment, 2008	To reserve seats for women in the Lok Sabha and state legislature

103 rd amendment, 2019	Consideration of economic backwardness
104 th amendment, 2020	Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies and Extension of reservation system for another 10 years

SCHEMES:

There are many schemes provided for the backward class people under reservation system. Those schemes are grouped under 2 main schemes. They are,

- Educational scheme, and,
- Employment scheme.

Even though the constitution has sealed the number of quotas for 50%, it has been growing higher with every amendment made and by the schemes brought by the government. Educational seats are provided mostly on the basis of quota system and not by merit. This has always led to inequality and unfair among the student pursuing education. Usually, the allotment of seats is divided into 2 categories namely,

- Reservation category (SC, ST, OBC, EWS and other minorities)
- Open category (General, SC, ST, OBC, EWC and other minorities)

Reservation category is based on only caste they belong but open category is based on Merit, Wealth, Cut-off, Entry fees, etc. is this called the equality that government offers in form of reservation system? In India, most of the educational seats are given to reservation category including 33% of women quota. Therefore, only 0.7% of students aid are based on merit category.

Employment scheme:

Reservation system in employment is also one of the major critiques for reservation system. Jobs should be hired on the basis of experience, knowledge on the work and merit obtained but public and private companies hire employees on the basis of reservation system. The reserved seats under government jobs for,

SC	7.5%
ST	15%
OBC	27%
EWC	10%
Differently-abled	3%
TOTAL	62.50%

According to the above table, reserved seats in Government companies is nearly 62.50% and moreover, 33% of reserved seats are given for women. Therefore, nearly 5.5% seats are only available on the basis of experience, knowledge on the work and merit.

CASE LAWS:

State of Madras V. Champakam Dorairajan⁷: it is a landmark case that led to 1st amendment in the Indian Constitution. In this Srimathi Dorairarajan filed a petition in Madras High Court stating violation of her rights for the admission in the medical college because of Government Order (G.O). She also stated that she was not given admission because she belongs to Brahmin religion. The Supreme Court upheld that the G.O directly affects the violation of Article 29(2) of the Indian Constitution and thus it struck down the G.O. This led to 76th amendment, Policy of reservation of seats in educational institutions and reservation, which invalidated the judgement.

M.R. Balaji V. State of Mysore⁸: In this case, the court held that the government order on 68% reservation on college is excessive and unreasonable. Therefore, the court sealed the reservation for 50%. However, Tamil Nadu and Rajasthan has already exceeded 50% of reservation with Tamil Nadu having 69% under 9th schedule and Rajasthan with 68% quota and 14% for Forwarding Castes.

Akhil Bharatiya Soshit Karamchari Sangh (railway) V. Union of India⁹: In this case the court implemented Carry Forward Rule where it allows the railway board to extend its reservation quota above 50%. This case was overruled in Indira Sawhney & Others V. Union of India. This case led to the addition of article 16 (4)(a).

M. Nagaraj V. Union of India¹⁰, in this case, the court validated the Parliament's decision to extend the constitutionality of the reservation system for SCs and STs to include promotions. This led to 85th amendment, that is, modification of Article (4)(a), to provide consequential seniority to SCs and STs candidates promoted by reservation.

PROTESTS AGAINST RESERVATION POLICY:

Mandal Commission Protest: In the year 1990, Mandal Commission protest was raised against reservation that is made in Government Jobs based on caste system in India. The object of this protest was to bring down the new Government employment opportunities scheme, that is, Reservation for backward classes.

Indian anti-reservation protests: This protest took place in the year 2006 in India. It was a series of protests that led by Indian National Congress against the decision made by Union of India to extend reservation to OBCs. The students and doctors who belonged to forward caste protested against this saying that this system disregards the meritocracy and driven by vote-bank politics.

FINDINGS:

- This reservation policy is a positive discrimination that indirectly violates article 14 right to equality and article 29(2) no person shall be subjected to any kind of exploitation on the basis of religion, custom, tradition, culture, practices or any other bases.
- Reservation system pulls down upper classes in order to raise lower class people
- This system gives importance to caste and disregards meritocracy.
- In India, a student who gets 99th rank in the UPSC exam couldn't become an IAS but a student who got 350th rank became an IAS. The only difference is that the girl who became IAS belongs to Reserved category whereas the girl who got 99th rank belongs to general category.

CONCLUSION:

Reservation system is not only ignoring meritocracy but it ignores one's right to be educated also. I acknowledge that reservation policy is brought to eradicate inequality among caste

but this also led to discrimination and inequality. In order to completely ignore this inequality, I would like to suggest,

- Change in government policy in better ways rather than reservation policy, or,
- To give equal reserved quotas for each caste or groups, or
- To seal 50% quota in all states including Tamil Nadu and Rajasthan.
- Rather than implementing policies to eradicate inequality among caste, it is better to eradicate caste system itself.

**“TO TAKE DOWN A POISONOUS TREE, CUT OFF IT’S ROOT
NOT IT’S BRANCH OR IT’S LEAVES”**



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