

Judicial friction with Legislative overreach on Reservation law in public Employment: A critical study

Dr (Lt Col) Anil Balhera¹ Dr Anand Kumar²

^{1,2}Asst Professor, Dept of Laws, BPS Women University, K.K, Sonapat, Haryana, India.

ABSTRACT: The system of reservation existed in India even before independence. Post-independence the system of reservation was framed by the Constituent Assembly which was chaired by Dr B.R. Ambedkar. Initially, the legislators of India found the necessity to continue the system of the reservation to overcome many years of societal and cultural discrimination of certain sections of society.

Reservations were put in place in the Indian constitution, immediately after independence, as a means to recognise the historical injustice meted out to the people belonging to backward groups and to implement provisions by which they would have better access to resources and opportunities. As per Article 46 of the Constitution of India, States will have to promote and protect the educational and economic interests of Scheduled Castes and Scheduled Tribes. It shall protect Scheduled Castes and Scheduled Tribes from Social Injustice and all forms of exploitation.

Among various affirmative actions taken by a government for the underprivileged, reservation is an extreme measure because it implies segregation of some posts for certain class of persons, which otherwise might have been secured by other persons. And this is why there is a perception that reservation gives benefits to some persons at the cost of others.

The higher Judiciary had evolved various tests for constitutionality of Reservation laws through a series of landmark judgments & recently identified economic may be a sole factor of reservation in public jobs & admission in educational institutions in “Janhit Abhiyan vs UOI. In the same way, the present study highlights the journey of affirmative action of legislators carried out through reservation law & policies and judicial counter of higher judiciary through constitution transformative approach in public interest.

Keywords: Reservation, Judicial Activism, public employment

I INTRODUCTION

For centuries, India's social system has been set up on inequality, exploitation and injustice. Even today, India's underprivileged are subject to mass discrimination of all kinds which includes economic exploitation. Post-Independence, those who framed the Constitution had back then realised the importance of social and economic justice, as they knew about the pervasive and poignant issues of poverty plaguing the nation. The jurisprudence of reservation relies on the symbiotic coexistence of constitutionally guaranteed equality of opportunity in public employment under Article 16 (1) of the Constitution of India and classifications thereunder various clauses of the same article, especially Article 16(4) and Article 16 (4 A), which are in the nature of facilitating provisions, vesting a discretion on the government to consider providing reservations for the socially and educationally backward sections of the society and to provide reservation in promotion to Scheduled Castes and Scheduled Tribes, respectively.

It is a settled law, time and again reiterated by the Supreme Court, that there is no fundamental right to reservation or promotion under Article 16(4) or Article 16(4 A) of the Constitution, rather they are enabling provisions for providing reservation, if the circumstances so warrant (*Mukesh Kumar and Another vs State of Uttarakhand & Ors. 2020*). They vest a discretion on the government to consider providing reservations for the socially and educationally backward sections of the society and to provide reservation in promotion to Scheduled Castes and Scheduled Tribes, respectively.

Reservation policy of India

Justice Rohinton Nariman has authored the unanimous judgement given by the Supreme Court on the policy of reservation in public employment. Reservation is a system of affirmative action in India that provides historically disadvantaged groups representation in education, employment and politics. A percentage of seats are reserved for the socially and educationally backward classes of citizens or the Scheduled Castes and Tribes who were inadequately represented.

Is reservation a fundamental right?

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II Constitutional provision related to reservation:

Article 16: It provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State

No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence

Exceptions: There are three exceptions to this general rule of equality of opportunity in public employment:

- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority
- As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh and Telangana

- The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services
- A law can provide that the incumbent of an office related to a religious or denominational institution or a member of its governing body should belong to the particular religion or denomination

Article 16 (4A): Provides that the State can make any provision for reservation in matters of promotion in favour of the Scheduled Castes and the Scheduled Tribes if they are not adequately represented in the services under the State. It was inserted by the 77th Constitutional Amendment Act, 1995

Article 335: It recognises that special measures need to be adopted for considering the claims of SCs and STs to services and posts, in order to bring them to par.

Reservation in employment

Reservation in employment which was otherwise confined to Scheduled Castes and Scheduled Tribes got extended to Other Backward Classes as well on the basis of the recommendations of the Second Backward Class Commission as constituted, headed by B.P. Mandal. The recommendation of the Mandal Commission (1980) to provide 27% reservation to Other Backward Classes in central services and public sector undertakings, over and above the existing 22.5% reservation for Scheduled Castes and Scheduled Tribes, was sought to be implemented by the Government of India in 1990

III Important Judgements and Amendments:

Indra Sawhney Judgment (1992):

- The case was decided by the Nine Judge Constitution Bench. The bone of contention in this landmark judgment was the Mandal Commission Report of 1980
- The court upheld the constitutionality of the 27% reservation but put a ceiling of 50% unless exceptional circumstances warranting the breach, so that the constitutionally guaranteed right to equality under Article 14 would remain secure
- The advanced sections among the OBCs (the creamy layer) should be excluded from the list of beneficiaries of reservation. The Supreme Court had held that Article 16(4) of the Constitution of India does not authorise reservation in the matter of promotions

The Constitution (Seventy-seventh Amendment) Act, 1995

It inserted Article 16(4-A), to provide that “nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State”

M. Nagaraj V Union Of India(2006)

- A five-judge bench of the Supreme Court upheld the constitutional validity of 77th Amendment and said these were mere enabling provisions. The court laid down certain conditions:
 - Quantifiable data showing backwardness of the class and
 - Inadequacy of representation of that class in public employment
- The bench held that the creamy layer among Scheduled castes and tribes is to be excluded from the reservation

Jarnail Singh V Lachmi Narain Gupta

- The controversy in this case arose due to the interpretation of Article 16 (4A) which was added by the Constitution 77th Amendment
- The constitution bench invalidated the requirement to collect quantifiable data in relation to Scheduled Castes and Scheduled Tribes but upheld the principle of applicability of creamy lawyer in relation to Scheduled Castes and Scheduled Tribes
- Jarnail Singh judgment authored by Justice Rohinton Nariman indicates a critical turn in the jurisprudence of reservation

Mandal Commission Report:

- The Mandal Commission was set up to investigate the extent of educational and social backwardness among various sections of Indian society and recommend ways of identifying these ‘backward classes’. The Commission gave its recommendations in 1980 and advised that ‘backward classes’ should be understood to mean ‘backward castes’

The Commission did a survey and found that these backward castes had a very low presence in both educational institutions and in employment in public services. It, therefore, recommended reserving 27 per cent of seats in educational institutions and government jobs for these groups. In August 1990, the government decided to implement one of the recommendations of Mandal Commission pertaining to reservations for OBCs in jobs in the central government and its undertakings. This decision sparked agitations and violent protests in many cities of north India. The decision was also challenged in the Supreme Court and came to be known as the ‘Indira Sawhney case’, after the name of one of the petitioners. In November 1992, the Supreme Court gave a ruling upholding the decision of the government

103rd Amendment of the Constitution of India:

Introduced 10% reservation for **Economically Weaker Sections (EWS)** of society by amending **Article 15** and **Article 16** of the Constitution. It provided for admission to Central Government-run educational institutions and private educational institutions (except for minority educational institutions), and for **employment in Central Government jobs**.

IV Arguments in Favour/Against of Policy of Reservation

Arguments in Favour of Policy of Reservation

- **Proper Access to Opportunity:** Centuries of discrimination and prejudice suffered by the SCs and STs in a feudal, caste-oriented societal structure poses real barriers of access to opportunity.

- **Constitutional Mandate:** The Constitution mandates realisation of substantive equality in the engagement of the fundamental rights with the directive principles.
- **Special Measures Needed:** Unless special measures are adopted for the SCs and STs the mandate of the Constitution for the consideration of their claim to appointment will remain illusory.
- **False Notion of Efficiency:** The Constitution does not define what the framers meant by the phrase efficiency of administration. It is a stereotypical assumption that the promotes drawn from the SCs and STs are not efficient or that efficiency is reduced by appointing them.
- **Representation in Higher Echelons:** The main reason for giving reservations and even promotions are that there are very few SC/ST candidates in the higher echelons of government.

Arguments Against the Policy of Reservation

- **Impact on Efficiency:** Appointment of SCs and STs to services and promotions may make it difficult to maintain the efficiency of administration.
- **Redundancy of Reservation:** The SCs and STs are getting the benefits of reservation in the appointments to various services. Therefore, it is undesirable and inefficient to provide quota in promotions for key posts.
- **Not a Compulsion for Government:** The Constitution empowers the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes **only** "if in the opinion of the State they are not adequately represented in the services of the State".
- **Acting as a divide:** It may act as a barrier between many social classes and castes in the society causing possible unrest.
- **The privileged getting more privileged:** Many reports suggest that the reservations are not actually being beneficial to the needy sections of the society but the already privileged ones.

The Indian judiciary has made judgments related to reservations, a system of affirmative action that provides for disadvantaged groups. These groups are primarily Scheduled Castes and Scheduled Tribes (SCs and STs), and from 1987 extended to Other Backward Classes (OBCs). Some of the court judgements have been modified by the Indian parliament. Many of these cases are challenges under constitutional law and have led to constitutional amendments and challenges to the legality of such amendments. The frequency of decisions being overturned or invalidated reflect the ongoing efforts by lawmakers and the judiciary to strive towards equality.

Some major judgments are listed below. Supreme Court cases are noted by the case citation "SC" or "SCC". All entries must be cited to reliable sources.

Table 1: Summarized Judgements on Reservation

Case	Ruling	Notes
State of Madras v. Champakam Dorairajan AIR 1951 SC 226 ^{[1][2][3]}	Court ruled that caste-based reservations as per Communal Award violate Article 15(1) of the constitution.	Led to the introduction of the First Amendment of the constitution, which invalidated the judgment.
M. R. Balaji v. State of Mysore AIR 1963 SC 649 ^[4]	The government's 68% reservation on college admissions was deemed excessive and unreasonable, and was capped at 50%. ^[5]	Almost all states except Tamil Nadu (69%, under 9th schedule) and Rajasthan (68% quota including 14% for forwarding castes) have observed this 50% limit. Tamil Nadu exceeded the limit in 1980. Andhra Pradesh tried to exceed the limit in 2005, which was postponed by the high court. ^[citation needed]
Syndicate Bank SC & ST Employees Association & Others v. Union of India & Others 1990 SCR(3) 713; 1990 SCC Supl. 350	Reaffirmed Bihar State Harijan Kalyan Parishad v. Union of India in that reservation policy cannot be denied by method of selection, and was applicable to the highest level of promotion. ^{[6][unreliable source?]}	This judgment was implemented only in Syndicate Bank to April 1993.
Indra Sawhney & Others v. Union of India AIR 1993 SC 477 ^[7]	The constitution recognized social and educational backwardness, but not economic backwardness. The court upheld separate reservation for OBC in central government jobs, but excluded these to the "creamy layer" (the forward section of a backward class, above a certain income). ^{[8][unreliable source?][9]} At no point should the reservation exceed 50%. ^[10]	Judgement implemented, with 27% central government reservation for OBCs. ^[9] However, some states denied the existence of the creamy layer, and a report commissioned by the supreme court was not implemented. The case was pressed again in 1999 and the supreme court reaffirmed the creamy layer exclusion and extended it to SCs and STs. ^[7]

<p>General Manager Southern Railway v. Rangachari AIR 1962 SC 36, State of Punjab v. Hiralal 1970(3) SCC 567</p>	<p>A divided court held that reservations could be made in promotions as well as appointments.</p>	<p>This was overruled in the 1992 case Indra Sawhney & Others v. Union of India.^[11]</p>
<p>Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India (1981) 1 SCC 246^[12]</p>	<p>Upheld the "carry forward rule" of the railway board in a selection of posts above 50% reservation, allowing for "some excess". This was overruled in Indra Sawhney & Others v. Union of India which held that reservations cannot be applied in promotions.</p>	<p>This led to the addition of clause 4A to article 16 of the constitution, empowering the state to make provision for reservation in promotion to any posts where SC/ST are not adequately represented.</p>
<p>Union of India v. Varpal Singh AIR 1996 SC 448, Ajitsingh Januja & Others v. State of Punjab AIR 1996 SC 1189</p>	<p>[relevant?]</p>	
<p>M. G. Badappanavar v. State of Karnataka 2001 (2) SCC 666</p>	<p>Articles 16 (4) and (4A) do not confer fundamental rights or constitutional duties, but invest discretion in the state to consider providing reservation.^[13]</p>	
<p>Post-Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association AIR 1998 SC 1767</p>	<p>When considering a single post, no reservation can be made (as it would amount to 100% reservation).^[14]</p>	
<p>Ashok Kumar Gupta: Vidyasagar Gupta v. State of Uttar Pradesh 1997 (5) SCC 201</p>		<p>77th Constitution amendment (Art 16(4 A) & (16 4B) introduced to invalidate judgement.^[citation needed]</p>
<p>M. Nagraj & Others v. Union of India and Others. AIR 2007 SC 71</p>	<p>Upheld the constitutionality of the 77th amendment.</p>	<p>1. Art. 16(4)(A) and 16(4)(B) flow from Art. 16(4) and do not alter the structure of Art. 16(4). 2. Backwardness and inadequacy of representation are the compelling reasons for providing reservations keeping in mind the overall efficiencies of state administration. 3. Government has to apply cadre strength as a unit in the operation of the roster in order to ascertain whether a given group is adequately represented in the service. The roster has to be post-specific with the inbuilt concept of replacement rather than being based on vacancies. 4. Direct recruitment to ensure adequate representation of a backward category may be made at the discretion of the authority. 5. Backlog vacancies are excluded from the 50% limit. 6. Reserved category candidates are entitled to compete for general category posts, and will not be counted against the quota limit. 7. Reserved candidates are entitled to compete with the general candidates for promotion to the general post. On their selection, they are to be adjusted in the general post as per the roster and the reserved candidates should be adjusted in the points earmarked in the roster to the reserved candidates.^[clarification needed] 8. Each post must be</p>

		marked for the particular category of the candidate to be appointed, and any subsequent vacancy has to be filled by that category alone (replacement theory). ^{[citation needed][undue weight? – discuss]}
R. K. Sabharwal v. State of Punjab AIR 1995 SC 1371 : (1995) 2 SCC 745	A roster to select members for a body is to operate only until the reservation quota is reached, and thereafter disposed. ^[citation needed]	
Union of India v. Varpal Singh AIR 1996 SC 448, Ajitsingh Januja & Others v. State of Punjab AIR 1996 SC 1189 : 1995 2 SCC 715	Reserved-category candidates benefiting from accelerated promotion would not gain consequential seniority over general candidates when considering subsequent promotion.	This decision was overruled and reinstated in subsequent years, ^[note 1] and M. G. Badappanvar v. State of Karnataka (2001[2] SCC 666: AIR 2001 SC 260) held that roster promotions were for the limited purpose of due representation at various levels of service, and did not confer seniority.
M. Nagraj & Others v. Union of India and Others AIR 2007 SC 71	Upheld the constitutionality of the 85th amendment.	The 85th constitutional amendment added consequential seniority ^[clarification needed] to Art 16 (4)(A) ^[citation needed]
S. Vinodkumar v. Union of India 1996 6 SCC 580	It is not permissible to relax standards of evaluation in matters of reservation in promotion	By the Constitution (82nd) Amendment Act a proviso was inserted at the end of Art 335. M. Nagraj & Others v. Union of India and Others (AIR 2007 SC 71) held the amendments constitutional.
Suraj Bhan Meena v. State of Rajasthan (2011) 1 SCC 467	Government rules for reservation cannot be introduced without quantifiable data of backwardness and underrepresentation.	
S. Balakrishnan v. S. Chandrasekar 28/2/2005, The Government of Tamil Nadu Vs. Registration Department SC/ST (9/12/2005)	The Madras High Court held that reservation in promotion is available only to SC and ST and not to OBC. ^[citation needed]	
Sudam Shankar Baviskar v. Edu. Off. (Sec), Z. P. Jalgaon 2007 (2) MhLJ 802	Consequential seniority is not available to VJNT. ^{[expand acronym][citation needed]}	
Union of India v. S. Kalugasalamoorthy 2010 writ no. 15926/2007	Reserved quotas are not counted for a person selected on the basis of his own seniority. ^[citation needed]	
I. R. Coelho (deceased) by LRS. v. State of Tamil Nadu 2007 (2) SCC 1: 2007 AIR(SC) 861	Supreme court advised Tamil Nadu to follow 50% reservation limit	Tamil Nadu Reservations were put under the 9th Schedule of the constitution, which had already been upheld by the court. ^[citation needed]
Unni Krishnan, J.P. & Others. v. State of Andhra Pradesh & Others. 1993 (1) SCC 645	The right to establish educational institutions can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). ^[clarification needed]	This was overruled in T.M.A. Pai Foundation v State of Karnataka (2002 8 SCC 481) ^[citation needed]

P. A. Inamdar v. State of Maharashtra 2005 AIR(SC) 3226	Reservations cannot be enforced on private educational institutions which do not receive government funding.	93rd constitutional amendment introduced Art 15(5).
Ashoka Kumar Thakur v. State of Bihar 1995 5 SCC 403	The supreme court overruled further criteria Bihar and Uttar Pradesh had codified to identify the "creamy layer", such as educational qualifications and property holdings, as arbitrary and unconstitutional. ^[15]	
Ashoka Kumar Thakur v. Union of India 2007 RD-SC 609 ^[16] [unreliable source?]	Upheld the 93rd Amendment; found creamy layer principle applies to OBCs and not STs and SCs. The government must set reservation thresholds to ensure quality and merit do not suffer, and set a deadline to reach free and compulsory education for every child.	Recommended reviews of backwardness every 10 years.
Janhit Abhiyan vs Union Of India Writ Petition (Civil) No(S). 55 OF 2019 ^[17]	Upheld the 103rd Amendment which introduced 10% reservation for Economically Weaker Section (EWS) in education and public employment.	It held that the 50% cap on quota is not inviolable and affirmative action on economic basis may go a long way in eradicating caste-based reservation. ^{[18][19]} This constitutional amendment pushed the total reservation to 59.50% in central institutions.

Source: Wikipedia.com

V CONCLUSION & WAY FORWARD

Summarizing the evolution of judicial observations, the court have largely following the lead of the legislature and the executive and when they did intervene occasionally it was mainly to regulate and modify, rather than to innovate or redirect policies.

Equality and constitutional reasonableness are basic features of the constitution. **Positive discrimination** as represented in our reservation system can lead to important **advances in societies** along with **deep-seated social inequalities**, but that such systems **must be periodically examined and redesigned**. The most obvious reform would be **to reduce the number of relatively wealthy beneficiaries**. This could be done both by enhancing **enforcement of the existing creamy layer system** and by **refusing to grant reservations to relatively prosperous castes** on purely political grounds. Creation of **sub-categorisation** or **creating categories within reservation** as recently suggested for OBCs. This would **ensure "equitable distribution"** of representation among all communities.

There is a 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 benefit from the provision or even whether such provisions exist. 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. 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.

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