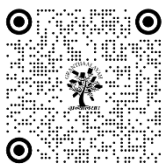


SOCIAL JUSTICE THROUGH RESERVATIONS IN INDIA - A CONSTITUTIONAL ANALYSIS

Prof. (Dr.) K.S. Gopalakrishnan ¹

¹Principal, Government Law College, Coimbatore



DOI

[10.29121/shodhkosh.v3.i1.2022.5243](https://doi.org/10.29121/shodhkosh.v3.i1.2022.5243)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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ABSTRACT

The reservation system in India aims to end caste discrimination and inequalities, promoting social upliftment and representation for the weaker sections of society. It consists of positive discrimination policies utilized by the government to help the weaker section to access employment and education in India. Sub-classification and internal reservation within the reserved categories aims to uplift the people who are not able to avail the benefits along with other communities within the reservation of common parlance of their reserved category. The paper aims in addressing the concept of social justice through reservations in India by highlighting the constitutional mandate for reservation and analysing the internal or reservation within reservation policies. The concept of creamy layer is critically analysed in order to ensure social justice within the backward classes and finally the paper suggests the pro-active measure for ensuring proper reservation in India.

Keywords: Reservation, Positive Discrimination, Scheduled Castes, Scheduled Tribes, Creamy Layer, Mandal Commission

1. INTRODUCTION

The concept of reservation system in India has served as a foundation for social justice, focusing on elevating historically backward communities. The structure based on the Indian Constitution guarantees equal opportunities in employment, education, and political representation for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). Throughout the years, reservations have deeply impacted Indian society promoting

development for historically disadvantaged communities while also sparking discussions regarding their extent and efficiency.¹

The changing dynamics of reservations in India have resulted in the implementation of sub-classification, especially within the OBC, SC and ST categories. This policy seeks to change the imbalanced allocation of reservation advantages among various sub-groups within the larger category. Through the creation of sub-classification, the policy aims to guarantee that the marginalized groups to obtain their fair portion of benefits, aiming a more just distribution of resources and opportunities. This article will examine the constitutional basis supporting the reservations system, the historical background of it and the effects of the new sub-categorization policy by highlighting the changing dynamics of reservations in India.²

2. ORIGIN OF POSITIVE DISCRIMINATION

Positive discrimination is a kind of equity conscience action taken by the government to help the under developed people, so that they can march towards the developed community without any hassle. The idea of reservations in India originates from the pre-independence period, mainly aimed to tackle the deep social disparities and historical wrongs experienced by certain communities. The initial type of reservations was established in the late 1800s and early 1900s during the colonial period. The Government of India Act of 1909³ established a unique electorates for Muslims, initiating the formal acknowledgment of minority rights. The differing perspectives of Mahatma Gandhi and Dr. B.R. Ambedkar greatly impacted the evolution of reservation policies. The Poona Pact⁴, rooting from their discussions, guaranteed reserved seats for the Scheduled Castes in provincial legislatures under the joint electorate system. This accord represented a significant turning point in the development of India's reservation system, influencing the trajectory of social justice and political representation for underprivileged groups.⁵

3. INDIAN CONSTITUTIONAL PROVISIONS

The Constitution of India advocates a strong argument favoring the concept of affirmative action's by the State and by following provisions, they are evident.

- 1) Article 15(1): Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- 2) Article 15(4)⁶: Permits the State to make special provisions for the advancement of Socially and Educationally Backward classes or SCs and STs.
- 3) Article 16(1): Ensures equality of opportunity in public employment for all citizens.
- 4) Article 16(4): Permits the State to make provisions for reservations in public employment for backward classes of citizens
- 5) Article 46: Directs the State to promote the educational and economic interests of SCs, STs, and other weaker sections of society.
- 6) Article 330 and Article 332: Provides reservation or SC and STs in the House of People and Legislatures
- 7) Article 335: Reservation for SC and ST in the Union and States Services and Posts.
- 8) Article 338-B⁷: National Commission for Backward Classes.
- 9) Article 340: Appoint of commission by President to investigate the conditions of backward classes.

¹ Raj, P. A., & Gundemeda, N. The Idea of Social Justice: A Sociological Analysis of the University Students

² M. S. Y. S., & Gokulraja, M. P. (2015). An Analysis of Reservation System in India. International Journal of Research (IJR), ISSN,(2348-6848).

³ <https://www.britannica.com/topic/Indian-Councils-Act-of-1909>. Last visited on 31/12/2024.

⁴ <https://www.constitutionofindia.net/historical-constitution/poona-pact-1932-b-r-ambedkar-and-m-k-gandhi/>. Last visited on 31/12/2024

⁵ Kumar, G. Reservation Policy in India: A Critical Analysis. Issue 3 Int' lu Mgmt. & Human., 5, 6307.

⁶ Inserted via Constitution (First Amendment) Act, 1951

⁷ Inserted via Constitution (One Hundred and Second Amendment), 2018.

- 10) Article 341: President power to designate certain group as Scheduled Castes. Parliament can include and exclude the lists from SCs through law
- 11) Article 342: President power to designate certain group as Scheduled Tribes. Parliament can include and exclude the lists from SCs through law

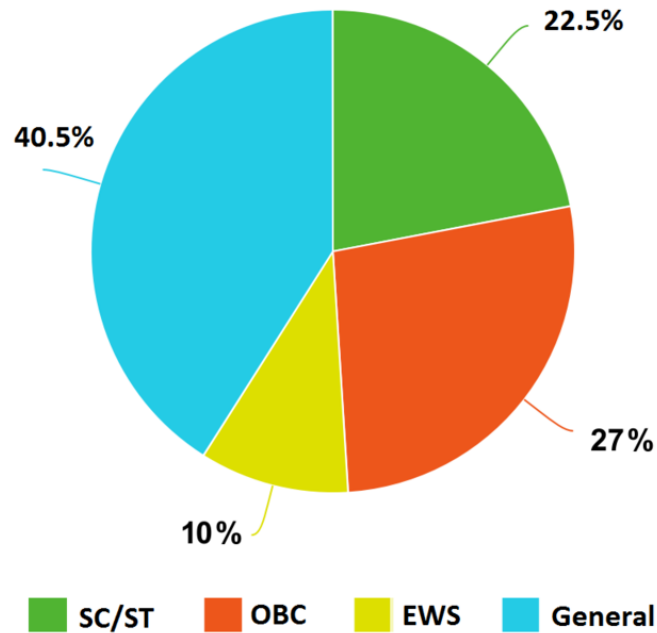


Chart 1: Reservation Percentage in India

4. RESERVATIONS WITHIN RESERVATION: SUB-CATEGORIZATION OF CASTES

Reservations within reservation and the Sub-categorisation involves splitting larger reserved categories into various smaller sub-groups to promote a fairer distribution of benefits. In the Indian setting, this mainly pertains to the Other Backward Classes (OBC), Scheduled Castes (SCs) and Scheduled Tribes (STs) which is a wide-ranging and varied group that includes several castes and communities experiencing different degrees of social and economic hardships. The aim is to tackle intra-category inequalities and guarantee that the advantages of reservations benefit the underprivileged sub-groups within their reserved classifications.⁸

⁸ Retna, S. K. (2012). The Reservation System in India-An evaluation of political reservation and poverty reduction (Doctoral dissertation, Georgetown University).

5. SUB-CATEGORIZATION OF SCHEDULED CASTES AND SCHEDULED TRIBES

In 1975, the Punjab government has released a notification for dividing its Schedule Caste 50% reservation into two categories Balmikis and Mazhabi Sikhs. It was the first time existing reservations being 'sub-classified' by an Indian state⁹. The notification for 30 years, until the legal challenges in the 2004¹⁰

In 2004 a five-judge Bench struck down the Andhra Pradesh Scheduled Castes Rationalization of Reservations Act, 2000 in *E.V.Chinniah Vs State of Andhra Pradesh*¹¹. The Act was challenged before the High Court and later the Supreme Court, which declared it 'ultra vires to the Indian Constitution' as it is against the Article 341 of the Constitution. This provision permits the Indian President to notify a list of SCs for each State, and mandates that the list can only be amended by Parliament. The case prohibited sub-classifications within SCs as it was found to violate constitutional provisions but recognized such distinctions within Other Backward Classes (OBCs). It formulated that SCs and STs are homogeneous groups incapable of further regrouping or classification. The Court observed that the State governments had no power to tinker with the list because it was evident on a bare reading of Article 341 that such authority vested only with the Parliament of India

In 2006 the Punjab & Haryana High Court, in *Dr Kishan pal v. State of Punjab*, struck down the 1975 notification on the basis of *E.V. Chinniah* decision. The Punjab government re-enabled the sub-categorisation through the Punjab Scheduled Caste and Backward Classes (reservation in services) Act, 2006, In 2010 the aforesaid Act was struck down in 2010 by Punjab and Haryana High Court. Eventually in 2014, the Supreme Court of India referred this matter to a five-judge constitution bench, further the Constitutional bench holds that the *E.V. Chinniah* decision needs reconsideration and referred it to the larger bench consisting of 7 Judge Bench, which is in interpretation.¹²

6. SUB-CATEGORIZATION IN OTHER BACKWARD CLASSES

The following timeline represents the landmark decisions taken in India for sub-categorization with respect to backward classes.

- 1) 1979: The central government set up the Mandal Commission to identify groups that were socially or educationally disadvantaged. The commission employed social, economic, and educational criteria, with a particular emphasis on Other Backward Classes (OBCs).
- 2) 1980: The Mandal Commission's report proposed reserving 27% of government jobs for Other Backward Classes (OBCs).
- 3) 1990: The V.P. Singh government implemented a 27% reservation for Other Backward Classes (OBCs) in government employment.
- 4) 1991: The Narasimha Rao government made adjustments to prioritize the economically disadvantaged segments within the OBCs by introducing the concept of creamy layer.
- 5) 1992: In the *Indra Sawhney vs. Union of India*¹³, the Supreme Court affirmed the government's decision to reserve 27% of government jobs for OBCs. It also ruled that the "creamy layer," or the more privileged members of the OBCs, should be excluded from the reservation benefits. However, the court clarified that the creamy layer concept does not apply to Scheduled Castes (SCs) and Scheduled Tribes (STs).
- 6) The states involved in the examination of the issues related to Other Backward Classes (OBCs) and provided reservation by sub-categorization are Andhra Pradesh, Telangana, Puducherry, Karnataka, Haryana, Jharkhand, West Bengal, Bihar, Maharashtra, and Tamil Nadu.

⁹ Circular No. 1818-SW-75/10451 dated 5.5.1975

¹⁰ Kumar, G. Reservation Policy in India: A Critical Analysis. International Journal of Law Management & Humanities, 5 Issue 3.

¹¹ 2005) 1 SCC 394

¹² Galanter, M. (1984). Competing Equalities: Law and the Backward Classes in India

¹³ AIR 1993 SC 477

- 7) In 2017, the Central government established the G Rohini Commission under Article 340 of the Indian Constitution, with the approval of the President of India. Article 340¹⁴. Before the Rohini Commission was set up, the National Commission for Backward Classes (NCBC) had been granted constitutional status through the 102nd Amendment Act of 2018¹⁵. The commission was tasked with investigating the uneven distribution of reservation benefits within the OBC category, aiming to develop a scientific approach to sub-categorize OBCs based on specific criteria, norms, and parameters. Additionally, the commission was responsible for identifying and classifying castes, communities, and sub-castes in the Central List of OBCs and reviewing the list for inconsistencies, repetitions, ambiguities, or errors in transcription and spelling, a process that was initiated in 2020¹⁶.
- 8) In 2018, the commission reviewed data on 1.3 lakh central government jobs filled under the OBC quota over the past five years, along with OBC admissions to central higher education institutions such as universities, IITs, NITs, IIMs, and AIIMS over the previous three years. The findings of this analysis revealed that 97% of the jobs and education seats were concentrated among just 25% of the OBC castes, and a mere 10 OBC communities secured 24.95% of the opportunities. The analysis also highlighted that 983 OBC communities, accounting for 37% of the total, had no representation in either government jobs or educational institutions. Furthermore, 994 OBC sub-castes were represented by only 2.68% of the total recruitments and admissions. However, the findings were limited by the lack of updated population data¹⁷.

7. CONCEPT OF CREAMY LAYER IN INDIAN RESERVATION SYSTEM

The "creamy layer" concept in India's reservation system focuses the more affluent and socially advanced individuals within the Other Backward Classes (OBCs) to ensure reservation benefits to get reach the genuinely disadvantaged. It was Introduced by the Supreme Court in the landmark *Indra Sawhney v. Union of India*¹⁸ case in 1992, the Court observed that the 27% reservation for OBCs but mandated the exclusion of the creamy layer from these benefits. This principle is grounded in the idea that individuals who have achieved significant social and economic advancement are comparable to members of forward classes and, therefore they are not eligible for reservation benefits intended for the underprivileged.¹⁹

The basic criteria for finding the creamy layer comprises both economic and social factors. Economically, families with an annual income exceeding Rs 8 lakh are considered part of the creamy layer, although this threshold has not been updated since 2017. Socially, children of high ranking government officials (such as Group A and B officers), constitutional post holders, and professionals like doctors, engineers, and lawyers with substantial income and status are also excluded from OBC reservation benefits. Especially, income from salaries and agricultural land is not included in calculating the income threshold.

It's crucial to note that the creamy layer concept currently applies only to OBCs and not to Scheduled Castes (SCs) and Scheduled Tribes (STs). While there have been discussions about extending this principle to SCs and STs, it has not been implemented so far, as these communities are generally seen as requiring continued support due to historical social and economic disadvantages. The creamy layer doctrine aims in preventing the

¹⁴ Article 340: President grants the the authority to form a commission to investigate the issues faced by OBCs and make recommendations for their improvement.

¹⁵ Article 338B: constitutional status given to National Commission for Backward classes inserted by 101st Constitutional Amendment Act, 2018

¹⁶ <https://pib.gov.in/newsite/printrelease.aspx?relid=171331>

¹⁷ <https://www.hindustantimes.com/india-news/explained-what-is-the-rohini-commission-on-obcs-101691058793660.html>

¹⁸ AIR 1993 SC 477

¹⁹ Chauhan, C. P. S. Education and caste in India. *Asia Pacific Journal of Education*, 28(3), 2008 p. 217- 234.

monopolization of reservation benefits by the more privileged within backward classes, thereby promoting equitable distribution and social justice.

8. CHALLENGES INDIA FACES IN SUB-CATEGORISATION OF RESERVATIONS

The sub-categorisation policy, aimed at promoting fairness and equity, faces several challenges:

- 1) Practical Challenges in implementation: The process of categorizing sub-groups within reserved categories is resource-intensive, time-consuming, and difficult to execute accurately.
- 2) Social stigma: Dividing reserved groups may increase competition for resources, potentially causing conflicts and divisions among communities, which requires careful management.
- 3) Administrative Challenges: Implementing the policy involves updating administrative systems, policies, and training, which can be slow and meet resistance.
- 4) Political Interruption: The policy can be politically controversial, with concerns that it complicates the system or unfairly benefits certain sub-groups, making consensus-building essential.
- 5) Balancing Merit and Social Justice: Critics fear that sub-categorization could undermine merit-based systems, posing a challenge in maintaining both efficiency and social justice.

9. SUGGESTIONS

Sub-categorization seeks to address inequalities within larger reserved categories by ensuring that each sub-group receives an equitable share of benefits. This process involves:

- 1) Identification based on data: Collecting and analyzing socio-economic data to identify the most disadvantaged sub-groups, ensuring that sub-categorisation is based on objective and accurate assessments of need.
- 2) Social Inclusion: Crafting reservation policies that cater to the specific needs of different sub-groups, including setting appropriate quotas, providing targeted support, and regularly reviewing policies for effectiveness.
- 3) Regulatory Policies: Establishing strong systems to track the socio-economic progress of sub-groups, identify gaps, and make necessary adjustments to policies.²⁰

Though there are few challenges, its potential to promote fair distribution of benefits and reduce intra-category disparities is substantial. Successful implementation requires careful planning, transparency, and inclusive approaches to ensure social justice in India.

10. CONCLUSION

As India is marching towards its journey from developing to developed country it becomes increasingly important to purify and adapt the reservation policies to address new challenges. The introduction of sub-categorization within existing reserved categories is a meritorious step toward making the system more inclusive, particularly by addressing disparities that exist within these larger groups. However, it is significant that the implementation of this policy is carefully managed to avoid exacerbating social tensions or adding unnecessary complexity to administration. The future of India's reservation policies will depend on continued collaboration between the government, judiciary, and civil society.

Having a balance between merit-based criteria and the principles of social justice is important as the nation strives to advance positive discrimination without undermining overall efficiency. By adopting a data-driven and social inclusive

²⁰ Human Rights Watch, and CHRGI. 2007. Hidden Apartheid: Caste Discrimination Against India's 'Untouchables'.

approach, India can move closer to a more just society where every individual has the opportunity to realize their full potential and contribute meaningfully to the country's progress. Hence the ongoing evolution of India's reservation system throws light on the need for persistent efforts toward social justice. Through effective policymaking, transparent procedures, and a focus on social inclusion. If these are achieved, then India will be a land of peace and harmony.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.

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