# Reservation Policy

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1 Introduction

Definition:
Reservation in Indian law is a form of affirmative action whereby a percentage of seats are reserved in the public sector units, union and state civil services, union and state government departments and in all public and private educational institutions, except in the religious/linguistic minority educational institutions, for the socially and educationally backward communities and the Scheduled Castes and Tribes who are inadequately represented in these services and institutions.

The reservation policy is also extended for the Scheduled Castes and Scheduled Tribes for representation in the Parliament of India.

Constitutional Provisions:
The exact necessities for the reservation in services in favour of the members of the SC/STs have been made in the Constitution of India. They are as follows:

- **Article 15(4) and 16(4)** of the Constitution enabled both the state and Central Governments to reserve seats in public services for the members of the SC and ST, thereby, enshrining impartiality of opportunity in matters of civic service.
- **Article 16(4 A)**: it makes provisions for reservation in the matter of promotion to any class or classes of posts in the services under the State in favour of SCs and STs (Constitutional 77th Amendment, - Act, 1995).
- **Article 16 (4 B)**: It enables the state to fill the unfilled vacancies of a year which are reserved for SCs/STs in the succeeding year, thereby nullifying the ceiling of fifty percent reservation on total number of vacancies of that year (Constitutional 81st Amendment, - Act, 2000).
- **Article 330 and 332**: It provides for specific representation through reservation of seats for the SCs and the STs in the Parliament (Article 330) and in the State Legislative Assemblies (Article 332), as well as, in Government and public sector jobs, in both the federal and state Governments (Articles 16(4), 330(4) and 335).

Rationale:
The underlying theory for the provision of reservation by the state is the under-representation of the identifiable groups as a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST).

The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities.

Present Status:
After introducing the provision for reservation once, it got related to vote bank politics and the following governments and the Indian Parliament routinely extended this period, without any free and fair revisions. Later, reservations were introduced for other sections as well.

The Supreme Court ruling that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. The central government of India reserves 27% of higher education for Other Backward Castes, and individual states may legislate further reservations. Reservation in most states is at 50%, but certain Indian states like Rajasthan have proposed a 68% reservation that includes a 14% reservation for forward castes in services and education.

However, there are states laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69% and is applicable to about 87% of the population in the state of Tamil Nadu.
2 Achievements of Reservation Policy

1) Reservations are a political necessity in India, for giving due representation to all sections.

2) Although Reservation schemes do undermine the quality of education but still Affirmative Action has helped many if not everyone from under-privileged and/or under-represented communities to grow and occupy top positions in the world’s leading industries.

3) Reservation schemes are needed to provide social justice to the most marginalized and underprivileged which is their human right.

4) Meritocracy is meaningless without equality. First all people must be brought to the same level, whether it elevates a section or decelerates another, regardless of merit.

5) Reservations have only slowed down the process of “Forward becoming richer and backward becoming poorer”.

3 Negative fall-outs of Reservation Policy

1) Reservation is similar to internal partition because in addition to being a form of ethnic discrimination, it also builds walls against inter-caste and inter-faith marriages.

2) Reservations are the biggest enemy of meritocracy. By offering reservation through relaxed entry criteria, we are fuelling inflation of moderate credentials as opposed to the promotion of merit based education system, which is the foundation of many progressive countries.

Meritocracy should not be polluted by injecting relaxation of entry barriers, rather should be encouraged by offering financial aids to the underprivileged although deserving candidates only. Today the IITs and IIMs hold a high esteem in the global scenario due to their conservation of merit.

3) Caste Based Reservation only perpetuates the notion of caste in society, rather than weakening it as a factor of social consideration, as envisaged by the constitution. Reservation is a tool to meet narrow political ends, by invoking class loyalties and primordial identities.

4) Affirmative Action can be provided at a more comprehensive level taking into account various factors of exclusion such as caste, economic conditions, gender, kind of schooling received etc. A comprehensive scheme of Affirmative Action would be more beneficial than reservations in addressing concerns of social justice.

5) The benefits of reservation policy have largely been appropriated by the dominant class within the backward castes, thereby the most marginalised within the backward castes have remained marginalised. It has been observed that mostly the beneficiaries of reservation have been the children of the highest paid professionals and high rank public officials.

6) Poor people from “forward castes” do not have any social or economic advantage over rich people from backward caste. In such a case, discriminating against the “forward caste” goes counter to the logic of reservation. It would create another “backward class” some years down the line.

This ‘perceived’ injustice breeds frustration and apathy in the society. The recent protests demanding quotas by some of the forward castes, in Gujarat and Rajasthan, is the testimony to this fact. For example, in Tamil Nadu, forward castes were able to secure only 3% of total seats (and 9% in Open Competition) in professional institutions at Undergraduate level as against their population percentage of 13%. This is a clear case of reverse discrimination.
4 Supreme Court Judgments

In a case Balaji v/s State of Mysore (AIR 1963 SC649) it was held that ‘caste of a person cannot be the sole criteria for ascertaining whether a particular caste is backward or not. Determinants such as poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. The court further held that it does not mean that if once a caste is considered to be backward it will continue to be backward for all other times. The government should review the test and if a class reaches the state of progress where reservation is not necessary it should delete that class from the list of backward classes.’

What is surprising is that our constitution clearly is a reservation-friendly constitution but nowhere in the constitution is the term ‘backward classes defined. What actually constitutes a backward class? What are the determinants of a backward class? These questions remain unanswered and it is only with the help of judicial pronouncements that they have been given some meaning. Question arises how can reservations be made for something that has not been defined?

Recently, while quashing the previous government’s decision to include Jats in the OBC category, Supreme Court said: “An affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens, which is constitutionally mandated. It is the identification of these new emerging groups that must engage the attention of the state.”

5 Possible Way Forward

Opportunities for all disadvantaged children, equity, fairness and common sense should be the guiding principles in evolving a more rational model of reservations. What can be done towards this end?

1) **De-reservation Policy:** While caste may continue to be the mainstay of reservation policies, the benefits should flow to the vast majority of underprivileged children from deprived castes; not to a few privileged children with a caste tag. Families of public officials of a certain rank certain high income professionals and others above a certain income should be de-reserved.

   In other words, once they have received a significant advantage of reservations, they should be able to ensure opportunities for their children and vacate the space for the truly disadvantaged children in their own caste groups.

2) **Affirmative steps:** We have to address the anger and aspirations of poor families among unreserved communities. With the Supreme Court ruling of 50 per cent ceiling on reservation quotas, no further reservation is possible. But intelligent, creative, fair and practical ways of giving the poorer children among OBCs a helping hand are possible and necessary. For instance, parental education and the school the child attended, are two sure indicators of poverty and the backwardness of a family. If parents have not had education beyond school, and if the child goes to a government school or a low-end, ramshackle private school, it is a sure sign of a lack of adequate opportunity.

3) Make education mandatory and free for all till age of 17

4) Instead of introducing reservations for these backward classes what is required is to bring about revolutionary changes in our education system at the grass-root level. When proper education is not provided to children belonging to such categories during the primary stage itself then on what basis are the reservations provided at a subsequent stage.

5) Reservations on the basis of caste and not on the basis of other conditions are unacceptable. Fair and just reservations to uplift the people with poor conditions of life, those who don’t have meals to eat, clothes to wear and no home to live in. They shall be made on the basis of factors such as gender as women are more disadvantaged than men since primitive times, domicile, family education, family employment, family property, family income and if any disabilities and traumas. The process of reservation should be such that it filters the truly economically deprived individuals and bring them all to justice.
6 Conclusion

The issue of reservation has remained a cause of disagreement between the reserved and the non-reserved sections of the society. While the unreserved segments, keep on opposing the provision, the neediest sections from within the reserved segments are hardly aware about how to get benefited from the provision or even whether there are such provisions.

On the contrary, the creamy layer among the same segment is enjoying special privileges in the name of reservation and political factions are supporting them for vote banks. Reservation is no doubt good, as far as it is a method of appropriate positive discrimination for the benefit of the downtrodden and economically backward sections of the society but when it tends to harm the society and ensures privileges for some at the cost of others for narrow political ends, as it is in the present form, it should be done away with, as soon possible.

It is time we address the challenge of reservations honestly, openly, fairly and innovatively. We cannot bury our heads in the sand forever like an ostrich.