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UNFOLDING THE COLD REALITY OF HOW CASTE BASED RESERVATION IN INDIA BARRICADES THE ECONOMIC UPSWING.

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Unfolding the Cold Reality of How Caste Based Reservation in India Barricades the Economic Upswing.

Abdul Noor N &,Aswani C Rajeev

As the preamble of the constitution of India suggests, achievements of social, economic, political justice and equality of status and opportunity is considered as one of the paramount purposes of our constitution. We do believe that the reason behind the inclusion of reservation of education seats was to promote social justice. It's high time to check whether it serves its purpose.

Reservation in India is the process where a certain percent of the seats are set aside for so-called 'underdeveloped' or 'backward castes' in government institutions. These sections weren't able to enjoy their basic human rights because of the caste system that prevailed long ago.

The history of reservations in India started before the independence of the nation. Long before the first democratic government of India, the rulers of different regions understood the need for reservation among their citizens. First of them was the maharaja of the princely state of Kolhapur who introduced the reservation for non-Brahmins in the year 1902. But reservation in the newly independent India was only discussed in 1954. In 1932, Mac Donald announces the proposal of minority representation, which is known as a communal award granted separate electorates in British India for the forward castes, Muslims, Buddhists, Sikhs, Indian Christians, Anglo Indians, Europeans and Dalit. The depressed classes were assigned a number of seats to be filled by election from special constituencies in which voters belonging to the depressed classes only could vote. This was protested by Mahatma Gandhi and he went on a hunger strike. Gandhi was afraid of the division because of the fact it would disintegrate Hindu society.

In the case of *State of Madras Vs. Smt. Champakam Dorairajan*¹, Court held that caste-based reservations as per Communal Award violate basic rights. But, the Nehru government introduced the 1st constitutional amendment² and made this decision invalid.

The government of India saw reservations mainly as a method for eradicating untouchability, the major issue India faced. Untouchability, which was primarily faced by SC and ST communities were also outlawed by the constitution of India. For the eradication of 'untouchability' it was necessary that the SC and ST community of India be uplifted, socially and economically. With this motive, the ministry of education suggested 20 % place to be reserved for the SCs and STs and a 5% relaxation in terms of qualifying marks for admission in educational institutions in 1954. After 28 years, in 1982, 15% and 7.5 % of vacancies in public sectors and educational institutions was then made reserved for SC and ST respectively. When the constitution came in 1950, the provision for reservation was to cease after 10 years. However, the conditions of SC/ST showed no progress and necessary amendments were brought again and again to the constitution which led to the 95th amendment act 2009 whereby the reservation will cease only after 70 years.

An important change in the reservation in India happened when the Mandal commission was assigned in the year 1979. In 1980; the commission submitted a report indicating the need of reserving 27% of places in the public sector for other backward communities. The Mandal commission also suggested similar changes in the admissions into educational institutions. These suggestions were only implemented in the 1990s. In 1992, the Supreme Court of India ruled that the reservations could not exceed more than 50% and judged any reservation above 50% as violative of equal access guaranteed by the constitution of India. It is to be noted that even the recent amendment of the constitution exceeds 50%. In

¹ *State of Madras v Champakam Dorairajan*, (1951) AIR SC 226 (India).

² Constitution (First Amendment) Act, 1951.

2019, the government of India amended the constitution giving the 103rd amendment act³ which provided 10% of reservation in government jobs and educational institutions to the economically weaker sections of the general category. This reservation scheme which was not given to those who were included in other reservation quota was much needed in the present-day India.

Grounds for Introducing Reservation

Before questioning the need for caste-based reservation in the present-day India, it would be fair to know why we needed this kind of reservation policy in the first place. The framers of the constitution of India firmly believed that caste-based reservation policy would be a revolutionary step, which would bring a change to the discriminatory tradition followed in this land rich in culture. Did it work? Is a counter-question. Beyond the shadow of a doubt, this policy was mandatory for the newly independent India, where people were divided on the basis of caste to which they were born. The fact that reservation based on caste started in India way before the independence of the nation shows that this ideology was right at that time to correct the historical injustice faced by backward castes.

The framers of the constitution of India had mainly one thing in their mind when reservations based on caste was established, that being the complete eradication of untouchability. Untouchability is the practice of ostracizing certain minority groups by segregating them from the mainstream by social custom or legal mandate. In India at that time, the Dalit community was considered as polluting and they were made to be separated from certain castes that considered themselves to be above other castes. In the worst-case scenario, the so-called “lower” caste people were not allowed to walk through public roads which were used by the “upper” caste. This kind of custom which killed the soul of the nation

³ Constitution (103rd Amendment) Act, 2019, introduces 10% reservation for Economically Weaker Sections.

had to be eradicated at any cost. Reservation based on caste was surely a method to do that.

The people of the lower caste were discriminated against in all ways possible by the upper-caste. So, it is more than reasonable to worry about the chances of the lower-class to having an equal opportunity of education and work and more importantly their wellbeing. The group of people who were considered to be polluted was never allowed to be in the same room as the upper-class. Even the touch of a lower-class was considered a wrong by upper-class people. At that time reserving seats for the lower-class was one of the necessary ways to abolish this custom. Reserving seats to the lower-class which is not available to the upper-class would bring equality in opportunity. Abolishing the untouchability can help the lower-class to rise socially and economically.

During the time of independence, India was mainly divided in terms of caste. Those who were seen at the apex of that division were always at the top of the chain in terms of all privileges. Due to this, only upper-caste people succeeded. The lower-class people remained where they were, which is always at the bottom of the table. On the other side, the upper-class was rich, they were having a very luxurious life with acres of land and the lower-class suffered poverty at that time. As a result, it widened the gap between the rich and the poor. Adequate chances for excellence had to be provided for the lower-class. Reserving seats on the basis of caste helped the lower-classes to have opportunities in education and work. More than that, they got a chance to prove themselves in a world where they were always ignored. In particular, two key objectives such as protection from atrocities and adequate representation gained relevance. The caste-based reservation system clearly gave the lower-class a way to represent themselves in different sections of our society.

After the submission of a detailed report by the Mandal commission, it became clear that there were other people among Indian citizens who required reservation.

These sections needed reservation for getting an equal opportunity. When these reservations were allotted, then the total percentage of reserved seats increased. But this decision was fair because this number of reserved seats were needed at that time. This reservation for the socially and economically backward community helped in upbringing a large group of citizens who were struggling to have a standard living. This community continued to be in that stage for a longtime. Even though this section didn't face any sort of untouchability, poverty was engulfing them. This so-called 'Other Backward Community' was the larger percentage of the poor section of India. The upbringing of this class was also a priority for the makers of the constitution.

As per article 15 (4), 15(5), and 15(6)⁴ of the constitution of India, there is a need to advance SC/ST or other weaker sections. So, by giving reservation we are giving reasonable opportunity to represent themselves in the services under the state. Additional relaxations like upper age relaxations, additional attempts, lower cut off marks are also provided to these categories in order to bring them to the forefront. For example, the UPSC (Union Public Service Commission) conducts various examinations in the country to recruit candidates for various posts in the Government of India. The UPSC age limit varies from candidates to candidates based on the category to which they belong. The upper age limit will be relaxable up to a maximum of 5 years if a candidate belongs to a scheduled caste or scheduled tribe. The number of attempts till that age limit is unlimited for them.

Reservation for SC/ST in services is not only to give jobs but also it aims at empowering them in all ways. The State is ensuring fuller participation in the

⁴Article 15(4) says that, Article 15 and Article 29 shall not prevent the state from making any special provision for the advancement of any SEBC of citizens or for the SCs and STs.

Article 15(5) empowers the country to make reservations with regard to admissions in to educational institutions both privately run and those that are run by the government.

Article 15(6) is added to provide reservation to economically weaker sections for admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of Article 30.

decision-making process. As a way to do it, they are provided with relaxations in direct recruitment and promotions.

The ministry of social justice and empowerment is the nodal ministry to oversee the interests of the SC. The efforts made by the state government and the central government for protecting and promoting the interest are also monitored. Thus, from all this, we can understand the fact that our government is putting the maximum effort to uplift them in all possible ways.

Seven decades after independence, where everything has changed from what it used to be, it would be right to question whether the caste-based reservation is needed right now. For a country like India which is large in terms of its population, there is a need for reservation for providing its citizens with equal opportunity.

Problems and End Result

In India reservation is provided in government educational institutions like IIM, IIT as per Article 15 (4), (5), and (6). And in government jobs like IAS, IPS, etc. as per article 16 (4) and (6)⁵. Before 2019, the reservation was mainly for social and educational backwardness. But now with the 103rd constitutional amendment in 2019, economic backwardness is also considered.

The present reservation quota in India for higher educational institutions and government jobs are given below:

Category	Reservation (In %)
ST	7.5

⁵Article 16(4) - Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts 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.

Article 16(6) is added to provide reservations to people from economically weaker sections in government posts.

SC	15
OBC	27
EWS	10
TOTAL	59.5

Here, vacancies for SC, ST and OBC can only be filled by them. About 60% are reserved in India and the remaining 40 % of seats are available under merit. In this merit seat, not only the general category but also other categories can also compete. According to article 16(4A)⁸, SC/ST is also provided with reservation with respect to direct recruitment and promotion.

There is no concept of the ‘creamy layer’ in SC/ST reservation. This means that irrespective of the income status or the government posts held by the parents, children of SC/ST parents will get SC/ST Reservation.

The reservation for OBC is 27% in government jobs and higher educational institutions. The peculiarity of OBC is that it has a concept of creamy layer. Persons who are in Non-Creamy Layer will only get the benefits of OBC reservation. The Central Government constituted a commission chaired by Justice Ram Nandan Prasad to identify the creamy layer among OBC. The recommendations of this commission were approved by the central government. Based on this, certain guidelines and criteria for excluding creamy layer among OBC have been issued by the Central Government.

If the parents are not directly recruited Class1 (Group A) or Class2 (Group B) officers or they do not occupy any constitutional posts (like that of President, Vice President, Governor etc.) then they are most likely to fall under Non-Creamy Layer OBC. If the parents are not employed by the government, their income should be within the limits by the government to be treated as Non-Creamy Layer OBC. In order to qualify as an OBC non-creamy layer candidate, the applicant’s

parents' annual income should be less than Rs. 8 lakhs. The purpose of the OBC reservation (non-creamy layer), is to uplift the most deserving candidates among backward classes. A 10 % is provided for the Economically Weaker Sections (EWS) among the general category candidates recently. Persons who are not covered under the scheme of reservation for SCs, STs, and OBCs and whose family has a gross annual income below Rs. 8 lakhs (Rupees eight lakhs only) are to be identified as EWSs for the benefit of reservation. Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application. Present Reservation is creating an illusion that the mentioned categories are benefited. Only a few can get this privilege and these will be mostly from the creamy layer. There are many out there who are facing problems with respect to reservation. In the case of the general category, their merit and excellence are always ignored in order to give preference for the backward castes. When the merit is ignored, a nation cannot develop. It has been more than decades still; reservation is an ongoing process. By these years, there are still people in backward communities who don't get any of the privileges. Thus, they remain at the bottom. Analysis regarding the effectiveness of the reservation policy is conducted by the government every year. Sad truth is that they are not developing according to their expectations. What Gandhi believed was it is not the protection of the so-called interests of the depressed classes required but the complete cessation of untouchability.

Reservation can act as psychological crutches to students in different categories. For students belonging to the SC category may think that even without studying hard, they can get admission to any college they wish for. It can diminish the need to learn and progress. Naturally, they will become lazier. But for students who belong to the general category, they know that their cut-off marks are high so they try so hard to achieve a seat. But a large number of students in this category are eliminated due to the lesser number of seats available. The reality turns cold

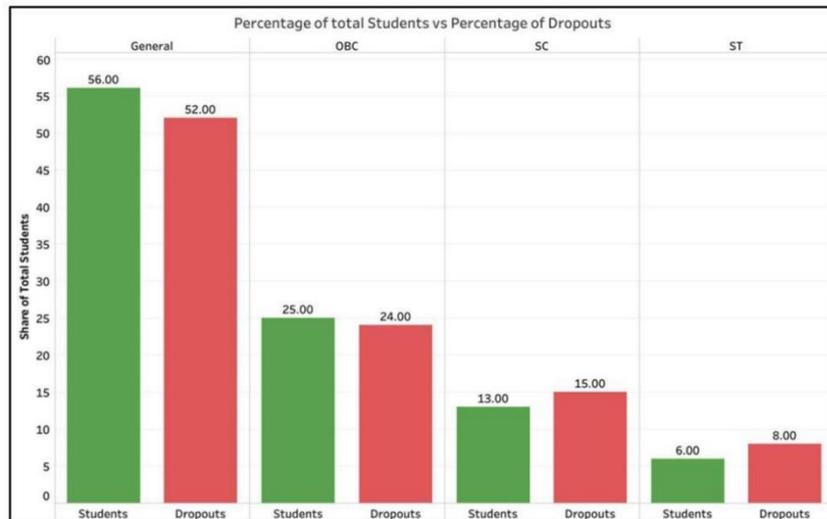
when students with lower marks are easily admitted to the same college in the name of caste which is reserved. It can demotivate them and create the impression that they are born in the wrong place.

For example, an upper-caste youth who got 90 percent in his exams may be denied admission/job, while an SC/OBC who got 40 percent may get it, by virtue of reservation. This naturally causes anguish in the former.

Even now, many people belonging to the “higher castes” of the bygone era are highly apologetic about the atrocities committed by their ancestors and still support equality.

It is easier for SC/ST Communities to have admission in educational institutions than the unreserved. It is also significant that apart from the reservation in the total seats in the educational institutions, the cut off mark for the qualification is also made much lesser than the common cut off mark. For instance, the cut-off mark for the SC/ST communities in the 2019 NEET were 133- 107 while it was 701 – 134. While this difference in the cut off mark is made for the assurance of the excellence of these communities, it does have a negative impact on the whole education system of the nation. It is an important fact that the reserved category candidates have a lower cut off criterion in the entrance exams, but once in college, the passing marks are the same for all. This makes it hard for the reserved category students to cope up with the rest of the class. This ultimately leads them to drop out of these institutions.

For instance, out of 2461 students who dropped out from the Indian Institute of Technology (IIT) between the years 2018 and 2019, 371 were from the scheduled caste (SC), 199 from the scheduled tribe (ST) and 601 were from the other backward community (OBC). This implies that nearly 48 percent of students dropping out of the IIT's are from the reserved category.



In the case of the Indian Institute of Management (IIM), out of 99 students who dropped out between the year 2018 and the year 2019, 14 were from SC, 21 from ST and 27 from OBC category, as per the official HRD data. This shows that over 62.6 percent of dropouts from IIMs are from the reserved category. Among IIMs, the most dropouts were seen in IIM – Indore where a total of 19 students dropped out of which 9 were from the reserved category. In IIM – Kashipuram all the 113 dropouts were from the reserved category.

Even though this drop out can hint at discrimination against these candidates, it also raises questions against caste-based reservation system that allows reserved category candidates with lower marks to have admission in an institute.

What is to be noted is that the percentage of dropouts for SC/ST and OBC candidates is equal or more than that of the unreserved category, while their number of admissions is below unreserved category candidates. The reason for such a trend in drop out is said to be because of the academic stress of the students. When the reserved category students find it difficult to cope up with the required mark percentage to complete the course, they are forced to drop out due to the pressure that they can't handle.

Due to these lower mark criteria for the reserved students, they are only required to put up minimum effort while the unreserved candidates have to do their best for the admission in the same institutions. This may make the reserved category candidates take the examination for granted.

It should be pointed out that at the same time a reserved category student who got the admission by the privilege of lower cut-off mark drop out from the institution due to academic stress, there are students belonging to the unreserved category, who scored more than average marks and still couldn't get admission to the institution itself. Rather than reserving seats on the basis of castes, the government should be focusing on reserving seats to those qualified and deserved.

Reservation is a means to prosper the vote banks of politics. It can hinder the country's growth, development and competency in all aspects. Reservation is chaining all facets of our constitution like a free, democratic, and sovereign nation.

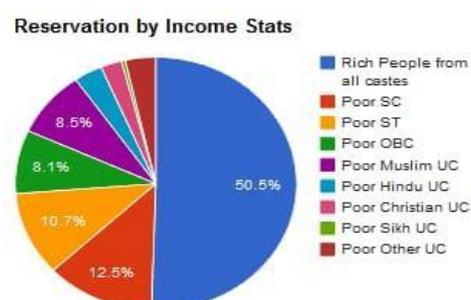
This policy is used for voting campaigns to get more support. No one is going to say no to the benefits. But as citizens of India who abide by the constitution, we all should look for justice. We should be able to raise our voices whenever justice is denied. A policy based on economic status should be brought into existence to improve the growth of the country –that is the one and only key by which India will be a developed country in upcoming years.

It has been striving to strike a balance between the commitment to an over-arching concept of equality in terms of basic freedom and the imperatives of reservation in favor of specific caste. Criticisms of reservation policy, which remained feeble for a long time, have become strident in some regions especially in extending the benefits of this policy to more social groups. Reserved groups are more militant and determined to safeguard the policy and more people are clamoring for 'legal

backward statuses. The upper-caste middle-class youth who are educated are increasingly threatened by the shrinking job market and transient perspective of political elites in enacting provisions for reservation.

If covert casteism distorted class struggle, the right step was removing distortions that had crept into class struggle. It is the politics of caste that motivates politicians to support caste-based reservation. The politicians often dare to question the reservation policy for fear of alienating voters. Changing politics ensures that caste always influences the selection of poll candidates. Only class consolidation can unify votes across castes to create a wave.

Reservation policy based on caste is established in India, to bring the weaker section of the society to economic and social well-being. But even though years after independence, the nation is still clinging on this policy to fulfill its aim. For a nation like India with such a large population reservation is much needed for the empowerment of its weaker section. By weaker section, we mainly mean the poor section of the nation. It is fair to ask that as the reservation policy reserves seats for the so-called lower class of the society; doesn't it cover the poor section also? Well, the truth is it doesn't. At the time of independence, the lower class constituted the major part of the poorer section of the nation. But that situation has changed. In India poverty is not limited to the lower class. There are sections in society who belong to the upper class and still live in poverty. In a country with this kind of situation, reservation based on caste is not a solution as it provides help only to the lower class, while poor people belonging to the upper class don't get any reservation.



It also should be pointed out that there are economically rich people in the lower class who can afford education but still make use of reservation even though they don't need it, while there are poorer people in the so-called upper class that can't afford education and need help from the government but doesn't receive them. What India needs now is a reservation policy based on the economic status of the people rather than their caste.

The EWS reservation which was introduced in 2019, was a major step towards the empowerment of the poor sections of the society regardless of their caste. EWS helped in reserving seats for the poor among the upper-class. But this 10% reservation seats are taken from the 50.5% of seats belonging to the general category. We can't say that EWS reservation is the exact solution that the nation needs. This reservation should have been made about 50% of the total seats available and it should replace the caste-based reservation policy of the nation.

A major revolutionary step was taken when the Supreme Court of India held that the creamy layer of the OBC should be excluded from the reservation. Creamy layer is a term used in Indian politics to refer to some members of a backward class who are highly advanced socially as well as economically and educationally. They constitute the forward section of that particular backward class — as forward as any other forward class member. They are not eligible for government-sponsored educational and professional benefit programs. But the drawback of this was that the concept of non-creamy layer was limited to the OBC category only. This concept of non-creamy layer should have been introduced to all reservation categories.

Apart from these reservation categories, there exists another category called NRI category to which the seats are reserved. This NRI reservation quota reserve seats to the non-residential Indians (NRI), Person of Indian Origin (PIO), Overseas Citizenship of India (OCI) and Foreign Nationals. These NRI quota reserved students have to pay a sufficiently big amount as fees as compared to the other

students. While the caste-based reservation is justified by saying that the weaker sections of the community need representation, there is no way to justify why we need an NRI reservation. Basically, these NRI students belong to rich families and will have a better family background unlike the poorer sections of the nation. When there are students who don't get reservations even though they can't afford education, just because they happened to belong to an upper-caste section, NRI reservation is a slap to their face. NRI students who have the opportunity to have good education don't deserve any reservation as they are fully able to afford the same. Instead of reserving seats to the able ones, the government of India should be focusing on reserving the seats to those who deserve it.

India is a nation with a large population, a population which keeps on increasing every minute. For such a population reservation is necessary. But when the reservation is based on caste, many students who deserve reservation in order to learn are left out. When they don't get the opportunity here, they are forced to look for opportunities outside the nation. Those who do so are seen to stay there rather than returning. This makes India lose its workforce to other nations, while India needs them more than anyone else. This affects the nation negatively. India, even after 7 decades of independence is still a developing nation. For India to become a developed nation, it should be run by the fittest. Reservation based on caste is forcing the fittest of the nation to depend on foreign countries. For this not to happen reservation should be based on economic status rather than caste so that the fittest is never left out.

The surprising fact about the constitution is that nowhere the term backward classes are defined. It is the discretion of the government, either at the state or central government to grant reservation in promotions. This ruling by the Supreme Court has invoked sharp responses from various political parties and stakeholders. However, the fact that reservation cannot be claimed as a fundamental right is a settled position under the law, and it has been pointed out

by several judgments in the past. Since it is not a fundamental right, the government is not obligated to collect data showing a particular community is inadequately represented in public services as per Article 16(4A).

In Indra Sawhney v. Union of India,⁶ the Court observed that the policy of reservation was the state's discretion to keep reservation at reasonable level by taking relevant factors into consideration. The perception is that the term 'creamy layer' which means the elite people in lower castes was coined in this case. Justice Jeevan Reddy stated that the creamy layer must be excluded from getting the benefit of reservation. Because, when a member of class reaches an advanced level of social status, he is no longer represented as backward. The court also held that reservation shall not exceed 50% and no reservation is to be provided in a promotion.

In Ashok Kumar Thakur v. Union of India⁷ it is clear that the identification of SEBC or OBC cannot be solely based on the "caste". In Article 15(4), it is important to notice that it only speaks of classes, not about the caste. If Article 15(4) inserted in the constitution with the purpose of considering "caste" as one of the elements of social and educationally backwardness, they would be mentioned in the Article. The constitution intends to help in the development of backward classes and put social interest above individual interests or groups which are advanced, both socially and educationally. This case also clears some doubt about the identification of socially and economically backward class or other backward castes by the union government.

In the case of M.R. Balaji and Ors. V. State of Mysore,⁸ the state of Mysore issued an order under Article 15(4) of the constitution declaring all the communities except the Brahmins as socially and educationally backward and

⁶ Indra Sawhney v Union of India, (1993) AIR SC 477, (India).

⁷ Ashok Kumar Thakur v Union of India (2008), Writ petition (civil) 265 of 2006

⁸ M R Balaji and Ors. v. State of Mysore (1963) Suppl. 1 S.C.R. 439 (India).

reserving a total of 75 percent seats in educational institutions in favour of SEBC and SCs/STs. Later a similar order was given in which the state reserved 68 percent of the seats in all engineering and medical colleges and technical institutions for SEBC, SCs and STs. Further SEBC was again divided into two as backward classes and more backward classes. The supreme court of India struck down the order and held that Article 15(4) is an exception to article 15(1) and article 29(2). The court also held that for Article 15(4), backwardness must be both social and educational. Though caste in relation to Hindus may be a relevant factor to consider, in determining the social backwardness of a class of citizens, it cannot be made the sole and dominant test. The court said that the permissible percentage of the reservation to be less than 50 percent. The further categorization of backward classes into backward and more backward was also struck down by the court as it is not warranted by Article 15(4).

In Preethi Srivastava v. State of M. P. ⁹the supreme court of India gave a verdict against caste-based reservations at the postgraduate level in medical institutions. The court also held that there cannot be a wide disparity between the minimum qualifying marks for reserved category candidates and the minimum qualifying marks for general candidates. This verdict linked declining standards of education and training to the reservation in admission procedures. This decision also took away the right of state authorities (including the legislature and executive) to alter the norms set for admission procedures by the Medical Council of India.

In another case, C.A. Rajendran v. Union of India¹⁰the Supreme Court of India held that the government is under no constitutional duty to provide reservations for SCs and STs, either at the initial stage of recruitment or at the stage of promotion. The Supreme Court agreed with the Centre holding that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty

⁹ Preethi Srivastava v State of M.P, (1999) AIR SC 2894, (India)

¹⁰ C A Rajendran v Union of India, (1968) AIR 507 (India)

imposed on the government to make reservations for the SCs and STs, either at the initial stage of recruitment or at the stage of promotion.

Need of the Hour

Reservation in India is largely governed by vote-bank politics. People by thinking about the welfare cast vote for them. Caste-based reservation has created vote banks which have hijacked democracy. Reservation in government job promotions bill introduced for SC/ST people is another example of this which divides the people based on caste, not on economic conditions. They are hindering the country's growth, development and competency in all aspects. So, it will separate us from "one nation one policy". The real beauty of democracy lies in a successful government which assures full security, safety, freedom, and equality to their citizens.

'Respect the work and Reward the worthy'. Reforms in the reservation system in India is the need of the hour. Fixing time for reservation is important rather than extending to eternity. Financial problems are relevant now in comparison with lower caste issues. There are complications associated with the reservation policy such as it undermines the quality of education and it's a lifelong spoon-feeding process. Getting something can make them lazy, incompetent and creates the impression that they are inferior.



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