

2023

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Recommended Citation

Monalisa Chandra & Pratiksha Kumar, 'Reservation Policy in India Scope, Development, History and Employment Rights' (2023) 2 IJHRLR 1-58.
Available at www.humanrightlawreview.in/vol-2-issue-4/.

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RESERVATION POLICY IN INDIA SCOPE, DEVELOPMENT, HISTORY AND EMPLOYMENT RIGHTS

Monalisa Chandra¹ and Pratiksha Kumar²

INTRODUCTION

Reservations were adopted in India during the later decades of the nineteenth century, when the subcontinent could be divided into two major types of governance: British India and 600 princely kingdoms. Some of these states were progressive, keen to modernize through the promotion of education and industry, as well as the preservation of national unity. The awakening and advancement of minorities and impoverished elements of society drew a lot of attention in South and Western India.

One of the Constitution's goals and objectives is to ensure equality of position and opportunity for all people, as well as to foster brotherhood among them all while preserving the individual's dignity and the nation's unity and integrity.

It is worth noting that the framers incorporated additional provisions since the right to equality and prohibition of discrimination on the basis of religion, race, caste, sex, or place of birth against any citizen were not adequate to make the basic human right meaningful to the weaker parts.

Article 334 originally reserved seats for scheduled castes and tribes in the House of People and state legislatures for 10 years. However, subsequent constitutional amendments have prolonged this reserve up to 2010 AD. Article 340 establishes a committee to examine the situation of socially and educationally disadvantaged groups and offer suggestions

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for their improvement.³

India's majority was socially, educationally, and politically backward. Scheduled Castes, Scheduled Tribes, and Other Backward Classes Government and public sector entities, as well as all public and private educational institutions, but not minority owned educational institutions, have established quota systems for the Backward Classes.

This system was created to help the socially and educationally disadvantaged groups, as well as the scheduled castes and tribes, who lack sufficient representation in government and education. The reservation policy extends to the Scheduled Castes and Tribes for representation in the Indian Parliament.

WHAT ARE SCHEDULED CASTES AND SCHEDULED TRIBES?

In order to compensate them, the Indian constitution included specific provisions.

Special provisions for SC/ST in services, legislative bodies, and preferential admission into educational institutions.

Now the issue is who is SC/ST? The Indian constitution does not specify who is a SC or ST, but Article 341 and 342 allow the President to compile a list of these castes and tribes.

Article 341 specifies the castes, races, or tribes or groupings within castes, races, or tribes for purposes of their constitution. Parliament may include or exclude castes, races, or tribes from presidential notification⁴.

India today is a perpetual mechanism that provides reservation based on caste, religion, and socioeconomic and educational backwardness in order to maximize votes. Reservation was in place in India while the

³ Ahuja R, Social Problems in India (1997).

⁴ Tope TK, Constitutional Law of India (1992).

Britishers controlled the country. In 1882, Mahatma Jyotirao Phule sought free and compulsory education and government jobs for everyone.

Of 1902, the state of Kolhapur announced a 50% reserve in services for the poor. This was the first notification in India providing for backward people's welfare. In 1908, reservations were established for the castes and groups involved in the British government. The Morley Minto Reforms were included in the Government of India Act, 1909. The Government of India Act, 1919, included reservation measures. Madras Presidency issued a GO in 1921 giving non-Brahmins 44% reservation, Muslims 16% and Anglo-Indian Christians 8%. The Government of India Act, 1935, had reservation measures. It came into effect on 26 January 1950. In *State of Madras v. Smt.* Caste-based reservations are illegal under Article 15 (1) of the Indian Constitution. The first constitutional amendment invalidated the aforementioned decision and inserted Article 15(4). It was founded in 1953 to look into the condition of the socially and educationally disadvantaged. In *Balaji v. Mysore*, the SC capped reservation at 50%. Rajasthan gives 68 percent reservation, whereas Tamil Nadu gives 69 percent (under 9th Schedule). In its 1980 report, the Commission suggested modifications to the current quota system. Vishwanath Pratap Singh executed the Mandal Commission's recommendations in 1990. The Narsimha Rao government established 10% special poor reservation in 1991. The state cannot impose reservations on minority and unaided private institutions, including private professional colleges. This policy was secured by the 93rd Constitution Amendment in 2005⁵.

REVIEW OF THE LITERATURE

Constitutional Law of India by T K Tope highlights the fundamental rights, directive principles and duties under the framework of International human rights law.

⁵ Panandiker VAP, *The Politics of Backwardness* (1997).

Reservation Policy in India, need for re-look by Komol Singha is an article where the author speaks about the reservation policies and controversies and agitations in India. It speaks about anti-caste-based reservation in the community. It analyses the pro's and con's of reservation.

The book edited by V.A. Pai Panandiker speaks about the series steps following the report of the Backward Class Commission known as the Mandal Commission. The politics of Backward reservation is the central theme of the book. It also highlights the issues relating to the reservation policy and need of better understanding of merit and demerits of reservation.

Evolution of the Constitutional history of India, 1773-1947 by VB Mishra is the book that has the complete history of the Evolution origin and development of the Reservation policies in India. This book serves as the main theme of my research work.

The book the Transfer of Power in India in which the authors highlight the full account of the partition of India and the transfer of power from England after the outbreak of the War in 1939 and with the transfer itself in 1947.

Law Commission of India Report in which the legal provisions of the employment and Reservation policies has been mentioned and used.

Reservation Policy in India: Exclusion in Inclusion is the book in which the author Satish K. Sharma emanates the unconvinced nature of state's interventions and for the inclusion of the Scheduled Castes and the scheduled tribes as a state domicile reservation creating dilemmas and challenges for the Indian society.

Right to work is the chapter that has been taken from the book Employment, Poverty and Rights in India by author Dayabati Roy speaks about the employment and working right of an individual in India.

The book *Employment in India* by professor Ajit Kumar Ghose states the employment related scenario of India since Independence and aspects of employment by using insights and facts of Employment data.

In the Book named *Dalits in India* one chapter namely “*Employment under Reservation*” by Sukhadeo Throat. In this chapter the author examines the progress and consequence of reservation in public employment. Analysis of the magnitude, trend and patter of Scheduled Castes in government services, Public Sector Undertakings, etc has been done.

Trends in India Employment: Policies and Programmes is an article in which the Author S.M. Jawed Akhtar highlights employments as a very important item that is required for opening the employment opportunities in both Urban and Rural areas. Unemployment has been the most recent problem and it has the analysis of levels of unemployment in NSSO data.

Deciphering India’s Services Sector Growth is a book written and edited by Shashanka Bhide V.N. Balasubramanyam, and K.L. Krishna. This book is addressing various range of issue relating to the nature and implications of growth of India’s service sector including the factors which give rise to the heterogeneity in growth of services and exports in employment sectors.

AIM OF THE STUDY

My Research is focusing of the Historical Perspective with development and scope that has undergone since the reservation Concept started. It also focused various kinds of reservation schemes in both centre as well as state level.

The project also highlights about Domicile reservation its history and development in India.

Highlighting concepts of political Sub-nativism and interstate migratory populations causing an unusual political structure.

Explains in short, the effects and arguments of Reservation policies in Employment and education sectors in India.

My research paper mainly focuses in the several constitutional provisions like Article 14, Article 15, Article 16 and Article 19 of the Indian constitution that guarantee freedom of Employment and how it is affected by reservation policies adopted in India.

Finally, my research also explains the Employment sectors in Public Employment and several of the Constitutional Provisions associated with.

RESEARCH OBJECTIVE

- To find out the Origin, Development and Scope of Reservation.
- To Highlight the Concept if Reservation in Employment Sector in general
- To highlight basic Idea of Domicile Reservation and judicial interventions
- To highlight the political Sub-Nativism and its effect in interstate Migratory population
- Discuss and explain the concept of Equal Opportunity and Employment rule and how is it affected by general Reservation policies.
- Discuss various sectors of Public Employment
- The careful interpretation of Article 15 (4), 16 (4) of the constitution of India to see that whether reservation policy
- Reservation in posts and appointments in public offices.

RESEARCH QUESTIONS

- What is the history and development of Reservation?

- What is the concept of reservation policy in India and is its purpose?
- How does Reservation effect Employment Sector
- What is Domicile Reservation?
- Why is Equal Opportunity rule necessary in Employment?
- What are the Sectors of Employment in India?

SCOPE AND LIMITATION

The Scope of my study is basically the historical cause which gave the policy makes reservation as affirmative action in India for positive equality as an instrument of social revolution for peace promotion in the varied culture.

It is focusing on the reason that led to the reservation in India and on what it was focusing on but have been used as unnecessary increase of demands of reservations due to political influence.

This study mainly focuses of the effect of reservation in Employment Sector only and various rights and constitutional provisions related to it.

The Research is limited to the theoretical or qualitative perspective and not on the empirical data due to lack of ground reports and lesser time frame.

RESEARCH METHODOLOGY

The current Research is Doctrine in nature and there will be no field work in this topic. The study is mostly descriptive and follows historical methodology and Case-Analysis Study.

Literature Reviews, Articles and online journals will be my secondary sources of my study.

RESERVATION IN INDIA HISTORY, SCOPE AND DEVELOPMENT

"The Reservation was not an exception but part and parcel of the

fundamental right of equal opportunity. "

- Justice Subba Rao

"Article 15 and 16 of the Indian Constitution empowers states to make provisions for educations and Employment for Backward class of the society. It lays in Part III of the fundamental rights and is merely directives to the State and is not bound."

"The Entire Reservation System is based on providing Social Equality and never aimed for Economic Empowerment."

"Equal opportunity is a phrase with several definitions and no clarity on the exact meaning."

The quota policy was adopted to boost some castes subjected to abuses and societal and economic backwardness owing to the caste system's supremacy in Indian orthodox society.

The reservations program rectified this by ensuring places for historically disadvantaged sections of society by establishing a common educational sensibility for formerly affluent individuals who now feel like an economic minority.

The British created subsidies and scholarships for affirmative action, reservations of government and State jobs, and outstanding political participation for low-castes in India, Sri Lanka, Malaysia, and other colonies. Since independence, these initiatives have grown considerably.

One of the various instruments used to achieve positive equality is the reservation policy, known as **positive discrimination**, **affirmative action**, **preferential treatment**, and **compensating justice policies**. Positive discrimination, reverse discrimination, and counteracting discrimination are three facets of the notion of positive equality.

Positive discrimination refers to giving particular consideration to those

who are at risk of being exploited. Reverse discrimination might be seen as a kind of retaliation, implying prejudice towards individuals who have been discriminated against in society. Compensatory discrimination entails taking steps to protect the interests of those who have been historically marginalized. Compensatory justice strives to compensate those who have been wrongly wounded or deprived in the past, bringing them up to the level of income and well-being they would have had if they had not been disadvantaged. As a result, compensation programs vary from redistribution programs in that they focus on the past⁶.

On the other hand, redistribution is focused on removing current inequities, while compensatory justice is concerned with this and compensating for past unjustified burdens. What must be noted is that balancing justice is an instrument of social revolution to promote peace in varied cultures, not only a poverty relief program, as is often thought⁷.

The greatest danger to meritocracy is reservations. We use loosening entry requirements to feed modest credentials rather than fostering a merit-based education system at the heart of many modern countries. The meritocracy should not be affected by reducing obstacles to entry; instead, it should be strengthened by financial aid to the poorest but most deserving people.

From the standpoint of political science, the State owes it to its citizens to care about their well-being. Although the Government defends its reservation policies based on fostering confidence and offering equal opportunity to the most vulnerable members of society, reservations based on domicile and residency are a distinct violation. Following that, the State deprives the deserving class by an arbitrary and perverse domicile reservation. It signals a deviation from the rule of law's promise

⁶ Verma S, 'Reservation in Panchayati Raj in India' [2011] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.2018200>> accessed 8 August 2021.

⁷ Singha K, 'Reservation Policy in India: Need for Re-Look' [2012] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.2286630>> accessed 02 August 2021.

of justice, fairness, and moderation, which is meant to be ultimate in our constitutional system.

It is an exciting fact that caste-based reservations have only been included in the Indian Constitution in educational establishments as a result of the Supreme Court's intervention in the Madras State case against Champakam Dorairajan, where the Court overturned the classification of caste-, race- and religious reservations for admission to educational establishments. The most fundamental critique of these policies is that the sole benefit of claiming reservations is a creamy layer of backward classes. The real advantages have never reached the poor⁸.

In 2019, when Arun Jaitley, then Finance Minister, proposed the Economic Reserves Act, he stated that the 50% limit placed upon caste-based reservations by the Supreme Court on the weaker sections of the EMS would not impact. Instead, the House passed a bill that would provide 10 per cent for the poor in the general category of education and jobs. Reservations for higher education were reserved for the poor in the public sector, but there was no discussion about reservations in the private sector⁹.

Simply stated, reservations in India restrict access to seats in government positions, education institutions, and Parliament to specific population sectors. The legislation reserves a place at educational facilities and specialized occupations for particular castes and strata of society deemed financially disadvantaged, including planned castes, planned tribes, and other castes. However, reservations should be modified to provide seats to economically poor segments of society, depending on socioeconomic distinctions.

Reservations in India are a government policy underpinned by various

⁸ 'Review of Reservation Policy'

<http://www.legalserviceindia.com/articles/res_poss.htm> accessed 03 July 2023.

⁹ 'Reservation in India – Explained in Layman's Terms' (*ClearIAS*, 3 March 2019) <<https://www.clearias.com/reservation-in-india/>> accessed 03 July 2023.

amendments to the Indian Constitution. Reservations in India, sometimes known as affirmative action, may be seen as positive discrimination. In India, the reservation system gives underprivileged communities representation in school, work and politics. Under the terms of India's Constitution, reservations allow the Indian Government to set aside reserved or quota seats by lowering the qualifications required for exams and vacancies.¹⁰

The idea is checked so as not to extend the advantages of reserves to future generations. In 1902, the State of Kolhapur established a quota in education for backward classes. The 103rd amendment of the Constitution provided for the provision of an EMS reservation in the Indian Constitution. Both Articles include reservations outlined in Article 15(4), Article 16(4), and the S.C.s/S.T.

Efforts to represent non-Brahmin castes precede the Mandal report and the case for Indian Independence. The more comprehensive norm of Indian class and caste reserves in employment was reportedly established in 1993 when the Supreme Court considered a petition to set up the Second Backward Castes Commission. Still, experience in South and West India dates back to the nineteenth century and included social movements against the state. Since 1831, this push led to the concept of quotas. Tamil Nadu had been reserved with its history of caste movements.

In planned areas with a high percentage of S.T.s, such as the districts of Kinnaur, Lahaul, and Spiti, the ratio of S.T. reserved seats in government offices is higher. In Tamil Nadu, the Government has allotted 35% of the seats in the OBC from 23% to 30%, excluding individuals from other backward castes and Muslims, Christians, etc. Maharashtra has 62 percent reservations in government employment

¹⁰ 'History of Reservation in India' (*GOI Monitor*)
<<https://www.goimonitor.com/story/history-reservation-india>> accessed 03 July 2023.

and education institutions. The issue of restraint in education and government jobs has always been controversial in India's myriad threads of public discourse.

Education and government reservations have led to a lot of turmoil, bloodshed, judicial decisions, and constitutional amendments. At the same time, his fundamental concept met rare political unity that meant the 1950 Constitution had for decades no provisions to make reservations, continuing the argument of the 1950s that particular disenfranchised India's people needed a leg to strengthen themselves. Reservations have intervened in 65 years of democracy to make a significant correction. According to Caste, political guru, Pratap Bhanu Mehta writes that the current Reservation system does not constitute equality of opportunity, as it distributes and perpetuates the spoils of state power.¹¹

RESERVATION: ORIGIN, DEVELOPMENT, AND SCOPE

India has been a land that practices Caste since the Vedic period in ancient history. As per History, Hinduism has been the staple religion of practice for the majority of the population. The Hindu Society has been divided into a system of Varna. Four Varna depended upon the type of work they used to practice. Later on, it became the norm and tradition in their family. The **Brahmins** were the highest-class of Hindus who were scholars and teachers. They enjoyed their rights of Education, Employment, Social gatherings, and they carried special rights to worship. The Second class of Hindus were the "Kshatriya," or also known as the **warriors**. They also enjoyed every right to study and do employment but were not allowed to worship, just like the Brahmins. The third Varna was the "Vaishya," or the class of Hindus who specifically

¹¹ 'Have Reservations Helped in Erasing Historical Injustices in India? - The Economic Times' <<https://economictimes.indiatimes.com/news/politics-and-nation/have-reservations-helped-in-erasing-historical-injustices-in-india/articleshow/48784238.cms?from=mdr>> accessed 3 July 2023.

indulged in Business activities like irrigation, etc.

But the Fourth Varna or class of Hindus were considered the lowest level of groups because they were manual scavengers, sweepers, gardeners, etc.; they were called "Shudras." They were not given any fundamental right of life, whether education, choice of work, or intermingle with other castes. This class of Hindus faced atrocities for many years. This Caste system was the reason for hindrance for this lower class of Hindu Society and thereby alienated those from the mainstream development. These kinds of repercussions are still felt to a greater extent. The so-called upper class did an injustice.¹²

The Rigid hierarchy of the Caste system was present where the upper Varna enjoyed every right and were looked up to as the excellent class of citizens. But the majority of the population were these socially backward populations who were never allowed even to get basic amenities.

PRE-INDEPENDENCE

With the advent of time, India went to an era of enslavement by the Mughals and later on by the Britishers for more than a thousand years. It led to the somewhat dilution of this Varna system. During India's freedom struggle, many freedom fighters, nationalist leaders, and reformers tried to uplift these lowest-class citizens of society. The motive of such reform was to join the freedom of struggle and join the rest class of Hindus. They were later on named the "**Untouchables**" or "**Harijans (Sons of God)**" by Mahatma Gandhi¹³.

The so-called Shudras emerged as **Dalits**¹⁴.

These untouchables were deemed unclean, filthy, and excluded from the

¹² *ibid.*

¹³ Khasnabis R, 'Rules of Governance in Developing Rural India *', Political Transition and Development Imperatives in India (Routledge India 2020)
<<http://dx.doi.org/10.4324/9781003157939-10>> accessed 03 July 2023.

¹⁴ Menon VP, Transfer of Power in India (Princeton University Press 2015).

system.

They lived their lives secluded outside the residential villages and were given no legal rights and basic amenities. There were also cases when these Dalits were killed or even severely punished if they violated the social norms. It adversely affected their development, and therefore it was the primary reason for the introduction of the "First Reservation Policy in India¹⁵."

Meanwhile, these atrocities made their outrage and demand reservation. In 1891 there was a colossal agitation in Kerala for the demand of reservation in government jobs in the princely State of Travancore against the recruitment of the non-Tamil Native Brahmins into the public service jobs overlooked the highly qualified natives of Kerala¹⁶. In 1902, the maharaja of the Princely states of Kolhapur Shahu introduced the non- Brahmin and Backward class reservation in education. After a very long movement led by the deprived class known as the social justice moment against the repression of non-Brahmins, Mysore then initiated the reservation for the backward castes in the year 1921¹⁷.

Later on, in 1932, the first signs of the community's polarisation started. The natives began to crumble into Ezhavas, Muslims, and some Christians who demanded representation in the Legislature and governmental jobs. Because of demands and agitations within the country, the community reservation was introduced on the 14th of July in 1936, and quotas were given according to the numerical strength of the community¹⁸.

Later on, in 1952, based on this community report, this quota system

¹⁵ VP Menon, *The Transfer of Power in India* (Orient Blackswan 1998).

¹⁶ R KRISHNAKUMAR, 'A History of Reservation' (*Frontline*)

<<https://frontline.thehindu.com/social-issues/article30224191.ece>> accessed 03 July 2023.

¹⁷ Panandiker VAP, *The Politics of Backwardness* (1997).

¹⁸ Ibid.

was replaced by communal Reservation in Travancore- Cochin State. The reservation was fixed to 45%, out of which 10% were to be given to Scheduled Castes and the Scheduled tribes. The rest, 35%, was meant for the OBCs or Other Backward Castes like the Muslims, Ezhavas, Kammalas, Hindu Nadars, Nadar Christians, and Catholics¹⁹.

Legally the origin of the Reservation policy began in the year 1919 with the Government of India Act of 1919 that came into existence during World War I. It was a good time in India as the Britishers only focused on the European countries than India. Seeing this, they conceded this very significant legislation that focused only on expanding the Indian Territory²⁰.

Despite implementing many changes in this Act of 1919 by the Governmental Institutions, it encountered several problems. Montague-Chelmsford opposed it because a new system might become a barrier to self-development policy. Muslims but already had a communal electorate owing to the Minto-Morley Act in 1909, and thus it was not feasible to take away the Separate Electorate of Muslims. After this Act, a contentious Simon Commission came up in 1927 that extensively examined the Montague-Chelmsford reform²¹.

The Indian provinces and their delegates suggested a united electorate with a reserved seat for the disadvantaged class, which was accepted unanimously. It could bring Economic, Educational, and social status to this class of the society. Round Table Conference took place in 1931 in London, which initiated the incorporation of the Constitution of the report of Simon Commission later on the stamp and scrutinized it. Many outstanding Indian delegates were represented, and Prime Minister

¹⁹ KRISHNAKUMAR (n 15).

²⁰ Guest Post, 'All About Reservation Policy In India' (*iPleaders*, 9 March 2016) <<https://blog.ipleaders.in/reservation-policy-india/>> accessed 03 July 2023.

²¹ *ibid*.

Ramsay Macdonald held the conference²².

The Drafter of the Indian Constitution, Dr. B.R. Ambedkar demanded a separate electorate for the oppressed class but was vehemently opposed by Mahatma Gandhi and Congress.

The Communal Award and the Poona Pact came into effect in 1932, when Prime Minister MacDonald declared a communal representation to the Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, and Dalits or Deprived Castes, among other minorities and religious groups. A certain number of seats were set aside for special districts in which only voters from a particular class were eligible to cast ballots. Dr. Ambedkar and other minority organizations backed it, even though MK Gandhi strongly condemned it. After the massive rebellion and hunger strikes, the Poona Pact, which reserved seats for impoverished castes within the Hindu electorate, was eventually approved in 1932 and implemented. The Government of India Act 1932, which provided for the reservation of seats for disadvantaged castes, served as the stamping ground for the Poona Pact of 1932 and its subsequent amendments.²³

Finally, in 1942 the Viceroy's Executive council recommended 8.5% of Reservation to Scheduled Castes in Civil services and made Dr. Ambedkar the council member²⁴.

POST - INDEPENDENCE

Post-Independence, the Dalits demanded equal status in society to not be deprived of the "Equal Opportunity" in education, work, and development of their class of people. It instigated the Upper Class or the General category of Hindus for the marginalized were given weight-age in the field of Employment and Education. Later on, they were re-identified as

²² Guest Post, 'All About Reservation Policy In India' (*iPleaders*, 9 March 2016) <<https://blog.ipleaders.in/reservation-policy-india/>> accessed 03 July 2023.

²³ *ibid.*

²⁴ Kaur H and Suri RK, *Reservation in India* (Pentagon Press 2009).

Scheduled Caste and **Scheduled Tribes** as per the Indian Constitution²⁵.

Reservation of Scheduled Caste and Scheduled tribe was made to give equal rights to every class of citizen. For a limited period on the grounds of the current scenario of the benefits and up-lift are achieved.

In the year 1950, the Constitution of India commits to giving reservations to Scheduled castes and tribes. But this excluded converted castes, and by the 1990's Sikhs and Buddhists were also included, but Muslims and Christians remained Excluded.

By 1951 the First Amendment in the Constitution came in, which legalized the Caste-based Reservation.

In 1956, with the reorganization of the States, several changes were very much necessary in the Quota system. Initially, Malabar, the part of Madras Presidency, the reservation of non-Brahmins was introduced in 1921, and the quota system for five categories was introduced in 1926. But later on, Malabar became part of Kerala, so several regions of Travancore- Cochin became part of Tamil Nadu²⁶.

Around 70 backward classes, 78 scheduled castes, and 38 scheduled tribes were eligible for quota with the establishment of Kerala. The quota for OBCs was increased to 40%, increasing the reserve to 50%. It was also seen that there was specific recruitment for specific Caste also like the Ezhavas and Thiyyas of Malabar had 14 %, the Muslims had 10 %, the Latin Catholics had 5% and Converted Backward Christians had 1% reservations respectively²⁷.

The Government made many changes and various modifications of the Quotas for the upliftment of the deprived class of communities. The

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ KRISHNAKUMAR (n 15).

Government even introduced a "Special Recruitment Drive for S.C.s and S.T.s" to normalize equality²⁸. By the year 1990, Mandal Commission recommended giving 27% of reservation to the Other Backward Classes under Prime Minister VP Singh²⁹.

In year 1992, the Supreme Court of India passed an order limiting the percentage of total reservations to a maximum of 50%. It also did not allow the Narasimha Rao government's move of reserving 10% of government jobs to Upper Castes, stating that "*Economic condition is never a criterion for reservation.*" But in 2019, the Parliament passes the Article 15 Amendment Bill that allowed 10% reservation to the poor higher castes in education and jobs.

Reservation in Legislature was only implemented till 1960 but has been extended for ten more years. But there was never a deadline for reservation in jobs and education.

Following India's independence, the architects of the Indian Constitution were mainly concerned with establishing specific rights for the Indian society's backward class. Thus, they proposed Article 46 of the Indian Constitution, which declared that it would promote economic, educational, and social justice for the backward class while safeguarding them from exploitation. Article 46 came and was complemented with the inclusion of many other pieces that empowered the backward class. It was done only to equalize the social inequality that this backward class had to face as a bad practice of oppression, and it was the best way to correct the mistake.

Another notable provision under Article 15 was amended by the Indian Constitution's first amendment Act of 1951, empowering the states to make specific provisions for the advancement of any socially backward

²⁸ *ibid.*

²⁹ Damodaran A and Neupane S, 'The Politics of Reservation in Contemporary India - Special Emphasis on OBC Reservation Debate' [2007] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.998447>> accessed 03 July 2023.

class of citizens belonging to the Scheduled Caste and Scheduled Tribe and enabling them to establish a Harijan Colony in the backward class's interest.

This Article 15 (4) is an exemption to Clauses 1 and 2 of the preceding Article.

Reservation of seats in private educational institutions for backward SC/STs is provided under the 93rd Amendment Act, 2006, which was passed in 2006. Following the new Clause 5 of Article 15, no clause or sub-clause (g) of Clause 1 of Article 19 precludes the legislature of any state from enacting legislation to advance the advancement of any socially, economically, or educationally backward class of citizens or from admitting members of Scheduled Castes or Scheduled Tribes to any educational institution, regardless of whether the institution is public or private.

It nullified the decisions of the Supreme Court³⁰; nonetheless, this change exempts minority educational institutions from being included under their jurisdiction.

Article 16(3) gives freedom to amend laws by the Parliament on the grounds of employment in any government or State. This article never clarifies anything on the grounds of reservation benefit to any citizen or amending any laws regarding reservation in employment.

Article 16(4) is a crucial Article that has been discussed in this research. It has been done in favour of providing domicile reservation and acts as an exception to Articles 16(1) and 16(2). It strictly includes reservation to the backward class citizen within a state.

"Untouchability abolition" or Article 17 states that the practice of untouchability is an offense and is punished by law in any form.

³⁰ Feinman JM and Beeman R, Supreme Court Decisions (*Penguin Civic Classics* 2012).

Following Article 39(A), the Social Security Charter of the Principles of State Policy requires States to guarantee equal rights in each form, whether it is equality or free legal support to an economically retrograde class.

Article 45 establishes a responsibility of the State to progress the backward class worth of life or health.

Article 330-342 refers to specific groups of people like Scheduled Castes, Scheduled Tribes, Anglo-Indians, Minorities³¹, and Other Backward Classes with particular privileges³².

Article 335 balances the function of the reservation-based assignment procedure. Each State must allocate to all administrative posts a proportion of claims of the backward class. This article serves as the guidance to any government's obligation to do so without limiting any reservation claim.

KINDS OF RESERVATIONS

CENTRAL RESERVATION SCHEMES

Initially, the reservation system was given primarily to the Scheduled Castes, Scheduled Tribes, because of the social inequality that created backwardness and was devoid of equal economic benefits. It led them to live a life of ignorance and restrictions, and they were primarily landless labourer's.

The Scheduled Tribes were mostly the primitive groups of a clan who lived in isolation and were called 'Adivasis' or the original inhabitants. They were exploited mainly by the Britishers and were considered as

³¹ Ambagudia J, 'Book Review: Rudolf C. Heredia, Taking Sides: Reservation Quotas and Minority Rights in India' [2015] *History and Sociology of South Asia* 102 <<http://dx.doi.org/10.1177/2230807514546802>> accessed 03 July 2023.

³² Mishra VB, *Evolution of the Constitutional History of India (1773-1947)* (Mittal Publication).

"Criminal tribes." The reservation percentage for S.C.s/S.T. was 15% and 7% depending upon the states on the population of each of them in their respective states.

The OBC or the Other Backward Class was not part of the original reservation system but had evolved under the "Mandal Commission." Around 27% of the seats were reserved for the OBCs.

Recently, the Government announced a 10% reservation to the **Economic weaker Section** of the General category.

Let us not forget about the Women Reservation Bill, which is recently a matter of debate because the Rajya Sabha passed this on the 9th of March 2010 but remained uncounted in the Lok Sabha. Many critics say that gender should never be a basis of reservation. But in reality, India has always been unkind to Women in the case of Gender Equality. India has been an orthodox environment when the absolute equality of opportunity comes to the gender role. Women always have been considered the Second-class Citizen. The condition of women has been more pitiful than even a Shudra Varna. Many Hinduism's Grantham speaks of women that they lay even after the lower Caste of the Varna System. It may be a topic of discussion that can address why the Women Reservation Bill is more important than any other reservation that dwells in the country.

DOMICILE BASED RESERVATION SCHEMES

"Karnataka became the first state to give Reservation to a transgender community in the governmental job."

Tamil Nadu allotted 3.4% reservation to Muslims and Christians as Minority Seat.

Andhra Pradesh introduced the law in 2004 that enables 4% reservation to Muslims as a Minority seat.

Kerala has a 12% quota for Muslims as a religion quota.

Some reservations still in agitation for demand are the Jat Reservation of Haryana when **Jats** demanded OBC status and the **Gurjar** in Rajasthan who ordered from OBC to S.T. status. The **Patel or the Patidar community** of Gujarat demanded OBC status too³³.

The **Kapu** community of Andhra Pradesh protested too for the Backward Class status³⁴.

The well-known and famous **Maratha reservation** is the focus of discussion where the Marathas, who are the Dominant Caste of Maharashtra, demanded OBC status since the 1990s. Marathas make up 16% of the total population of the State. The Maharashtra Government gave them SEBC category with 16 % Reservation³⁵; however, the Supreme Court of India quashed this SEBC reservation to the Marathas.³⁶

DOMICILE RESERVATION

The State domicile quotas are thus nothing more than the State that makes use of its rights for the benefit of the people, which would, if not for universities of national importance, have been entirely fair. The welfare of nationals is a duty of state governments, although these reservations may focus on the socio-economic and educationally backward category.

- Many Indian states have joined the nativism bandwagon.

³³ 'Jats, Marathas, and Patels Want Quotas, But Do They Need Them? | Economic and Political Weekly' <<https://www.epw.in/engage/article/jats-patels-and-marathas-want-quotas-but-do-they-deserve-them>> accessed 03 July 2023.

³⁴ 'Why Trouble Is Brewing in Andhra over Kapu Reservation Once More | The News Minute' <<https://www.thenewsminute.com/article/why-trouble-brewing-andhra-over-kapu-reservation-once-more-105610>> accessed 03 July 2023.

³⁵ 'Jats, Marathas, and Patels Want Quotas, But Do They Need Them? | Economic and Political Weekly' <<https://www.epw.in/engage/article/jats-patels-and-marathas-want-quotas-but-do-they-deserve-them>> accessed 03 July 2023.

³⁶ Prasad A, Reservation Policy and Practice in India (South Asia Books 1991).

- Jharkhand passed a similar bill to reserve jobs for Jharkhand residents as well.
- In its manifesto for the upcoming Assembly elections in Tamil Nadu, the Dravida Munnetra Kazhagam (DMK) made a similar proposal.
- The goal is to safeguard the interests of a large number of unemployed locals.
- However, such policies have drawn criticism because they go against the liberal concept of a free market.
- It is suggested that focusing on creating more jobs rather than reserving the few available ones is a better strategy.
- However, it must be understood that state governments do not have complete control over creating new jobs.
- It's a complicated interplay of numerous factors.

If we examine closely, we may see that Article 15(4) frees the State from limits on implementing reservation policies just for socially and educationally disadvantaged groups. There is no mention of economic backwardness in the Constitution

Article 16(3) is an exception from Article 16(2) that bans discrimination on the residence grounds. However, there may be legitimate reasons for maintaining citizens' special state status alone. This Article allows Parliament to act on how a state may depart from the above principle³⁷.

In situations about employment or appointment to any position under the State, Article 16(1) ensures equal opportunity for all people. Article 16(2) further states that no citizen should be disqualified for or discriminated against in any occupation or position under the State solely based on religion, race, caste, sex, descent, place of birth, or

³⁷ Hill J, 6. Domicile, Nationality, and Habitual Residence (*Oxford University Press*, 2016) <<http://dx.doi.org/10.1093/he/9780198732297.003.0006>> accessed 03 July 2023.

residency.

However, Article 16 exempts these laws (3). It allows for laws mandating a particular residence located within the territory of the State or the Union where the public office or profession is situated.

It is an authority that belongs to Parliament, not any state assembly. That implies that only the Indian Parliament, not any state legislature, has the power to make decisions concerning reservations in public employment based on place of birth.

Remember that every Indian citizen has the freedom to live and work anywhere in the country under Article 19(e) of the Indian Constitution. As a result, Indians cannot be discriminated against when applying for any public position in a state or territory because of their place of birth since they are Union of India nationals.

Indian affirmative action is based on the particular provisions of Articles 15(4) and 16 of the Constitution, which are as follows: (4). It empowers the state to make specific provisions for the preservation of higher academic positions and appointments for groups that are socially and educationally backward, or who are members of planned castes or planned tribes, and who, in the state's opinion, are not adequately represented in state departments.

This is based on the concept of equal opportunity but still reserving some possibilities for those who are not equally fortunate (educationally, socially, economically backward communities inadequately represented communities).

POLITICS OF SUBNATIONAL NATIVISM

Despite constitutional constraints, discourse against immigrants has grown more legislative in the past three years. The government of Andhra Pradesh has adopted the Andhra Pradesh Jobs of Local

Candidates in Industries/Factories Bill for 2019, with 75% of employment for the local population. This Statute was immediately called into question, and the High Court accepted the appeal in Andhra Pradesh as a matter of public interest. However, similar legislation is widely supported in states such as Madhya Pradesh and Goa. In March last, Haryana's Government adopted the Haryana State Local Candidate Employment Bill in 2020, limiting 75% of local people's private employment to less than Rs 50,000 a month.

Let us put aside the flagrant unconstitutionality of the legislation for a minute. Let us also ignore the irony that the Haryana government, headed by the BJP, is aimed at limiting businesses' capacity to recruit employees throughout the country while the national government led by the BJP strives hard to enable farmers to sell their goods anywhere in the country. Let us put aside the reality that most migration to work in India is inside national borders. According to the 2011 census data, in almost all Indian districts, interstate migrants account for fewer than 10 percent of urban workers. The major fault of this bill is to make low-income migrant labourers victims of the Indian government policy once again.

As the 2020 migration crisis shows starkly, life is tough for low-income migrant workers in India. They have another reason for concern, namely nativistic laws, to add to their long list of problems, ranging from dangerous jobs to lack of access to mobile social security. Sectors with large numbers of migrants from across states like Surat's power loom, which employs Odisha workers, do so because they do not aspire to such employment. Work migration connects businesses looking for specific skills and workers who want to earn considerably more than they can at home.

In the economic environment of India, the politics of subnational nativism has reappeared. In March 2021, the Haryana government

approved the 'Local Candidates' Haryana State Employment Bill 2020, which reserves for Haryana residents 75% of private-sector employment, which pays less than 50,000 rupees per month.

Similarly, the DMK party in Tamil Nadu has promised to enact a law reserving 75% of the State's industrial jobs in their election manifesto. Maharashtra (up to 80%), Andhra Pradesh (75%), Karnataka (75%), and Madhya Pradesh (75%) are among the other states that have promised locals private job reservations (70 per cent).

The majority of the time, these are just political rhetoric with no constitutional validity or enforceability. However, it's essential to consider the logic that has led to the rise of anti-migrant policies in light of such policy proposals.

The theoretical argument for anti-migration policies is based on the law of demand and supply, which can be found in any introductory economics course. When migrants arrive in a state, they cause a shift in the labour supply curve, which, in turn, reduces wages for that economy.

Even those who chose to study the information to make comments about the changing nature of the migration of India did not rely too much on it until last month. The facts of the 2011 census, which was published much more later than expected, reveal that most labour-related movements were kept within state borders, even as Indian economic development substantially accelerated in the 2000s. Interstate movement between 2001 and 2011 did not drastically increase.

The census shows a significant shift in the pattern of Indian migration. The Hindi migration from the heartland no longer centered on the economic regions of the west coast and a newly formed north-south corridor. In search of better educational opportunities, many Indians crossed national borders. Despite these new routes, in most districts in India, interstate migrants account for less than one in ten (or less than

10 percent) of urban labour. This proportion is 5% in Madhya Pradesh, where quotas are requested for indigenous people.

Only those who have resided in Maharashtra for 15 years or more and are proficient in Marathi are eligible for government positions. A comparable language examination is also held in Tamil Nadu. The legal foundation for these restrictions is based on the official language of government offices, which is essential for the proper functioning of government employment. West Bengal also administers a language exam for specific positions, albeit there is no quota for natives in government employment.

For inhabitants of Uttarakhand, Class III and Class IV professions are limited. In Meghalaya, both Khasis, Jaintias, and Garos have an 80% quota, whereas the Arunachal Pradesh quota is 80%.

The Haryana cabinet recently endorsed a rule that, if enacted, would enable locals to have a 75 per cent quota in private employment. Maharashtra had proposed an 80 per cent quota for locals in companies seeking state incentives in 2008, but it was never implemented. In 1995, Gujarat announced an 85 per cent quota policy for locals, but it was never implemented in the corporate or governmental sectors.

All government jobs are reserved for citizens of Jammu & Kashmir. This reservation, however, was challenged in the High Court of Jammu and Kashmir, and a decision is pending. At Assam, proposals were made to implement the Assam Agreement to permit government quotas only for those who could trace their ancestry back to 1951.

IMPACT OF RESERVATION POLICIES

Affirmative action or reservation policies, such as those in India, are thought to provide compensatory justice to the dominated and marginalized castes who have long faced discrimination and exclusion in

the Indian job and education markets. In academic circles, these policies are hotly debated and debated. Many people believe that reservation policies provide genuine equal opportunity to all applicants and are an essential policy lever for reducing economic and social inequality. Reservation policies benefit the direct beneficiaries and other beneficiaries' caste groups through peer effects, role models, and increased aspirations. There have been calls for reservation in the private sector, given the high levels of persistent discrimination and the shrinking government sector³⁸. There have also been calls to extend religious discrimination in the workplace.

The people are losing out on scarce job market opportunities, increasing inter-caste tensions, and policy objectives based on "vote-bank" politics with no real benefits to the beneficiary. Reservation may also lead to elite capture among a subset of the dominated castes, resulting in a "creamy layer" that reaps all of the benefits of these policies while leaving many others marginalized and excluded³⁹. Another criticism of reservation policies is that they act as a charity and do not work towards racial equality among those who benefit them. There have also been complaints about the loss of "merit," which ignores the cumulative benefits that certain groups have received regarding economic, social, cultural, and linguistic capital. Against this backdrop of debate and counter-arguments, it is critical to examine India's reservation policy benefits empirically.

ARGUMENT

The Indian Constitution's Directive Principles of State Policy of the 1950s said that the reservation is designed to strengthen socially retrograde

³⁸ Madheswaran, S. & Singhari, Smruti. (2017). Social exclusion and caste discrimination in public and private sectors in India: A decomposition analysis. *The Indian Journal of Labour Economics*. 59. 10.1007/s41027-017-0053-8.

³⁹ Kaetski, Elizabeth & Prakash, Nishith, 2016 "Does Political Reservation for Minorities Affect Child Labour? Evidence from India," *World Development*, Elsevier, vol. 87(C), pages 50-69.

and under-represented class liberation and empowerment. The caste-ridden and caste-biased society aimed to increase social diversity, social responsibility, and social mobility. By the 1980s and 1990s, the poor and the depressed were classified as minorities as S.C.s, STs which discovered that in education campuses and on employment agencies due to reservations, the scale of opportunities was measured. But on the other hand, hostility has remained in a caste-based society, which thought the reservation was malignant; it is an unfair chance for brilliant individuals and a lack of quality. Reservation advocates claim that a reservation has been and remains the technique of increasing the I.Q. of the deprived and backward class as a privileged class. At the same time, anti-reservationists find that I.Q. is inherent and eugenic in developing capability.

The reservation of seats in the educational establishment and governmental organizations is an act of constitutional intervention to legitimize those who have been professionally disregarded as equal status since pre-independent India. They were to gently and gradually incorporate them into their identity and dignity into the mainstream political consciousness. The plan was implemented to keep pace with the legislative privileges and unify the country's inhabitants regardless of Caste, creed, sex, religion, and gender. It was a step towards modifying the slippery vulnerabilities of the Indian caste society.

The intellectual class says that the harmonization and elimination of alienating discriminatory behaviors amongst the general castes and sub-castes are attempted. It was not intended to damage any one group's feelings. It was all to be raised for the nation's sake. Political power and wrong will have sought to preserve social hierarchy, degradation of the labour. Secondly, thirst for power leads to under-represented class delay

to benefit from education⁴⁰.

DO PRIVATE OFFICES APPLY FOR RESERVATIONS?

Except for infotech and biotech, the Karnataka government proposed a 100 per cent reservation in blue-collar positions in private sector firms in 2016. The Legal Commission expressed its opposition to this proposal in early 2018, citing Articles 14 and 16 of the Constitution as justification. The argument was made that the government might encourage the private sector to hire Kannadigas first and foremost, but that no obligatory regulations could be placed on them by the government in this regard. It was stressed that, in contrast to government organizations, private businesses are under no obligation to hire individuals based on their caste or religion.

JUDICIAL CONTOURS OF DOMICILE RESERVATION

A review of the analysis in *Pradeep Jain v. Union of India*⁴¹, which invalidated wholesale reservation based on domicile or residence, and *D.P. Joshi v. The State of Madhya Pradesh*⁴² reveals that the courts have weighed two factors in justifying departure from the merit-based selection principle:

- (1) Claims of State interest in providing the people of the State with sufficient medical services, declarations of State interest in giving the people of the State adequate health care.
- (2) The claim of backwardness made by the locality.

Even a small degree of discrimination based on domicile and residency would constitute discrimination since even a slight deviation produces an illogical class that denies a deserving applicant his fundamental rights, and the grounds given above are as flawed as they come. In the first

⁴⁰ Prasad A, *Reservation Policy and Practice in India* (South Asia Books 1991).

⁴¹ AIR 1984 SC 1420.

⁴² AIR 1955 SC 334.

place, no reasonable guarantee appears to be given that a person who resides in a state will practice a profession after graduation in that State. Different surveys showed that after graduation, many people who have accepted reservation quotas continue working in various States or other countries due to globalization. Secondly, there is no rationale for adopting home-based constraints to decrease backwardness because it has nothing to do with backwardness if an individual is living in a specific state.

As a result, it seems that there was a mistake in determining the cause of the issue. *N. Vasundhara v. the State of Mysore*⁴³, the Supreme Court has undoubtedly upheld the constitutional legitimacy of reservation based on a state's residency criterion for admission to medical institutions. The Court considered that if admissions were made based on an all-India national entry review, everyone would have an equal chance of entering. However, this would ignore a series of factors, such as regional social, economic, and pedagogical differences and the difference in the number of seats available for MBBS admission.

If this were the case, it would be difficult for candidates from a single country to reserve their seats since other states would probably have similar or higher social and educational backwardness degrees. When a standard test is carried out to determine merit, the Court rightly decided that because of its location, a significant student must not be denied his fair portion of education."

AN UNUSUAL POLITICAL STRUCTURE

Allowing reservation based on domicile in a specific State after a university of national significance has allotted seats based on an all-India admission test would be as discriminatory as intra-State domiciliary classification, which is biased in ***A. Peeriakaruppan v. the State of***

⁴³ AIR 1971 SC 1439.

T.N.⁴⁴ In reality, there is a lot of fuss about economic inequity, which has served as a justification for permitting reservation.

There is no mention of economic backwardness in the Constitution. It has also been held in *Prasad Parimoo v. the State of J&K*⁴⁵. The Court held that poverty alone could not be used to determine backwardness to permit reservations.

The Institution of Delhi, the capital of India, and a major university were not surpassed. In 1978, the Delhi graduate reservation quota was raised to 70% for graduates looking for postgraduate medical schools. From the remaining 30 percent "open" (for Indians) seats, entry points remained available. The institution maintained the reservation by asserting the same policy used by all other institutions.

The Indian Ministry of Health justified it by saying that the students fasted at home to increase the limits. In *Jagdish Saran v. Union of India*⁴⁶, the Supreme Court backed him by stating that Delhi students came from India rather than the land. The reservations practice at all other universities damaged the perspectives of Delhi students — the indirect, accurate, and significant discrimination resulting from disabilities that cannot be desired and must be tackled with specific quotas or other acceptable techniques. Delhi students thus could not become constitutional martyrs.

The question is whether state governments may create regulations under a federal organization that benefits individuals were living in the country merely because they fund universities.

It is true that state legislatures may pass legislation on subjects listed in List II of the Seventh Schedule and that state legislatures may also pass legislation on matters enumerated in List III of the Seventh Schedule if

⁴⁴ AIR 1971 SC 2303.

⁴⁵ AIR SCR (3) 236.

⁴⁶ AIR 1980 SC 820.

the overriding power of Parliament is exercised; however, the federal legal system under which state legislatures pass legislation is in effect.

The argument that the legal systems of different states differ from one another, or that the legal systems of other states differ from the legal systems of the Union of India, is absurd simply because a state has legislative competence over matters falling within the scope of the state's legislative power.

The mere fact that a state government finances a national organization does not give the state government the power or privilege to reserve seats in a democratic system for citizens. India's federal system is cooperative, with powers allocated and exercised in collaboration between the center and states.

Some sections of the Indian Constitution enable federal supervision of local enforcement. These laws demonstrate the Union's supremacy over the States.

The Supreme Court of India declared the policy of reserving employment for sons of the soil to be unconstitutional in *Pradeep Jain v Union of India*⁴⁷. However, since the concerns in the case were founded on a distinct matter about the right to equality, the Court did not give an unambiguous ruling prohibiting it. The Supreme Court noted that this seems legally unconstitutional at first glance, yet the Court declined to offer a definitive decision on the matter.

In *Sunanda Reddy v. State of Andhra Pradesh*⁴⁸, the Supreme Court maintained the judgment in *Pradeep Jain*. It knocked down the policy that gave applicants who spoke Telugu as their first language an additional 5% weighting in their grades. In this decision, the Apex Court cited the *Pradeep Jain* decision, which stated:

⁴⁷ AIR 1984 SC 1420.

⁴⁸ AIR 1995 SC 914.

“Now, assume that India is a single country with just one nationality, namely Indian citizenship. Every person may travel freely across India and live and reside in any area of the nation. In this instance, it is difficult to comprehend how an outsider of Uttar Pradesh may be seen in someone with a permanent residency in Tamil Nadu or who speaks Tamil.

To regard him as an outsider would mean deny him his constitutional rights and reject the essential unity and integrity of the nation by considering it as an independent collection of States”.

It was contended in *Kailash Chand Sharma v State of Rajasthan*⁴⁹ and others. Depending on a region's socio-economic backwardness, such geographical classification may serve as a legitimate basis for racial discrimination in public job opportunities. However, according to the Supreme Court, such broad reasoning with provincial undertones may be rejected under the simple terms of Article 16(2) and Article 16(1) of the Constitution (3).

The Public Employment (Requirement as to Resident) Act was adopted by Using the power conferred under Article 16(3) of the Constitution. The Indian Parliament removes all existing state residency restrictions on public employment. However, exemptions were given to Andhra Pradesh, Manipur, Tripura, and Himachal Pradesh⁵⁰.

Article 371 of the Constitution additionally includes special requirements for certain States. Andhra Pradesh is allowed, according to Article 371d of the Constitution, to recruit indigenous cadres in specified areas directly.

FUNDAMENTAL RIGHTS AND EMPLOYMENT

⁴⁹ Appeal (civil) 4417 of 2002.

⁵⁰ Akthar SMJ and NP AA, ‘Trends in India Employment: Policies and Programmes’ [2015] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.3522971>> accessed 03 July 2023.

Several provisions in the Indian Constitution guarantee freedom of movement and, as a result, employment within the country.⁵¹

- Article 14 guarantees equality before the law regardless of where one was born.
- Article 15 prohibits discrimination based on one's birthplace.
- Article 16 prohibits discrimination in public employment based on one's birthplace.
- Article 19 guarantees citizens' freedom of movement throughout India's territory.

The following are the reasons for such legislation:

Inter-state migrant workers (ISMW) make up a sizable "under-used or un-used" electorate because they rarely exercise their voting rights. The electoral causes of the parties will be served if these workers and potential migrants can be retained and given jobs through JRFL.

- Economic Sluggishness: As joblessness has increased in shrinking government employment, the native unemployment issue has become more relevant.
- Increased Incomes and Talent: JRFL will retain talent as well as income that would otherwise be diverted to "other regions."
- Land Acquisition Preconditions: Farmers and villagers who lose land acquisition for industries maintain land acquisition preconditions that require enterprises to employ local youth.

In India, the right to equality is one of the country's Constitution's basic fundamental rights to all countries. In the field of public employment, **Article 16 deals with equal opportunities.**

The Constitution of India has broadly interpreted this article.

⁵¹ 'Right to Work!', *Employment, Poverty and Rights in India* (Routledge, 2018) <<http://dx.doi.org/10.4324/97811351065429-2>> accessed 03 July 2023.

The principles of equal job opportunities (EJO) are applied:

- Access to jobs
- Employment conditions
- Labour relationships
- Performance assessment, and
- Training and career development opportunities.

"The application of the general norm under Article 16 is an instance with a specific reference to the possibility of appointments under the State. It declares that all citizens have equal opportunities in job concerns or the appointment of a State position."

"They would go to the wall if all the backward towns remained alone in a business with an incompatible fundamental social structure; this rule of equality would only be utopian if it had no real significance."

For this reason, clause (4) was inserted in Article 16 by the Constitution's authors.

"The term 'nothing in this article is a legislative instrument that makes it very clear that its power is not confined to what the primary provision provides but is excluded. It has not created an exception but has maintained a power unstopped by the other Article provisions."

In the field of assignment to State services, Article 16 provides equal opportunity. Equality of opportunity means that, according to the qualifications and abilities established by the Apex Court in the *State of Jammu and Kashmir. v. K. V.N.T. Kholo*⁵², any citizen shall be entitled to be employed or nominated to any position under the State. Consequently, Article 16 shall not prohibit the State from creating the qualifications and selection tests required to recruit public servants following the Constitution.

⁵² AIR 1974 SCR (1)771.

EQUAL OPPORTUNITIES IN PUBLIC EMPLOYMENT ISSUES

1. All citizens will be afforded equal opportunity in all issues about employment or appointment to any position within the jurisdiction of the State.
2. The rule only applies to employments or positions held under the authority of the State, i.e., when the individual having the situation is considered to be subordinate to the State. Because of this, the State is free to establish the qualifications for government employment, and the authority is free to confirm any additional terms of work that are beneficial to the preservation of good order among the public workers.
3. In addition to mental dominance, these characteristics may also include physical fitness, discipline, moral integrity, and devotion to the state. There must be an interpretation given to the phrase "issues of employment and appointment," which includes all problems relating to work, both before and after the profession, that were by-products of the job and that are the part of the terms and conditions of the trade at the time of the work⁵³.

In this instance, the guarantee provided in paragraph (1) will cover, among other things, (a) initial appointments, (b) promotions, (c) job terminations, (d) salary issues, periodic increases, time off, gratuities, pensions, and the age at which a person is entitled to retirement.

Section 16 of the Constitution addresses the principle of equal compensation for equal effort

- Concerning *M Thomas v State of Kerala*⁵⁴, Justice V.R Krishna Iyer stated that in reality, the creamiest layer of backward classes or classes benefited from the advantages, leaving the weakest among

⁵³ Roy D, 'Political Parties, Employment Generation Policies and Governance', *Employment, Poverty and Rights in India* (Routledge 2018) <<http://dx.doi.org/10.4324/97811351065429-3>> accessed 03 July 2023.

⁵⁴ AIR 1976 SC 490.

them impoverished and allowing the more fortunate layers to take their fill of the cake.

- The passage of time, improvements in education, and increased work possibilities have significantly reduced the burden. No citizen will be denied or discriminated against in any occupation or position under the State solely based on religion, race, caste, gender, descent, place of birth, or domicile (or any combination of these factors) or any combination of these factors. Religion, race, caste, gender, descent, place of birth, place of residency, or any combination of these is banned topics of debate.

This is made evident by the terms "any job or office under the State," which indicate that Article 16(2) applies solely to public employment. The Supreme Court of India, in *K.C. Vasanth Kumar v. the State of Karnataka*⁵⁵, suggested basing reservations for backward courses on the mean test. It is also recommended that the reservation policy be reviewed every five years. If a style no longer needs a reservation, the rule should be modified. To remove it from the list of obsolete classes, rename it.

The Supreme Court decided *Indira Sawhney and others v. Union of India*.

1. It was determined that separate reservations for other backward classes in central government employees should be implemented.
2. It was ordered that Creamy layer and other backward groups be barred from making use of reservation services.
3. Ordered to limit bookings to those that fall below the 50 per cent restriction.
4. Declared unlawful some advanced caste reservations for economically disadvantaged individuals. This Article does not prevent Parliament from passing laws requiring a person to live in a State or Union territory before commencing employment or appointment.

⁵⁵ AIR 1985 SC 1495.

In *M R Balaji vs. the State of Mysore*⁵⁶, except for Tamil Nadu (which has 69 percent quota under the 9th schedule) and Rajasthan (which has 68 percent quota plus 14 percent for advancing castes, after the Gujjar unrest in 2008), the Supreme Court imposed a 50% ceiling on reservations. Tamil Nadu crossed the border in 1980.

Andhra Pradesh attempted to violate the limit again in 2005, but the High Court again blocked the attempt. No provision of this article prohibits the State from establishing any requirement for the reserve of appointments or positions favoring any backward class of people who, in the judgment of the State, are not sufficiently represented in the services under the jurisdiction of the State.

1. The Supreme Court of India examined the extent of Article 16 (4) in *Devadasan v. Union of India*⁵⁷, which was decided in 1964. In this particular instance, the "carry forward rule," which was enacted by the Government to control the hiring of individuals from economically disadvantaged backgrounds to government positions, was in play.

Earlier this year, the Apex Court ruled a "carry-forward rule" not constitutional, saying that the government's authority cannot be used in a manner that denies fair equality of opportunity to individuals who do not belong to backward groups. In this case, the "carry forward rule" raised the reserve of places for members of the lower classes from 50% to 68%.

This choice necessitates the evaluation of each recruiting year on an individual basis. To avoid monopolization or to infringe on the lawful rights of the rest of society, yearly reserves must not be excessive.

Therefore, the Court decided that reserves should be less than 50%, but

⁵⁶ AIR 1963 SC 649.

⁵⁷ AIR 1964 SC 179.

that the amount of reserve that should be less than 50% should be established based on the present conditions of the parties involved.

*S. Rly. v. Rangachari*⁵⁸, *State of Punjab v. Hiralal*, and *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*⁵⁹ has been decided (Supreme Court of Canada). Promotions were included in the reservation of appointments or positions under Article 16(4)⁶⁰. In the case of *Indira Sawhney & Others v. Union of India*, this was overturned.

The Supreme Court ruled that reservations may not be used in promotions⁶¹.

(4A) Nothing in this Article prevents the State from making provisions for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under its control to benefit members of the Scheduled Castes and Scheduled Tribes who, in the opinion of the State, are not adequately represented in the benefits under its control in matters of promotion, with consequential seniority, in the services under its control.

This Clause does not apply to other backward groups. Due to its inclusion, it is inapplicable to the scheduled castes and tribes.

The Supreme Court previously ruled that seniority acquired via promotion of general category applicants could not be impacted by a later increase of available class candidates, which justified scheduling reservations for SC/ST candidates. The Indian Supreme Court says in *S. Vinodkumar vs. Union of India*⁶² and it was not allowed to relax qualifying marks and assess the level of assessment in reservation issues in the promotion.

⁵⁸ AIR 1962 SC 36.

⁵⁹ AIR 1962 SC 36.

⁶⁰ AIR 1981 SCC 246.

⁶¹ AIR 1993 SC 477.

⁶² AIR 1996 6 SCC 580.

(4B) Nothing in this Article prevents the State from considering unfilled vacancies in a year as a separate class of vacancies to be filled in a subsequent year or years, and such type of vacancies must not be considered along with the vacancies in the year in which the reservation is made.

Reservation on the total number of vacancies available for that calendar year's events.

2. Any law requiring that the incumbent of an office in connection with the affairs of a religious or denominational institution, or that a member of the governing body of such an institution, must be of a particular religion or belong to a specific denomination is not affected by the provisions of this article. In *UOI vs. S. Kalugasalamoorthy*⁶³, the Court ruled that when a person is chosen based on their seniority, there is no justification for considering or counting them against a limited quota.

*T.M.A. Pai Foundation v. State of Karnataka*⁶⁴ (S.C.) The Supreme Court ruled that reservations cannot be imposed on private schools that the government does not support. When is it permissible for the backward class to reserve? The government of India is the collective noun for castes that are socially and educationally disadvantaged in India. Along with Scheduled Castes and Scheduled Tribes, India's official demographic group (S.C.s and S.T.s).⁶⁵

The more important question is how far it should be allowed for extraneous variables like caste and religion to take precedence over merit and efficiency criteria. It is the opinion of Aristotle that "*injustice arises when equals are treated unequally as well as equally.*"

It is challenging to choose the most appropriate basis of distribution for

⁶³ WP No .15926/2007.

⁶⁴ *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481.

⁶⁵ *P.A. Inamdar v. State of Maharashtra* 2005 AIR (SC) 3226).

preference. Beneficiary distribution has been suggested as a viable option based on individual need, position, merits, or entitlement.

According to Bernard Williams, *"it necessitates not only the elimination of exclusion from access on grounds other than those appropriate or rationale for good in question, but it also necessitates the creation of grounds for access that are such that people from all sections of society have an equal chance of satisfying them."* We cannot define a "segment of society" only based on the criteria used to distribute the good, since doing so would further restrict some individuals from participating in society. Everyone believes that merit is an appropriate criterion for medical school admissions since there are a limited number of available spots. It is now unlawful to exclude potential candidates for grounds other than merit since this violates the principle of equal opportunity.

Akhil Bharat Soshit Karamchari Sangh emphasized that scheduling castes and tribal groups as a class may be justified as fair and reasonable under Articles 15(1) and 16(1) of our Constitution because these groups are significantly different from the rest of Indian society, which is reflected in our Constitution. Other weaker sections, in this context, refer to groups that are economically and educationally disadvantaged, comparable to the Scheduled Castes and Scheduled Tribes of India. At the same time, the categorization of backward classes may need to be verified under Articles 15(4) and 16(4).⁶⁶

If so, why?

Articles 15 and 16 are exceptions to the rest of that article and Article 29 (2), and they are both applicable. To put it another way, Article 16 (4), in contrast to Article 15 (4), allows what the rest of the article expressly prohibits.

This was also the initial impression formed by the Supreme Court. In the

⁶⁶ Sharma RN, Fundamental Rights, Liberty and Social Order (1992).

case of *State of Kerala v. N M Thomas*⁶⁷, a few judges contended that paragraph (4) of Article 16 did not provide an exception from the provisions of clauses (1) and (2) of that article.

The Court also supported the view stated in Thomas, which was much more forcefully expressed by Chinnappa Reddy, J., in *Indra Sawhney v. Union of India*, which is the last case to be discussed. (4) of Article 16 does not constitute an exemption to the remainder of the article but rather an element of clause (4), according to his concurring judgment (1).

No, Clause (4) does not contradict the first and second sentences of Article 16; it just provides more substance to them. It achieves the same goal as clauses (1) and (2), which is to guarantee that everyone has an equal chance (2). This, together with paragraphs (1) and (2), or any other component of that article, qualifies as a fundamental right under the law.

"Equality of opportunity" is a phrase that is widely accepted in modern cultures. When examined in-depth, the concept of opportunity equality devolves into a plethora of conflicting visions. Whether some ethical norms should be enforced and which ones should not is a contentious issue. It is considered desirable to strive towards a society in which no one is discriminated against based on race, ethnic origin, religion, sexual orientation, or gender. Many people believe that the ideal is more important than any argument that it is an essential justice component.

CONCEPT OF SECTORS OF EMPLOYMENT AND CONSTITUTIONAL PROVISIONS

Employment means “*something or someone which engages or occupies and consumes time, attention in an office or any postal service like public employment or private employment. It is defined as a relationship between two parties based on a contract where one is an employer and an employee*”.

⁶⁷ AIR 1976 SC 490.

The Employee has contributed to the process of labour and has the expertise to work as per the employer's requirement as per the duties specific to the job assigned.

There are two sectors of Employment

1. Organized - It is the Sector of employment where the terms of employment are fixed and regular. The work is assured and stable with working hours that are fixed. There are added benefits like overtime payment, job security, medical, ESI, PF, etc. There is an appropriate authority that makes a set of regulations. It is divided into two types

- **Public Sector**- It is usually public employment with the motive of service, and the government pays the wages. This sector is strictly monitored and regulated by the government laid rules and regulations, and every employer is bound to follow. No new rules can be made or followed for any employer's interest.
- **Private Sector** - This employment sector is usually profit-motivated, where the private organizations pay wages to their employees on their interests and rules. They can make their laws and regulations within their organizations but, in the end, have to be within limits to the universal set of rules set by the government.

2. Unorganized - This Sector of employment is usually a scattered form and not in government control. Monetary benefits are low and irregular. The job is not secure, and no extra benefits were given.

The history of Employment is dated way back during the pre-Independence in India when Employee welfare was very much emphasized at the cost of Manufacturing Efficiency. This inheritance continued to date and has been underscored by the complex set of

Federal Regulations and State Legislations. These in conjunction operated and also usually conflict with each other.

Indian economy is significantly comprised of both Organised Sector and unorganized Sectors in Employment, depending upon the number of employees. Mostly the paradox of Indian Employment is the organized sector, and this research also focused on this sector of employment. This Sector is primarily Governmental governed and has around 50 Central and state statutes related to the law of work that protects the rights of the Employee in a State or a Centre. Some legislation defends the interests of the ordinary Employee, whether it be a private or governmental form of Employment⁶⁸.

Indian employment legislation comes into existence to protect the Employee who qualifies the definition of “workman” defined in the Industrial Act, 1947. Any employee who falls under this statutory definition is having all benefits of protection under the law. The law of employment is a compassionate issue in India and, in recent times, plays a significant political influence on the vote bank. Also, these laws are very outdated and still not updated as per the current needs. The Factories Act 1948, which came into existence, was last amended in 1987. Also, many new companies were getting registration and licensed to meet the globalization standards.

But in past years, few reforms and the committees in consultation with the government and trade unions. This reform process will be a forever process to provide a transparent employability Index in the Sectors of Employment.

According to the National Sample Survey Organization (NSSO)⁶⁹, 30

⁶⁸ Dagli V, *Public Sector in India* (Atlantic Publishers & Dist 1969).

⁶⁹ Brahmananda PR, ‘Aspects of Academic Thinking in India on Employment and Related Policies’, *Employment Policy in a Developing Country A Case-study of India Volume 2* (Palgrave Macmillan UK 1983) <http://dx.doi.org/10.1007/978-1-349-06646-9_16> accessed 03 July 2023.

million Indians work as migrant labourer's, while 2594 million women have entered the workforce since 2000. Every day, 13000 Indians reach 60, and they are projected to live a further 17 years. Sadly, just 10% of Indians save for retirement. Tragically, current social security laws barely cover 8% of India's 459 million workforces.⁷⁰

The latest NSSO data on casual employees in India between 2004-05 and 2009-10 indicates a substantial rise in casual workers and a decrease in regular employees.

Between 1999 and 2000 to 2009-2010, the labour force structure shifted from self-employed to regular and casual employees. (*Casual workers do not have the same benefits and security as permanent employees. Casual workers include all daily pay employees and certain contract workers.*)

These NSSO reports show that the Indian labour market has changed dramatically, with the growth of informal activities, deterioration in employment quality (job security, working conditions), weakening of worker organizations and collective bargaining institutions, and a marked decline in social security. These changes may be linked to the continuing globalization trend and businesses' attempts to reduce manufacturing costs to the lowest levels. These results are strongly linked and mutually reinforcing.

They took for granted the administrative versions and interpretations of the organizational versions. Now, none of this can be taken for granted. Growth is sluggish, inflation is structural, and employment is not expanding fast enough.

Formal employment growth has always lagged behind total employment growth, indicating faster growth in the informal sector. The statistics available suggest that informal/unorganized employees are increasing

⁷⁰ Greer I and others, *Employment-Services Sectors under Resource Scarcity and Uncertainty* (Oxford University Press 2017)
<<http://dx.doi.org/10.1093/oso/9780198785446.003.0004>> accessed 03 July 2023.

inside the official economy. According to NCEUS (2007), the nation is presently experiencing “formalization of the formal sector,” with the natural growth in employment in the organized sector during this time being informal⁷¹.

The industry is also characterized by high temporary and contract employment, unusual production structures and work relations, lack of social security and welfare laws, lack of social norms and worker rights, and so forth. Inadequate human capital (education, skill, and training) and lower mobilization status of the workforce add to the vulnerability and weaken the bargaining power of informal sector workers. Attempts to regulate and put it into a more effective legal and institutional framework hurt the sector's labour absorbing ability.

The uncertainties and vulnerabilities of contemporary formal sector workers are rising due to a lack of worker mobilization.

CONSTITUTIONAL PROVISIONS

Our Constitution states in Article 38 that the State must secure and safeguard the people's well-being as a social system where Justice, Social, and Economic, and Political, should enlighten all National Institutions.

Moreover, the state should endeavour to reduce the disparities in income and status, facilities and opportunities for people, as well as the collection of individuals from various places or occupations different professions

Article 39 states that the state's policies should be aimed towards securing-

(a) Every citizen, male and female, has the right to a decent living. The

⁷¹ Bhide S, Balasubramanyam and Krishna, *Deciphering India's Services Sector Growth* (Taylor & Francis 2020).

management of the material resources of the communities is spread out to serve the common good better. (c) That the economic system does not result in shared wealth and production methods disadvantage. (d) That men and women get equal compensation for equal labour. (e) That worker's health and strength, and children are not mistreated or coerced at an early age.

A child's right to grow in a healthy, accessible, and dignified way youth are protected against exploitation and abandonment on both counts.

Our Constitution states in Article 41 that the State must provide adequate provision within its economic capabilities working, studying, and receiving governmental aid in unemployment, old age, illness, disability, and another unjustified plight⁷².

Our Constitution states in Article 42 that the State must provide for fair and humane working conditions maternity leave. Also, to control the hiring of women in specific places before and after to offer maternity and other benefits

The Maternity Benefit Act, 1961, was passed in India.

Our Constitution states in Article 43 that the State must secure, by appropriate law or economic structure in otherwise, to all agricultural, industrial, and other employees a reasonable quality of living, a liveable income, and the full enjoyment of leisure and social activities.

Article 43 of the Constitution speaks of enacting laws or otherwise ensuring employees in enterprises, institutions, or other companies in any sector.

Article 43B of our Constitution requires the state to free will, autonomy,

⁷² 'Political Parties, Employment Generation Policies and Governance', *Employment, Poverty and Rights in India* (Routledge, 2018)
<<http://dx.doi.org/10.4324/9781351065429-3>> accessed 03 July 2023.

democracy, and professional co-op management.

Measures for social security True, when India's constitution was written, List III through Schedule VII of it was established as the combined duty of government, federal and state. Several state directive principles social security policies were integrated into India's charter Acts like The Industrial Disputes Act (1947), the Minimum Wages (1948), Coal Mines Provident Funds Act (1948), Employees Provident Fund Act (1952), The Maternity Benefit Act (1961), Provision for Seamen Act (1966), Contract Labour Act(1970), the Building and Construction Workers Act (1996), etc., show the organized to get various social security and welfare benefits.

The central State governments have developed specialized assistance programs for employees who fail to fulfil genuine demands sector labour force.

NO DISCRIMINATION IN HIRING AND PROMOTION

Section 5 of the legislation prohibits discrimination based on except when the employment of two Scheduled Castes, Scheduled Tribes, Veterans, or other laid-off workers

Except where the Central the relevant government implements state governments where the State employs, the government can enforce the regulations. E.R. State Labour authorities carry out the 1976 Act. The Central Government oversees the State's Equal Remuneration Act, 1976

The laws made are primarily in public employment, whether it be for the kind of Employment or place. The Indian Constitution clarifies through these legislator measures that no one can exploit any person while he is engaged in a type of job opportunity. The freedom of doing a job in any part of the country is preserved by the Employment laws that govern the sectors of Employment.

Most of the legislation is made only for organized sectors. Only a few measures are present or in the process of formulation that addresses the hidden agendas that can be related to the cause of unemployment for the talented youth. The main reason for issues that arise in employment is that much legislation is operative and usually very much confusing. The states typically bargain their rights for political influence and vote banks and oversee the merits of employment in the public sector. Usually, they don't follow the federal laws set as a universal law. The Centre is primarily dependent upon the judiciary and doesn't even bother to find out the reason that causes unemployment of youth in mass.

ANALYSIS

Reservation in India aims to enhance the lives of those who have traditionally been socially disadvantaged.

Articles 41, 45, and 46 of the constitution required affirmative governmental action and allowed reservations in educational institutions, positions, and appointments.

All of these laws seek to quickly elevate the weaker parts to ensure equality of status and opportunity, which **promotes national brotherhood, unity, and integrity**.⁷³

Dr. B.R. Ambedkar had emphasised the necessity for **social and economic equality** in the Constituent Assembly discussion.

Reservation orders are applicable depending on the recruiting technique. The proportion of reservation as well as the application process will vary depending on the recruiting technique.

The main objective of bringing in reservation was to give "Equal

⁷³ 'Employment under Reservation', , *Dalits in India: Search for a Common Destiny* (SAGE Publications India Pvt Ltd) <<http://dx.doi.org/10.4135/9788132101086.n8>> accessed 03 July 2023.

opportunity” for those who were socially backward and exploited.

Initially there was only 22.5% of Reservation that was given to the S.C, s and S.T.s and it was very less and was acceptable for ensuring equality. But in the advent of time more and more Reservation schemes came up demanding reservations⁷⁴.

The OBC reservation was added up with 27.5% of the seats in the employment and educational sectors.

This created the defamatory effect on the SC/ST reservation which was actually necessary and was the initial need of the time. Many opposed the SC/ST reservation and not the OBC reservation which is 27% and based on the Economic and Non - Economic background which was an accidental approach that created mess in reservation policies due to a bigger political agenda. The total reserved seats completely covered around 49.5% seats and thus defamed the SC/ST reservation.

Furthermore, to more political influence newer reservation schemes came up in name of particular clan, class or society which is creation confusion.

Domicile reservations is a new problem that is arising and creating problems to the SC/ST's to take opportunity of Reservation since most of the reservation schemes are now less of National level importance and more of State Level or Domicile based and its due to more of political influence than of state welfare for locals.

The Inter-State Migratory SC/ST's are the one who are the real sufferers because they have to move to another state due to employment or need or by birth.

⁷⁴ Sharma SK, 'Reservation Policy in India: Exclusion in Inclusion' in Paramjit S Judge (ed), *Mapping Social Exclusion in India* (Cambridge University Press) <<http://dx.doi.org/10.1017/cbo9781107296947.007>> accessed 03 July 2023.

The question lies that will an SC or an ST be always be an SC or An ST if he moves to any part of the Union of India. ? If Not then why should the state give importance to domicile in Reservation for Employments?

Public Employments have two sectors e.g. the Organised and Unorganised Sectors.

Reservation based on domicile status may be regarded a factor in denying job rights to anybody who has a merit or has a reservation of status to another state law.

CONCLUSION AND SUGGESTIONS

Dr. B.R. Ambedkar helped draught the constitution, which states that governments must execute it based on distributive justice and reparation for past wrongs. But it was just the public sector, which had been declining for some years. This has been going on for a decade and a half, all in the name of so-called globalization. Vote-bank politics has forced all political parties to examine the seriousness of this demand.

Interestingly, the same so-called experts who seldom backed employment reservations in the public sector voiced concerns to the same in the private sector. As a consequence, the UPA pledge (Reservations in Private Sector) has sparked much debate. This in turn raised some relevant concerns. For example, should dalits and the poor be given priority in the job market? Is this favoritism based on birth caste or community justified? This is to be provided to specific individuals. The answers to these questions must be given quickly.

The original goal of 'Reservations' was undermined from 'within' to ensure the improvement of disadvantaged and deprived sectors of society.

The Indian constitution recognizes reservation in public education and employment as a legal type of affirmative action intended to help

historically disadvantaged populations. The Constitution provides for three types of reservations: (1) employment in government agencies, (2) educational institutions, and (3) legislative seats.

The Supreme Court's decision on reservation in private higher education institutions and subsequent legislative measures have fueled the flames. The ensuing flurry of publications on the topic has left ordinary people perplexed.

Several articles highlight the perceived conflicts between reservations and merit and efficiency. There is a large theoretical literature on how markets and discrimination (of caste, community, or gender) interact to decrease economic efficiency, and how affirmative action to eliminate discrimination can only improve efficiency.

The argument over reservation policy seems to focus on how affirmative action should be implemented. The data also shows that social discrimination (which is linked to but not the same as economic inequality) persists in India.

Discrimination has far deeper roots, since social and economic inequalities are increasingly linked. For this reason, we must see the argument over private sector reservation as an attempt to rectify historically established and still widespread societal inequality.

Some of the present reservations debate's key concerns and problems are also addressed. Why we care about discrimination? Is discrimination just about fairness or does it also have an economic and political cost? What is the business sector's position on these issues? How solid are the arguments against a private sector anti-discrimination policy? What legal action would be just?

Reservation for SC/ST and other disadvantaged groups in the Employment sector has risen again, in its ashes, following the upheaval

and student unrest experienced in the Mandal years.

In general, reservations are linked to social justice, which is stated in the preamble of the Indian constitution. Inherent in the concept of social justice is the human right to fair opportunity.

But the issue is that some groups of people have been historically disadvantaged and discriminated against. To achieve genuine equality of opportunity, equal result is required.

Articles 14, 15 and 16 of the Indian Constitution impose legislative and administrative duties on the legislature and executive, respectively.

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