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## Reservation policy and the Indian constitution

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### Abstract

India is a diversified society, with people from various religious sects coexisting. However, they are not all created equal. Many are from upper-class families and some are not so well equipped with resources. The government has given them some benefits in the form of reservation or affirmative action. Dr. B.R. Ambedkar acted as a champion for Dalits and other underprivileged classes. Reservation policy was enacted to live for the weaker and poorer sections of the community and provide them with equal status as other high-status communities. With time and at the request of other communities, more castes were added to this policy from time to time to provide them with benefits. This paper looks at some of the more important chronological, constitutional and lawful moments in the development of a reservations procedure in India.

**Keywords:** Government, constitution, development, religious

### Introduction

India is a diverse country. Throughout history, people of all castes, colors, religions and languages have co-existed in peace and harmony. The spirit of equality pervades the provisions of the constitution of India, as the main aim of the founders of the constitution was to create an egalitarian society where social-economic and political justice prevailed and equality of status and opportunity are made available to all. However, owing to historical and reasons, certain classes of Indian citizens are under severe social and economic disabilities so they cannot effectively enjoy either equality of status or opportunity.

The makers of the constitution felt that these classes needed to be a part of the law-making procedure and special provisions had to be granted to them to incorporate them into the process.

### Research Objectives

- 1) To overview the concept of reservation policy Indian constitution.
- 2) To understand the tussle between the right to equality and reservation policy in India.

### Reservation Policy in Indian Constitution

The constitution guarantees the right to equality and prohibits discrimination based on religion, race, caste, gender, or place of birth. This also ensures special protection for society's most vulnerable.

Reservation is a system of affirmative action in India that provides historically disadvantaged groups representation in education, employment, government schemes, health, insurance, banking, foreign higher education, scholarships and politics. Based on provisions in the Indian Constitution, it allows the Union Government and the States and Territories of India to set reserved quotas or seats, which lower the qualifications needed in exams, job openings, university admissions, scholarships, loan approval, promotions, etc. for "socially and educationally backward citizens.

#### 1) Article 14: Right to Equality

Article 14 of the constitution of India provides that the state shall not deny any person equality before the law or equality protection of the laws within the territory of India prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.

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## 2) Article 15 Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex, or Place of Birth.

Article 15(4) was introduced by the 1<sup>st</sup> Amendment Act, of 1951. It confers the power of the state to make special provisions in favor of socially and educationally backward classes of citizens. Article 15(4) was added by the constitution (1<sup>st</sup> Amendment) Act 1951, as a result of the decision in State of Madras V/S Champakam Dorijan. In this case, the Madras Government had reserved seats in sets in state Medical and Engineering colleges for different communities in various proportions based on religion, caste and race. The State defended the law on the ground that it was enacted to promote social justice for all sections of the people. The Supreme Court held the law is void because it classified students based on caste and religion irrespective of Merit.

To modify the effect of the decisions, Article 15 was amended by the constitution (1<sup>st</sup> Amendment) Act 1951. Under the clause, the State is empowered to make provisions for the advancement of any socially and educationally backward classes of citizens for the scheduled class and scheduled tribe.

## 3) Article 16 Equality of Opportunity in Matters of Public Empowerment

Article 16(1) provides that, there shall be equality of opportunity for all citizens in matters relating to empowerment or appointment to any office under the state. Article 16(4A) provides that “Noting in this article shall prevent the state from making any provision for reservation in matters of promotion of any class or classes of posts in the service under the state in favor of scheduled cast and scheduled tribe which, in the opinion of the state are not adequately represented in the services under the State.

## 4) Article 17 Abolition of Untouchability

Article 17 abolition “Untouchability” and forbids its practice in any form. The enforcement of any disability arising out of untouchability its be an offense punishable following the law. It does not stop with a mere declaration but announces that this forbidden “Untouchability” is not to be henceforth practiced in any form.

## 5) Article 39(D) Equal Justice and Free Legal Aid

Article 39A Directs the State to Ensure Equal Justice and Free Legal Aid to Economically Backward Classes.

## 6) Article 330 Reservations of Seats for Scheduled Caste and Scheduled Trib in the House of People

It provides for the reservation of seats for Scheduled Caste and Scheduled Tribe in the Assemblies of the States.

## Landmark Judgments Regarding of Reservation

### 1) Indra Sawhney V/S Union of India

The 9 Judges Constitution Bench of the Supreme Court by a 6/3 Majority held that the decision of the Union Government to reserve 27% of Government jobs for backward classes provided socially advanced persons-creamy layer among them are eliminated, is constitutionally valid. The reservation of sets shall only confine to initial appointments and not to promotions and the total reservations shall not exceed 50%.

The court accordingly partially held the two impugned notifications dated 13 August 1990 and 25 September 1991,

as valid and enforceable but subject to the conditions indicated in the decision that socially advanced persons-creamy layer among Backward Classes is excluded. However, the court struck down the congress Government On reserving 10% of Government Jobs for economically backward classes among higher classes.

### 2) MR Balaji V/S State of Mysore

A 5- Judge of the Supreme Court for the first time, talked about ensuring that reservations remained below 50%. It rejected the argument that reservations do not affect the quality of scholarship or efficiency. Although the Judges in Balaji did not cite it, the petitions arguing against Maratha reservations have relied on Article 335 of the Constitution.

This Article requires “efficiency of administrative” to be a constitution when making provisions for Scheduled Caste and Scheduled Tribe. They have argued that is a broader principle of efficiency, relevant to Higher Education, States and all special provisions for any backward classes.

Thus reservations should be kept minimum. This narrative has been often been challenged by anti-caste authors.

Balaji also held that the rights of deserving candidates from other communities should also be kept in mind. Accordingly, “Special Provisions” like Article 15(4) and Article 16(4) should be restricted to reasonable limits. So reservations must be kept below 50% of seats. How much below 50% would depend on the circumstances.

### 3) T Devadasan V/S union of India

The 50% rule was applied to hold “carry forward” reservations unconstitutional. This meant that unfilled seats for reserved categories in one year could not be carried forward to the next year. The 50% rule seemed to have become an accepted constitutional principle.

## Conclusion

The framers of the Indian Constitution had in their mind the concept of a welfare state while framing the Constitution which we can be made out by analysis of various Articles in the Constitution which clearly shows that they wanted to create a society that is free from any discrimination and injustice that exists in the society towards the suppressed class the provisions contained in various laws helps giving relief to the needy persons who had suffered in pre-independent India which has ensured that the poor people will have an opportunity to grow as a matter of inclusive growth and thereby has supported the downtrodden people and in reality ensures that the social interests are protected over that of vested interests.

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