



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Reservation Laws in India: Need for Caste-Based Census

Sweekriti Yadav<sup>a</sup>

<sup>a</sup>Guru Gobind Singh Indraprastha University, Delhi, India

*Received* 16 August 2021; *Accepted* 09 September 2021; *Published* 14 September 2021

---

*Reservation in India has been through a long journey India serving the needs of socially and educationally backward classes, the reservation laws were initially brought by Dr. BR Ambedkar after the independence and during constituent assembly debates, he emphasized the fact that without economic equality there can be no political equality if we need to make citizens of India empowered we need to make them empower in all spheres of life thus reservations were brought in the constitution itself through Article 15(3) and,15(4). Supreme court many times has relied on the fact that reservations are not arbitrary classification but a reasonable classification which is a must in a nation like India having economic diversity, recently there has been a debate among political scientists that although reservations are reasonable classification how we are determining the fact who is in need of reservation and who is not for that the need for caste-based census has aroused which further has taken a political turmoil after the state of Maharashtra brought reservation for Marathas in public services breaching the Indira Sawhney ceiling of 50% citing the reason being it can be breached in exceptional circumstances, thus this paper tries to recognize as to what is a caste-based census and why India needs it today.*

*Reservation laws in India were envisioned first by Dr. BR Ambedkar chairman of the drafting committee who himself belonged to the socially deprived class of India and noted that until and unless there is a reservation for backward classes India cannot achieve development in a real sense thus the provision of reservation was brought in the constitution itself, recent 127<sup>th</sup> constitutional amendment 2021 providing rights to state for determination of caste for reservation has aroused the need of caste-based census in India conclusively it is very much needed today to read the basics of reservation and why the caste-based census is argued. Reservation laws in India were envisioned first by Dr. B.R Ambedkar chairman of the drafting committee who himself*

*belonged to the socially deprived class of India and noted that until and unless there is a reservation for backward classes India cannot achieve development in a real sense thus the provision of reservation was brought in the constitution itself, recent 127<sup>th</sup> constitutional amendment 2021 providing rights to state for determination of caste for reservation has aroused the need of caste-based census in India conclusively it is very much needed today to read the basics of reservation and why the caste-based census is argued.*

**Keywords:** *reservation, caste, census.*

---

## INTRODUCTION

Article 15 of the Constitution of India under fundamental rights clearly stipulates that the state cannot discriminate between citizens on the grounds *only* of “race, caste, religion, sex, place of birth” however based on the needs of India constitution-makers adopted a buddha’s path i.e., the middle way in order to curb social evil practices and to promote equality among citizens by enunciating the principle of Reasonable Classification and mentioning the provision for making special provisions for women, children, the vulnerable section in the constitution itself.

## PROVISIONS FOR RESERVATION

*“Article 15(3)<sup>1</sup> - The state is not prevented from making any special provision for women and children. Article 15(4) along with Article 29(2) - does not prevent the state from making any special provisions for the advancement of any socially educationally backward classes of citizens or for the scheduled Castes and Scheduled Tribes.”* However, it must be noted that the provisions mentioned in the above said articles are merely enabling provisions. No citizen of India can claim reservation as a matter of right and accordingly no writ of mandamus can be issued.

### **Article 15(3)**

The state is not barred from making any special provisions relating to the women and children for their advancement in social spheres as they are categorized under vulnerable sections of the society. Thus, the constitution is characterised by gender equality. The provision finds its

---

<sup>1</sup> Constitution of India, art 15(3)

root from the English law “But for sex” test which means that no less favourable treatment shall be given to women on the gender-based criterion which would favor the opposite sex and women will be not treated differentially deliberately based on their sex. Thus according to the article, it crystallises the fact that “equality cannot be achieved unless there are equal opportunities”<sup>2</sup> this factor finds its place in matters of reservation of Scheduled Castes, Scheduled Tribes, and Other Backward Classes also.

#### **Article 15(4)**

This provision has been tested many times wherein the court has clearly mentioned that in India in order to remove the social evils such as casteism, varna system there is a need for REASONABLE CLASSIFICATION and the provision of the reservation is the road for the development of India as a whole.

*“Article 15(4) is an exception to clause 1 and 2 of Article 15, it came into existence by the amendment in the constitution 1<sup>st</sup> Amendment, Act, 1951, which find its roots in the adjudication of a case of State of Madras v. Champakam Dorairajan<sup>3</sup>”* As shown in court documents, the Madras government had allocated seats in state medical and engineering schools for different groups in varying proportions based on religion, caste, and race, In order to justify its opposition to this legislation, the state used Article 46 of the Directive Principles of State Policy, which states that it was established to promote social fairness to all sectors of society. The Supreme Court ruled that the legislation was unconstitutional because it categorised pupils based on caste and religion, regardless of their academic ability. With the Constitution 1st Amendment, Act of 1951, Article 15 was modified to modify the impact of judgments. The state is authorised to create arrangements for the development of any socially and educationally disadvantaged groups of people, or for the Scheduled Castes and Scheduled Tribes, under this act of the Indian constitution. As a result of the amendment, the state could establish a Harijan Colony to promote the interests of lower-class citizens, and numerous land reform laws were enacted across the nation.

---

<sup>2</sup> *Charu khurrana v UOI* (2015) 1 SCC 192

<sup>3</sup> *State of Madras v Champakam Dorairajan* AIR 1951 SC 226

Under Article 15(4), in innumerable cases, the court has upheld the reservations of seats for SC, ST in engineering, medical and educational institutions however one case which changed the course of reservation laws in India was:

*Indira Sawhney v UOI*<sup>4</sup> wherein in order to curb political vicissitudes regarding reservations supreme court put a ceiling limit on the stipulation of reservation in any field i.e state cannot provide more than 50% reservations. Moreover, it held that reservations are not a constitutional mandate but a prerogative of the state.

### **SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES**

“A major difficulty raised by Article 15(4) was regarding the determination who are socially or educationally backward classes moreover it was not a simple matter as sociological and economic consideration came into play in evolving proper criteria for is determination.” In this regard Supreme Court in *MR Balaji v state v Mysore*<sup>5</sup> laid certain criteria for determination of economically and socially backward classes:

1. In the Indian society, there were classes that had somewhat less or almost no adequate means of development because of their birth in a particular caste, they may be treated as socially and educationally backward classes.
2. Poverty alone cannot be the test of Backwardness in India because by and large people are poor in India and they will fall under the category of backward classes which may hamper the very scope and objective of the provision itself.
3. Backwardness should be comparable, though not exactly similar to the Scheduled tribes and Scheduled Castes.
4. Caste may be a relevant factor for the determination of backwardness however it cannot be the sole factor of the determination of backwardness.
5. Poverty, occupations, place of habitations, all contribute to backwardness and such factors cannot be ignored.

---

<sup>4</sup> *Indira Sawhney v UOI* AIR 1993 SC 477

<sup>5</sup> *MR Balaji v state v Mysore* AIR 1963 SC 649

Thus, it is pertinent to note that caste along with certain factors contributes to the very basis for laying down the criteria of reservations however recently there has been numerous issues wherein the caste has intermingled with politics making the sole purpose of reservation backing out some of the prominent examples are “Jaat Protest for Reservation” “Recent Maratha laws on Reservation”. Thus many state governments have requested the Union Government to consider the Caste-based census in order to identify the backward classes and the scope and objective of reservation could be envisioned.

### **CASTE-BASED CENSUS**

“Every Census in independent India from 1951 to 2011 has published data on Scheduled Castes and Scheduled Tribes, however, there is no adequate data for other castes which constitute almost 30-40% of Indian population Earlier every Census until 1931 had data on caste. But, in 1941, caste-based data was collected by the British government but not published. Without proper data, there is no proper estimate for the population of OBCs, various groups within the OBCs, and others. The Commission on Other backward classes revealed the Other Backward Class population at 52%, while some other data have been based on National Sample Survey data.” Thus, the caste-based census becomes a need of the hour for the development of India

### **NEED FOR CASTE-BASED CENSUS**

A caste census is not merely attributed to the reservation issue. It revolves around many other issues which are very much relevant for the development of India as a whole, for instance, a caste census will prove beneficial to the particular number of people who are at the edge, or who are disadvantaged, or the kind of profession they are engaged in, or the kind of hold that institutions such as caste have on them. Furthermore, such data is the need of the hour for any democratic policymaking as in democracy the voice of people be it marginalised or in the majority is heard however if the voices of marginalised are not heard properly there would be no faith in democracy by people moreover it will try to achieve what Nehru envisioned “If People cannot come to the doors of Democracy we will make democracy walk to the doors of

people". Moreover, the courts in India have often emphatically relied on the fact that it is important to have adequate data about the reservation so that the fruits of every provision could be achieved. Caste as also laid in the Balaji case is not only a source of disadvantage; it is also a very important source of privilege and advantage in our society one caste may be privileged due to its birth. Further assessment of caste does not mean perpetuating caste or the caste system. Myths of caste elitisms can be quashed through a caste census.

### **CONCERNS REGARDING CASTE-BASED CENSUS**

It is argued that a Socio-Economic Caste Census is the only possible road to make a case to breach the 50% cap on the reservation and rationalize the reservation model in the country. Another concern that has been put forth is that the More the State ignores outcastes, the more is the tendency to preserve caste, protect it. This has been observed in many states, Data collection itself is a big problem because it can become very, very chaotic. But India needs to balance it with enabling people and asserting citizen equality. However, the 50% cap, as invoked by the court in Indira Sawhney's judgement, has not really been under controversy. But a handful of the population feels that there is nothing sacrosanct about the 50% limit – it can be exceeded, if necessary, but a clear argument should be given for why this is being done.

### **RESERVATION SCENARIO TILL NOW**

The road of reservation practiced has invariably led to elites among castes and communities and such elites within the castes have arguably exercised their dominance over their very communities and not let them exercise the kind of freedoms, or search for equality, which any democratic polity deserves. The state to have political gains has helped privileged communities far more, even though this help has not taken the explicit form of programs like a reservation.

### **CONTROVERSY REGARDING CASTE CENSUS**

This is a demonstration of the fact that those in power control data and information. India has had many instances wherein the data has been collected but has not been made public. Since a

caste census is a need, it is not a joyous thing, it is not a paramount achievement, it is just something that the State must do in certain circumstances for vested interests of state governments in the hunt for vote banks are also visible these days.

### **SOLUTIONS THAT MIGHT PROVE BENEFICIAL**

We are engaged in a mindset where we think only those communities which want welfare benefits from the state must be enlisted. Political scientists have suggested that a Socio-Economic Caste Census might be the best way to rationalize reservation based on data and would make a strong case for breaching the 50% gap. In past unions argued that counting caste will perpetuate the socio-economic gap.

### **CONCLUSION**

The pandemic has brought chaos in the nation regarding poverty, wellbeing and development of citizens and country as a whole, it is an undeniable fact that our Indian society has many internal problems such as caste being used as vote bank, caste politics side-lining the minorities and caste playing major role in day to day life of an Indian however it is worth mentioning that due to availability of reservation laws India since independence has done great with regard to education from having literacy rate of less than 20% at the time of independence to now having almost 80% literacy rate, such achievement has been made possible because of reservation policies along with welfare policies of government such as Sarv Sikhsha Abhiyaan Skill development programmes however recent incidents has proved that India needs to embrace itself for bigger picture of assessing caste in India as providing the reservation to population which is in need of such reservation, union government along with state governments must try to revise the data of caste in India and provide relief measures to the needy population of country. It is worth mentioning that there would be problems in the caste-based census there will be opposition however it is up to the government of India how it deals with such exigencies.