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Reservation System in India and the Right to Equality

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Indian Constitution guarantees equality to all residents and prohibits the state from all forms of discrimination. It ensures that the state respects all its citizens equally giving equality of position and opportunity to each and everyone and particularly states that discrimination based on religion, sex, colour, caste, or race is to be prohibited. The main goal is to transform a community that is divided between the lines of religion, caste, and economic status into a homogeneous society. Reservation is an anti-discriminating program in India that supports the traditionally underprivileged groups with inclusion in education, jobs, and policymaking. It was intended to attain the ultimate target of growth. However, it gave rise to an increase in the disintegration and partition of society along with the caste system, which was never the goal of incorporating such measures for upliftment. As a resolution, the Constitution grants protected discrimination through various Articles like 15(4) and 16(4) to these vulnerable segments of society. These Articles grant the state the authority to make a particular reservation for the improvement of any section that is backward in social and educational terms along with scheduled castes and scheduled tribes. The present article discusses the “Right to Equality” provided by our nation, the reservation policy in India, and the relation between equality and reservation.

Keywords: constitution, equality, reservation, discrimination.

INTRODUCTION

Indian Constitution Part III assures basic rights to all Indian citizens, regardless of “caste, race, birthplace, religion, or gender”. These basic rights which can be legally justified are known as Fundamental Rights. Dr. B. R. Ambedkar mentioned them to be the constitution’s utmost citizen-focused part. These are regarded as the most vital part because they safeguard citizens’ rights and liberties from abuse or interference by the government. These rights seek to achieve the ideals of justice, liberty, equality, fraternity, and self-esteem set out in the Preamble.¹ For democracy to grow and develop, individuals in society must be treated fairly and without prejudice. Thus, the writers of the Constitution believed that including such a provision would eliminate the barrier of prevailing inequalities in social and economic aspects and allow the country’s various groups to relish the rights and liberties provided by the constitution. It was thought to be critical to eliminate religious and social norms related to disparities, and ancient practices conducted in different areas of India, such as untouchability, casteism, and race discrimination.² Therefore, according to the constitution, the government would not deny anyone in India parity before the law or should ensure equal safety under the law. It indicates that the law applies in the same way to everyone, regardless of their status. This is known as the “Rule of Law” which is the backbone of any democracy.

The Indian Constitution divides the right to equality as follows:

- Equality before law (Article 14)³
- Prohibition of discrimination on grounds of religion, caste, race, sex, or place of birth (Article 15)⁴
- Equality of opportunities in matters of public employment (Article 16)⁵
- Abolition of untouchability (Article 17)⁶

¹ Shruti Goel, ‘Right to Equality: A Fundamental Right’ (*Ipleaders*, 26 September 2019) <<https://blog.ipleaders.in/right-to-equality-a-fundamental-right/#Introduction>> accessed 14 June 2022

² *Ibid*

³ Constitution of India, 1950, art.14

⁴ Constitution of India, 1950, art.15

⁵ Constitution of India, 1950, art.16

⁶ Constitution of India, 1950, art.17

- Abolition of titles (Article 18)⁷

Article 14 of the right to equality has got a universal implementation, whereas Articles 15, 16, 17, and 18 have a specialized application.

A. RIGHT TO EQUALITY- ARTICLE 14

Article 14 under the constitution states that “the state shall not deny to any person equality before the law or the equal protection of the law within the territory of India.” This implies that everyone who resides in India has the same legal rights as the rest. This article is divided into 2 parts:

- Equality before the law
- Equal protection under the laws

Even though they are similar in tone, they do not have a similar meaning. The term “Law” is used in the first sentence in a true philosophical way, while the term “Laws” is used in the second sentence to identify certain legislations in effect.

“Equality before the law” refers to the that all citizens should subject themselves to the usual law of the land as directed by ordinary law courts. It entails the lack of any special treatment for any individual, as well as the equal surrender of all classes to regular law. In contrast, equal protection of laws is a positive idea that means equal treatment in similar circumstances, both in terms of advantages conferred and obligations enforced. As result, everyone should be treated fairly and equally. This equal protection right applies to both substantive and procedural laws.⁸ A landmark judgment related to this article is *E.P Royappa v State of Tamil Nadu & Another*.⁹ It adhered firmly in this case that Article 14 is one of the basics of the Indian Constitution and so cannot be limited by a preventive and inflexible explanation. Thus, this article should be given the widest interpretation which comprises the reasonableness and arbitrariness of some legal provisions.

⁷ Constitution of India, 1950, art.18

⁸ *Ibid*

⁹ *E. P Royappa v State of Tamil Nadu & Another* (1974), AIR 555

B. RIGHT TO EQUALITY- ARTICLE 15

Article 15 under the Indian Constitution forbids the state from discriminating toward persons based on caste, religion, gender, race, or place of birth. This article encapsulates the fundamental rights guaranteed by the Constitution without any distinction. From the 11th to the 21st century, India was plagued with bigotry. The British enslavement of Indians, the damaging caste system depicted in the “Manu Smriti”, and bias during the Mughal Empire are a few examples of why Article 15 is necessary for a society like India. The term discrimination in this article refers to specific practices in Indian culture, like untouchability. There have been countless examples of inferior caste people, such as “Dalits”, being denied admission into public places such as stores, public hotels, places of amusements, places of religious activities, and so on. Article 15 and its sections give the state government the authority to construct a fair and equal society in which everyone has a level playing field for all persons, irrespective of their colour, caste, creed, or religion.¹⁰ This general rule of non-discrimination has got three exceptions. The first is that the state may establish any particular measures for women and children. For example, reserving seats for women in local bodies and providing free education to children. The second exception is that the state has the power to create special provisions for socially and economically deprived people, as well as Scheduled Castes and Scheduled Tribes. For example, seat reservations or cost reductions in public educational institutions. The third one is that the state can make particular measures for the educational and communal upliftment of socially and economically disadvantaged parts of society, as well as for SCs and STs. Provisions for entry to educational organizations in private institutes, whether subsidized or unassisted by the state, are examples.¹¹

C. RIGHT TO EQUALITY- ARTICLE 16

Article 16 under the Indian Constitution ensures an equal chance for all citizens in matters of public sector services. Article 16(1)¹² stipulates that “people shall have equal opportunity for

¹⁰ Constitution of India, 1950, art.15

¹¹ Hemant Singh, ‘What is Article 15 of Indian Constitution?’ (*Jagran Josh*, 12 May 2020)

<<https://www.jagranjosh.com/general-knowledge/article-15-1561544384-1>> accessed 14 June 2022

¹² Constitution of India, 1950, art.16(1)

employment or appointment to any office under the state”. This equality clause applies to jobs or offices which is under the state. The state is yet able to set the minimum criteria for hiring personnel in private authorities. The government may also select applicants for employment as long as all candidates are given an equal chance to seek government services.

Article 16(2)¹³ establishes that “religion, race, caste, sex, descent, birthplace, domicile, or any combination of these are prohibited grounds of discrimination for employment or appointment to any office under the state”. The phrase “any employment or office under the state” in clause 2 of Article 16 states that the law applies to public employment and private sector employment.

Clause 3 under Article 16¹⁴ states that there is nothing in the article that shall stop the parliament to pass a law requiring citizens nominated to any positions under the state to reside inside that state or union territory former to the employment or appointment to any workplace under the state.

Article 16(4)¹⁵ under the Indian Constitution delivers for reservation of state affairs in favour of an underprivileged section of citizens. The state shall determine whether or not a specific group of people is backward. As a result, the State must establish appropriate standards for determining whether a specific section of citizens is an inferior class or not.¹⁶

D. RIGHT TO EQUALITY UNDER ARTICLE 17

According to Article 17¹⁷ untouchability or any form of it is to be eliminated or banned. The charging of any disability leading to untouchability is an illegal offence according to law.

Untouchability refers to a social practice of excluding a group of people classified as “untouchables” or “persons barred from the caste system”, as ascribed in Vedic Hindu

¹³ Constitution of India, 1950, art.16(2)

¹⁴ Constitution of India, 1950, art.16(3)

¹⁵ Constitution of India, 1950, art.16(4)

¹⁶ Shristi Suman, ‘Right to equality: Article 16, 17 &18 under the Indian Constitution’ (*Ipleaders*, 15 January 2020)

<https://blog.ipleaders.in/right-to-equality-article-16-17-18/#Right_to_equality_of_Opportunity_in_Public_Employment_Article_16> accessed 14 June 2022

¹⁷ Constitution of India, 1950, art.17

literature by members of “higher caste”. This results in segregation and persecution of such people from members of higher caste. The inclusion of this article in the constitution demonstrates the priority given by the constituent assembly to the abolition of this heinous activity. Article 17 is indeed a key requirement in terms of “Equality before the law” (Article 14). It ensures social equality and human self-respect, the two rights that have been denied to a large section of Indian society for centuries. The Supreme Court ruled in “People’s Union for Democratic Rights v Union of India”¹⁸ that anytime a basic right enshrined in “Articles 17, 23, or 24”¹⁹ was by an individual, the state has a legal responsibility to intervene and ensure that the fundamental rights of such person should be respected. The fact that the aggrieved individual might guard or pursue his infringed fundamental rights does not permit the state from its legal duties.

E. RIGHT TO EQUALITY- ARTICLE 18

Article 18 under the constitution states that the “state is prohibited from conferring any titles on Indian nationals or accepting titles given by a foreign state”. A “title” is anything that is attached to one’s name as an addition. Titles or titular glories should not be created in a democracy. This will be counterproductive to the development of social parity. However, the recent bestowment of labels such as “Bharath Ratna”, “Padma Vibhushan”, “Padma Shree”, and so on (established in 1954) is claimed to be permissible under Article 18²⁰ because they just reflect the State’s appreciation of good efforts by people in diverse spheres of activity. Fundamental rights are not guaranteed by Article 18, but rather they limit executive and legislative power.²¹ “Article 18(1)”²² repeals all designations. It states that the “state is forbidden from bestowing titles on anyone, whether a citizen or a non-citizen”. Clause (2)²³ forbids an Indian citizen from receiving any title from a foreign state. Clause (3)²⁴ prohibits an individual who is not a citizen of India but holds any profit or any office of trust under the

¹⁸ *People’s Union for Democratic Rights v Union of India* (1982), AIR 1473

¹⁹ Constitution of India, 1950, art.17, art.23, and art.24

²⁰ Constitution of India, 1950, art.18

²¹ Shristi Suman (n 16)

²² Constitution of India, 1950, art.18(1)

²³ Constitution of India, 1950, art.18(2)

²⁴ Constitution of India, 1950, art.18(3)

state from taking any title from any foreign state without the President's assent. Clause (4)²⁵ states that "no individual, citizen or non-citizen, holding any profit or trust post shall accept any present, emolument, or office of any kind from or under any foreign state without the President's assent". Clause (3) and clause (4) have been introduced to ensure that an alien citizen remains faithful to the state, i.e., does not disrupt the confidence placed in him.

WHAT IS A RESERVATION SYSTEM?

Reservation is an assenting action system in India that gives traditionally underprivileged groups involved in education, employment, and politics. According to the Indian Constitution, permission is granted to the Union Government, States, and Union Territories of India to designate reserved quotas or seats for "socially and educationally backward individuals" in exams, job opportunities, and so on. Reservation is primarily granted to four groups, shortened as "SC, ST, OBC, and EWS". Initially, reservations were available solely to SC and ST societies. Following the adoption of the "Mandal Commission report" in 1987, it was extended to include OBCs. In 2019, reservations for the "Economically Weaker Section" (EWS) in the general category were expanded. The first category is Scheduled Castes. They were seen to be at the lowermost or below the caste structure in South Asia, even below the "Shudra varna". Agricultural labour, manual scavenging, laundry, day-to-day wage works, fishing, and so on were the hereditary professions of this society. They were exposed to the practices of untouchability that included a variety of social boundaries ranging from not touching other castes, not using a similar water supply, or living in the same place. The goal of providing them with reservations is not merely to provide jobs but to empower them and ensure their contribution to the state's policymaking process.²⁶

The Scheduled Tribes are the next group. "Indications of primitive features, peculiar culture, geographical isolation, shyness of contact with the community at large, and backwardness" were considered to be the characteristics of this section once. The majority of these people are "Adivasis" and indigenous occupants, while the rest are nomadic tribes that were designated

²⁵ Constitution of India, 1950, art.18(4)

²⁶ Alex Andrews George, 'Reservation in India - Explained in Layman's Terms' (*Clear IAS*, 3 February 2020) <<https://www.clearias.com/reservation-in-india/>> accessed 14 June 2022

as “criminal tribes” during the British administration. They live in a variety of ways, ranging from subsistence agriculturalists with outside contact to hunter-gatherer communities who remain in the forests. During the colonial era, the British routinely exploited many of them and their properties. The Other Backward Classes (OBC) are the third major group. They were not initially included in reservation policy, but during Morarji Desai’s leadership, the “Mandal Commission” researched all groups in India to determine which caste was behindhand in comparison to the general population. According to the 1931 census figures, they calculated that 52 percent of our nation’s population belonged to “backward” castes on the basis of socioeconomic characteristics such as wealth or traditional professions. The bulk of the OBCs was born in “Shudra varna” and had low ritual status, in addition to being economically disadvantaged. The potential of providing reservations to these groups is permitted by Articles 15(4) and 16(4)²⁷. Even though the Centre keeps its own directory of OBCs, which includes more than 5000 castes and subcastes, each and every state is free to develop its own backward caste list for in-state reservations. Some castes belonging to the OBC list are regarded as “dominant castes” for their greater number and in many circumstances are the implementers of the caste order even though they are ritually low.

HISTORY OF RESERVATION SYSTEM IN INDIA

The caste system in Hinduism stratifies people into four groups or varnas, “Brahmins, Kshatriyas, Vaishyas, and Shudras”. Hindus believe that these four groups were created by “Brahma”, the inventor of the universe, Vedas, and individuals. The caste system is regarded as the distorted form of the Varna system. Brahmins were intellectuals who functioned as teachers and priests. The Kshatriyas who were considered to be descended from Brahma’s arms were regarded as kings and warriors. Vaishyas who took the third position are traders, artisans, or farmers. They were considered to be derived from Brahma’s thighs. The Shudras, who were believed to be descended from Brahma’s feet, were the lowermost of this stratification. They used to perform all of the low-wage professions in society. In 1882, William Hunter and Jyoti Rao Phule devised the concept of reservation policy in India based on the

²⁷ Constitution of India, 1950, art.15(4) and art.16(4)

caste system and the practice of untouchability. However, the current reservation system in India was implemented in 1933 by British Prime Minister Ramsay Macdonald in the way of the “Communal Award”. The communal award was provided for distinct electorates for “Europeans, Anglo - Indians, Indian Christians, Muslims, Sikhs, and Dalits”. However, when Mahatma Gandhi and Dr. Ambedkar signed the Poona Pact agreement on September 24, 1932, it was concluded that for Hindus, there would be a solo option with specific reservations for the poor people. When India gained freedom from British rule in the year 1947, it got partitioned into India and Pakistan. After this division, many Muslims went to Pakistan, and Hinduism turned out to be the dominant religion in India. As a consequence, when the constituent assembly was drafting the Indian Constitution, social inequalities based on the caste system was a major impediment to social equivalence. As a result, the provision of reservations for disadvantaged sections was incorporated into the Indian Constitution. Reservations were originally installed for a 10-year period and only for SCs and STs, but they were extended with many amendments. Following the Mandal Commission’s references, OBCs were involved in the reservation category in 1991. Reservation was adopted in the “All India Quota Seats” in 2007, with 15 percent of seats reserved for the SC category and 7.5 percent reserved for the ST category. When the 103rd Constitutional Amendment was implemented on 14th January 2019, a 10 percent reserve was granted to the EWS in the general class under Articles 15(6) and 16(6)²⁸. Reservations for the EWS class were added to the current 50 percent reserve for the SC/ST/OBC classes. On July 29, 2021, the Government of India concluded to offer a 27 percent reservation for OBCs and a 10 percent reservation for the EWS in the All India Quota Scheme for undergraduate and postgraduate medical/dental courses beginning with the 2021-22 academic year.²⁹

WHY IS RESERVATION NEEDED IN INDIA?

Reservation was intended to be a step toward the improvement of Dalits and other inferior castes in our nation. Reservation in India is a helpful action that gives the current and

²⁸ Constitution of India, 1950, art.15(6) and art.16(6)

²⁹ ‘The Concept, Origin and Evaluation of Reservation Policy in India’ (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-6526-the-concept-origin-and-evaluation-of-reservation-policy-in-india.html>> accessed 14 June 2022

traditionally underprivileged individuals representation in education, work, and policymaking. People who are provided with reservation policies endured significant social and educational inequality at one point of time in history and they were underrepresented. For many years, the majority of the population was denied access to school and employment. Inferior classes were resisted through numerous methods. Reservation is similar to contributing support to such dejected individuals on the basis of their caste, which they were previously denied. People nowadays say that we are living in the 21st century and there is no caste-based prejudice now. They argue that caste discrimination was in the past, which is known as history, and today SC and STs are entirely favoured and evolved. This is not entirely correct. We see discrimination every day where inferior class people are treated in a different way by higher class people.³⁰ Manual scavenging is still practised by such people. Discrimination exists in the medical and nutrition industries as well. According to a sample survey, over 65 percent of Dalits were not allowed in healthcare fields and also in ration stores. There have also been numerous reports of SC and ST fellows being stressed or victimized by authorities. They are underrepresented in law enforcement as well as in the courts and other public agencies.³¹ A sample survey done in 2014 by “*Dalit Adhikar Abhiyan*” and supported by “*ActionAid*” discovered that 88 percent of state education centres in Madhya Pradesh victimized Dalit pupils. Dalit students are prohibited from mid-day meals in 79 percent of the schools investigated. In 35 percent of schools, they are forced to be seated apart at lunchtime, and in 28 percent they must eat on properly marked plates.³² Now the question which arises is whether reservations can help to solve these issues. Reservations are not intended to solve caste disparity, which is the responsibility of the dominant higher caste to address. They are proposed to repair some of the damage caused by centuries of persecution and to prevent caste bigots from outright, denying the underprivileged their opportunities.³³

³⁰ ‘Does India still need Reservation’ (*Strictly Legal*) <<https://strictlylegal.in/does-india-still-need-reservation/>> accessed 14 June 2022

³¹ *Ibid*

³² Radhika, ‘Why reservation is still necessary to uplift the depressed classes?’ (*Ground Post*, 7 May 2021) <<https://groundreport.in/why-reservation-is-necessary/>> accessed 14 June 2022

³³ Vidyut, ‘10 reasons why caste-based reservation in India is necessary’ (*Aam Janata*, 30 August 2015) <<https://aamjanata.com/10-things-to-remember-when-discussing-caste-reservations/>> accessed 14 June 2022

RESERVATION AND EQUALITY

The issue of reservation is a debatable topic in the realm of legal intellectuals. When compared to the concept of equality, it appears to a common man to be an arbitrary practice of authority and a violation of the right to equality. The reservation system is not only a legal issue but also has political implications.³⁴ Justice has been assured by the state according to Article 14 of the Indian Constitution, and this article is referred to be the soul of the Constitution because no nation can be regarded as a republic without equality, and it is the requirement for equality that has forced humans to come under the state so that they can get safety, equal protection under the law, and equality in all aspects. The word equality is borrowed from the French Revolution in our Preamble, which demonstrates the goals of our constitution, and Article 14 is a step in the right direction. It allows for the appropriate classification of “like” and “unlike” so that unlike are provided with specific treatment to put them on an equal level with that of like, since similar treatment in unequal situations would themselves amount to discrimination. The idea of impartiality will not be regarded as accomplished until everyone is on equal footing. Thus, the idea of impartiality gave birth to the idea of reservation or affirmative act. Reservation is a unique action provided to the unlike until they are on an equal level with the like in society. Reservation is a notion established to help the weak overcome their weakness and contest with the powerful.³⁵

The Supreme Court’s landmark decision in *D.V. Bakshi v Union of India*³⁶ and *Air India v Nargesh Mirza*³⁷ demonstrated that discrimination will never be accepted anywhere and so the verdicts in these instances set new milestones in the notion of equality. Reservations have been demonstrated to be incredibly fruitful in many nations. For e.g., the United States has positive actions for blacks and in many other countries also, reservation is playing a vital part in

³⁴ Dr. Shailendra Nath Jha, ‘Right to Equality and reservation policy under the constitution of India: A case study’ (2020) 2 (2) International Journal of Advanced Academics Studies
<<https://www.allstudyjournal.com/article/373/2-4-66-114.pdf>> accessed 14 June 2022

³⁵ Gopika Arun, ‘Reservation system in India and Right to equality’ (*Indian Law Portal*, 9 March 2021)
<<https://indianlawportal.co.in/reservation-system-in-india-right-to-equality/>> accessed 14 June 2022

³⁶ *D.V. Bakshi v Union of India* AIR 1993, SC 2374

³⁷ *Air India v Nargesh Mirza* (1981), AIR 1829

decreasing the gap between different groups.³⁸ India has been independent for 75 years, and the concept of equality among Indians has yet to be realized. This implies that something is definitely wrong with our country's education and job systems. As mentioned earlier, the reservation system in India was implemented to solve the caste system. Initially, the caste system was a division based on occupation, but over time it took a nasty turn leading to limitations on caste intermingling which in turn led to the social ill of untouchability and hostility among the groups. Social discrimination based on caste, religion, gender, and creed is an inhumane and immoral practice that persists in most regions of our country. Reservation has significant economic, social and political implications in such a country, despite being the world's greatest democracy.

CONCLUSION

Negligence suffered in the past and injustice make the backward communities eligible for reservation in India. Reservation renders a level playground for the suppressed backward sections in society. Without providing such an equal ground, meritocracy will not have any meaning. In a country like India, the reservation based on caste was inevitable to reduce gaps between the higher and inferior caste groups.³⁹ Though an effective tool to resolve social and educational backwardness, the reservation cannot be considered the sole solution for all the social and economic disparities. The system can provide only a short-term consolation to the so-called historical inequalities. If one looks at the situation objectively, he will see that the goal behind reservations is not all flawed, but it is the connotation and implementation of the same that have proven ineffectual. Reservation has reinforced and exacerbated caste distinctions, resulting in the formation of various sections within the so-called backward classes and upliftment has been achieved only in the topmost layer of them throughout the years. The benefits of reservation have not reached the poorest members of society.

³⁸ Kriti Gangwar and Milind Kaur, 'Right to Equality in India vis - a - vis Reservations in favour of Backward Classes' (2015) 2 (1) International Journal of Law and Legal Jurisprudence Studies <<http://ijlljs.in/wp-content/uploads/2015/01/paper.pdf>> accessed 14 June 2022

³⁹ Santosh Kumar, 'The Great Indian Reservation System - Understanding its Past, Present and Solutions' (*IAS Express*, 3 November 2021) <<https://www.iasexpress.net/reservation-system-in-india-upsc-ias-gk/>> accessed 14 June 2022

Furthermore, it has extinguished the sense of brotherhood and healthy competition, as well as the drive to advance and exert effort. Reservations on the basis of the restricted definition of religion are so inherently incorrect and have consequently failed. It is necessary to put aside the thrive for political mileage and consider where things have gone wrong objectively. Nobody appears to care about the well-being of the underdog but rather wants to earn a significant amount of political capital. Reservations should not be abandoned since everyone want society to flourish as a whole and gain profits from development. However, in place of being focused on caste to fulfill the political requirements of our power-hungry politicians, reservations should be based on more acceptable principles that benefit all sections of society. We must identify those who are truly in need, oppressed, and underprivileged. Then we must offer them appropriate encouragement, such as education, opportunities, and financial support. Afterward, genuine skill and sincere efforts must be recognized and rewarded, rather than thoughtlessly guaranteeing someone a safe future solely based on class, even if he or she is less deserving. Excellence should be the standard because the country needs the best of its people to grow, not individuals who are reaping undeserved and unearned privileges simply because they fit into a sector of society that has been fortunately identified in the constitution as underdeveloped. It is extremely depressing to witness a deserving applicant with a promising future lose out to another less deserving candidate just because he comes from a reserved segment of society. Nothing has improved in the previous years, demonstrating that we have misplaced our energies. We have completely failed to put the underprivileged on an equal level with the rest. Rather, it appears that the reservation strategy is frequently used to avenge the wrongs done to disadvantaged people throughout the ages. In short, it is high time to take away the reservation from the clutches of the political powers and implement it to the real, needy, underdeveloped sections of the society rather than the same being offered merely on the basis of the caste system. This will turn out to be more beneficial to upgrade the communal, economic, and scholastic status of the disadvantaged communities in India.