



SOCIO-LEGAL OVERVIEW OF RESERVATION SYSTEM IN INDIA

Dr. Ruchi Rani Singh

Assistant Professor, Department of Law, Dr. Harisingh Gour University, Sagar, M.P.

ruchi.rani77@gmail.com

Preamble of the Universal declaration of Human right, provide that the

*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*¹

All human are born equal and have equal dignity 'Equality' is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined' within traditional and doctrinaire limits.² From a positive point of view, equality is antithetic to arbitrariness.³

The term "equality" used in the constitution of India has been addedly the phenomenon of "reasonable classification" with an object to protect/provide equality to weaker classes. The Administration/Government used to take curative steps to fill up the lacuna caused by inequality in different types of classes, for example providing mid-day meals or allocating housing units to the economically weaker section of persons is an example, of remedial steps of the government. In order to fulfill the gap caused by social discrimination among different class of persons, the Government use to earmark some posts in the appointment process to some specified classes conceptually called as a "Reservation Policy" in the matter of appointments. The term appointment" includes appointment by direct recruitment or appointment by promotions. Besides, there used to be appointments on adhoc basis or appointment by out sourcing or on contract basis.

ORIGIN OF THE CONCEPT OF RESERVATION

At the time of freedom struggle of India, the people of lowest class of society were agreed to be uplifted by freedom fighters, nationalist leaders and reformers, so that they may join into the freedom movement unitedly, yet the system of segregation of classified group continued and they were termed as "Untouchables" by the upper caste group of society; they were termed as scheduled caste and tribes in the Indian Constitution; they were called as *Harijans* (the sons of God) by the Father of Indian Nation, Mahatma Gandhi; they were known as *Shudras* in the olden days of Indian history; they emerged as *Dalits* (called by Dr. B. R. Ambedkar, who is later on was the drafter of Indian Constitution) in pre-independent history of India. After Indian independence, these group of people as *Dalits* were included in the reserved category, in order to upgrade their social status and to grant them the status of equality in the society, so that they may not be deprived of equal opportunities of development, education and work.⁴

The Hindu Religion (which is known as "Aryan Dinesty") has developed its social system based on "Manu smriti" an ancient religious book. According to this epic, The Aryan society consists of four classes i.e., Brahmins, Kshatriya, Vaishya and Sudras, and these classes are called "Varnas": Each "Varnas" had taken birth from the different parts of body of "Brahma", the creator of universe. The caste system is an outcome of this "Varnas System" The Sudras are believed to have taken birth from the feet of "Bramha" and they are considered to be inferior to other three "Varnas" The caste system laid down by "Manu smriti" is still prevalent in the society and a caste-based discrimination is a source of social backwardness of Sudras, the fourth verna of society. In order to ensure equality to this fourth "Verna" the phenomenon of reservation has been included in the constitution of India.



The Idea of reservation policy in India was originally developed by "William Hunter" and "Jyoti Rao Phule" in the year 1882. In the last decades of 19th century, the Indian subcontinent consisted of broadly speaking two main forms of governance British India and the other consisting of 600 princely states. Some of the princely states were progressive and eager to modernize through the promotion of education and industry and by maintaining unity among their own people. The State of Mysore in south India and princely states of Baroda and Kolhapur in south western India took considerable interest in the awakening and advancement of the minorities and deprived sections of society. The very first step of implementing reservation policies are from these princely states.

In the end of 17th century, the East India Company was reeking with corruption. They blamed Indians for maladministration and inefficiency which resulted in large losses of revenue. Lord-Cornwallis, as Governor General, introduced certain reforms and closed the doors for employment for Indians except in the lower ranks of administration. Lord Macaulay introduced English as an official Language. The Lord Hardinge introduced a regulation providing that all public services to be filled by an open competitive examination to be held by the council, preference being given to the knowledge of English. The Brahmins in the Madras presidency took advantage of new educational policy, and the central place of English Language with it, and occupied most of the posts available in the administration. The Brahmins in Madras, comprising barely three (3) percent of the total population, occupied more than 80 percent of the posts. Thus reservations were introduced in 1918 in favour of, members of castes and communities, that had little share in the administration.

The untouchables or the depressed classes had joined the Presidency Armies and fought battles under the command of British officers. They had contributed a great help to British in the establishment of and to the creation of their empire. In the army, untouchable soldiers got opportunity to learn and to read and write for in first time and were exposed to new ideas. The untouchables also worked as camp-followers and domestic servants for British families in their cantonments.⁵

The reservation system that exists today, in its true sense was introduced in 1933 when the British prime Minister Ramsey Maedonald presented the communal award. The seats were reserved in the legislature in favour of Mohammad Sikhs, Marathas, Europeans, Paris, Anglos, Indians and Christians As regards depressed classes the following provisions was made: -

Members of depressed classes shall be qualified to vote in general constituency. In view of the fact that for the considerable period these classes would be unlikely, by this means alone, to secure any adequate representation in the legislature, a number of special seats will be filled by election from special constituency, in which only members of the depressed classes be electorally qualified and will be entitled to vote.⁶ There shall be no disabilities attaching to any one on the ground of his being a member of depressed classes in regard to any election to local bodies or **appointment to public services.**

It was also provided that there shall be seats reserved for the depressed classes, out of general electorate seats, in the provincial legislature as given in the table herein under the table⁷:

TABLE

Madras	30
Bombay with Sindh	15
Punjab	08
Bihar and Orissa	18
Central provinces	20
Assam	07
Bengal	30
United provinces	20
Total	148



The government issued order regarding reservation in services vide resolution no. F14/17-B 33 dated July 4, 1934 (Published in the Gazette of India part I July 7, 1934)

It has been asserted that the British have introduced the policy of divide and rule into India. But if we seriously study the India history of man, the principle of divide and rule was imposed in ancient India. It was developed by framer of the rules and laws in the name of "Dharma" or "Brahma" to divide the society vertically and also horizontally.

The philosophy of "Sam, Dam Dand Bhed" in the Hindu Methodology converted from Divided-and-Rule of British. When British reached in the Land of India, they found that the social structure of the Indian society is based on the classification between the upper cast and lower cast and they took advantage of this discriminatory system.

COMMUNAL AWARD

The Communal award was announced by the then British privacy Minister Ramsey maedonald on 16 august 1932 after the deliberation in the round table conferences (1930-32). The first-round table conference was held between November 1929 to January 1930. The second-round table conference was held from September 1931 to December 1931. The third-round table conference was held in November-December 1932. The British Government by its award, made a provision for separate electorate for depressed classes and other minorities in the matter of representation in local Government. The separate electorate was already/provided to Muslims by Government of India Act 1919.

POONA-PACT

The two leaders met just before the Second Conference in 1931, but the meeting ended in an open confrontation which continued in the actual conclave: Ambedkar emphasising the need for political power for the untouchables, and Gandhi insisting upon only protective measures against social and religious persecution.⁸

After the declaration of communal Award by British Government Mahatma Gandhi, the Congress-leader went on hunger-strike until death. Dr. Ambedker representing the depressed classes and Mahatma Gandhi the congress leader. After a long declaration a compromise was arrived at which is known as "Poona-Pact". By this pact, it was agreed to that there shall be a single "Hindu Electorate" with certain reservations.

As regards the share in the administration, it was laid down to provide due representation. The salient features of the text of the agreement are as under: -

1. There shall be seat reserved for depressed classes as follow- Madras 30; Bombay with Sind 15; Punjab 8; Bihar and Orissa 18; Central Provinces 20; Assam 7; Bengal 30; United Provinces 20; total 148.
2. Election of these seats shall be by joint electorates subject, however, to the following procedure: All the members of the Depressed Classes, registered in the general electoral roll in a constituency, will form an electoral college, which will elect a panel of four candidates belonging to the depressed classes for each of such seats, by the method of the single vote; the four persons getting the highest number of votes in such primary election shall be candidates for election by the general electorates.
3. Representatives of the Depressed classes in the Central Legislature shall, likewise, be on the principle of joint electorates and reserved seats be filled up by the method of primary election in the manner provided for in clause 2 above, for their representation in the provincial legislatures.
4. In the central legislature, eighteen presents of the seats allotted to the general electorate for British India in the said legislature shall be reserved for the depressed classes.
5. The system of primary election to a panel of candidates for election to Central and Provincial legislatures, as hereinbefore mentioned, shall come to an end after the first 10 years, unless terminated sooner by mutual agreement under the provision of Clause 6 below.



6. The system of Representation of the depressed classes by reserved seats in the provincial and central legislature as provided for in clauses 1 and 4 shall continue until determined by mutual agreement between the communities concerned in the settlement.
7. Franchise for the Central and Provincial Legislatures for the depressed classes shall be as indicated in the Lothian Committee Report.
8. There shall be no disabilities attaching to anyone on the ground of his being a member of the depressed classes in regard to any elections to local bodies or appointment to the Public Services. Every endeavor shall be made to secure fair representation of the Depressed Classes in these respects, subject to such educational qualifications as may be laid down for appointment to the public services.
9. In every province out of the educational grant, an adequate sum shall be earmarked for providing educational facilities to the members of the depressed classes.
10. To earmark some post to be filled from persons belonging to military, who has been discharged to due to cession of war or for any other reason.

Dr. B.R. Ambedkar and Mr. M.C. Rajah probably believed that the best means of empowering the lower castes, is job quotas, in the administration. Ambedkar was part of this sub-committee. Partly as a result of his work, try to define "the minorities as any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State"⁹.

DIFFERENT CLASSES OF RESERVATION

At present the following reservation are recognised on different norms:

1. **Reservation for women** –The women are not properly represented in Government Jobs and so a horizontal reservation has been made in all categories of appointments to Government services.
2. **Reservation for ex-military-personae:** The Government has made a provision to earmark some posts to be filled from persons belonging to military who are discharged due to cessation of war or any other reason.
3. Reservation for freedom fighters and their dependents.
4. Reservation for local persons in the name of domicile. This reservation is more common in the matter of admission to educational institutions.
5. Reservation in favour of physically disabled in the matter of a appointment to services
6. Dying in Harness Rule
7. Caste based reservation in favor of SC./ST./O.B.C./EWS. persons in the matter of appointment to services.
8. Political reservation for persons belonging to SC/ST/.

The central Govt. has made a vertical reservation as follows: -

CASTE	PERCENTAGE
SC	15%
ST	7.1/2%
O.B.C.	27%
EWS	10% ¹⁰

Besides there is a horizontal reservation as follows: -

Women	20%
Military person	02%
Physically Handicapped	03%

After Independence, the reservations were provided only for scheduled castes and scheduled tribes, but after the acceptance of recommendations of Mandal Commission in 1991, a provision, for reservation



in services, was made in favour of OBCS. The class known as OBC includes not only Hindus but it includes Backward classes among non-Hindus e.g., Muslim Sikhs, Christians, Buddhists. Later on, a provision of ten percent reservation was made in favor of EWS (economically weaker section) of General Category which is outside the 50% reservation earmarked in Indra shahney's¹¹ case. In this case it was held that:

1. Upheld the Implementation of separate reservation for other backward classes in central government jobs.¹²
2. Ordered to exclude Creamy layers of other backward classes from enjoying reservation facilities.¹³
3. Ordered to restrict reservations within the 50% limit.¹⁴
4. Declared separate reservations for economically poor among forward castes as invalid.¹⁵

The above discussion shows that there are inequalities in society at different levels and state is taking efforts to remove these inequalities by providing reservation in the matter of employment. However, there is question to be decided whether reservation to be provided in the matter of employment by promotion. If a reservation in promotion is not given, the whole effort to provide equality will be frustrated.

In matter of *Indira Sawhney's*¹⁶ case and thereafter in *M.Nagaraj v. Union of India*¹⁷ it was laid down that a qualitative data to be collected within a period of five years before making further provision for reservation in promotion. It was found, in the matter of *Amar Kumar v. State of UP*¹⁸, that the Government of UP failed to collect such data. Here it is pointed out that every government has got a Statistical department and every data should have been presented with them. Besides the Commission for Scheduled Caste/ Scheduled Tribes submits its report every year. If the concerned Government conceals/withholds such information, the court has got power to call for and to take a judicial notice of it, (within meaning of section 57 of the evidence Act) in order to impart justice to weaker and down-traded class of Indian Society.

¹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

² Seervai, H.M., Constitution law of India, 4th edition (Silver jubilee edition), Volume 1, Universal Book Traders, 2002Page436

³ Ibid

⁴ Dr. Singh, Jayshree, *History and Political Governance of Reservation Policy in India*,

https://www.researchgate.net/publication/302933940_History_and_Political_Governance_of_Reservation_Policy_in_India

⁵ Das, Bhagwan, Moment of in a History of Reservation, Economic and Political Weekly, October 28,2000, WS-31, P.p.3831-3834.

⁶ Ibid

⁷ Ibid.

⁸ [_history_of_Reservation_in_India_From_1800_to_1950_pdf](#)

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¹⁰ Constitution amendment Act, 2019

¹¹ AIR 1993 SC 477

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

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¹⁷ AIR2007SC71

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