



---

## Critical analysis on reservation policy in India

**Allaraham Ali**

Assistant Professor, Department of law, Himt group of institutions greater Noida Uttar Pradesh, India

---

### Abstract

The system of protecting discrimination or the reservation policy, for a few neglected sections of the Indian Society, better known as the Scheduled Castes and the Scheduled Tribes, has been in vogue ever since India became a Federal Republic. Since then these teams of individuals are enjoying many rights and privileges not accessible to alternative traditional voters in Republic of India. It is felt that even after six decade these people have not come up as a group (exceptions are there) in the social ladder. On the other hand, people from other caste groups, meritorious and deserving ones have been feeling deprived as they do not get the special benefits of representation, subsidies, scholarship, employment opportunity, housing and others. They feel that the SCs and the STs have wasted, rather put-upon the opportunities that they failed to be. This might lead to social conflict and divide the society which is already being capitalized by the political parties.

**Keywords:** reservation, protection, discrimination, meritocracy, mediocrity

---

### Introduction

The provisions available in the Constitution of India, based on which orders relating to reservations in services for Scheduled Castes (SCs), Scheduled Tribes (STs) and other Backward Classes (OBCs) have been issued by Department of Personnel & Training and Ministries of Social Justice of Government of India<sup>[1]</sup>. The provisions made in the Articles 16, 335, 338, 340, 341 & 342 of the Constitution relate to reservation, protection and safeguards, in public employment in respect of the persons belonging to the SCs/STs and other backward classes. Article 16 enables the 'State' to make provisions for reservation of appointments or posts in favour of SCs, STs and OBCs. However, the detailed provisions regarding the quantum and the applicability of reservation in appointment or posts are governed by the orders issued from time to time by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pension, Government of India. The applicability of reservation orders is dependent on the method of recruitment. Not only the percentage of reservation but also the procedure of the application of reservation will depend and vary according to the method of recruitment. However the job reservation policy has three important flaws. First, it has a "discriminatory bias against Muslims who do not benefit from such policies". Second, it emphasises caste or tribe rather than income or wealth: The goal of reservation in India has been to bring about an improvement in the welfare who, historically, have been economically and socially depressed. But, in arriving at this judgement about who should be eligible for reservation, the criterion has been a person's caste rather than his income or wealth. Consequently, groups belonging to what Article 115 of the Indian Constitution

calls "socially and educationally backward classes" have benefited from reservation even though, in practice, many of these groups could not be regarded as "backward". This has meant that many of the benefits of reservation have been captured by well-off groups from the depressed classes (for example, chamars from the SC) while poorer groups from the depressed (for example, bhangis from the SC) have failed to benefit.

### Welfare Schemes

However the task reservation policy has three very important flaws. First, it is a "discriminatory bias against Muslims World Health Organization don't love such policies". Second, it emphasises caste or tribe rather than gain or wealth: The goal of reservation in Republic of Asian country has been to originate Associate in Nursing improvement among the welfare World Health Organization, historically, square measure economically and socially depressed. But, in incoming at this judgement concerning World Health Organization have to be compelled to be eligible for reservation, the criterion has been a person's caste rather than his gain or wealth. Consequently, groups happiness to what Article 100 and fifteen of the Indian Constitution calls "socially and educationally backward classes<sup>[2]</sup>" have benefited from reservation though, in observe, many of these groups could not be thought of "backward". This has meant that many of the benefits of reservation square measure captured by well-off groups from the depressed classes (for example, chamars from the SC) whereas poorer groups from the depressed (for example, bhangis from the SC) have didn't profit.

---

<sup>1</sup> J.N. Pandey, The Constitutional Law of India, 46th Ed. Reprint 2009

<sup>2</sup> Raju.C.B, Social Justice & The Constitution of India (with reference to sc's and st's)

## Education Scheme

Examination Fee: the scholars in SSC and equivalent customary showing within the SSC board examination area unit supplied with examination fee starting from Rs 170/- to Rs. 200/- Scholarship: Students with thirty-eight per cent ends up in Govt. Schools, Govt. recognized colleges and with forty-five per cent lead to non-public colleges got yearly scholarship of Rs.125/- to Rs.200/- each year. Tuition fee of Rs.250/- p.m. paid to the scholars whose parents/guardian financial gain was but Rs.24000 p.a. Scholarship were additionally sanctioned to lady students whose family financial gain exceeds between Rs.50,920 p.a. Engineering medical & B. Sc(Agri) certificate courses area unit given Rs.510 to Rs.740/- for Residential hostel, whereas for the day students it's Rs.330/ p.m. additionally to the on top of narrated themes the subsequent themes are modish (i) free uniform (ii) food help theme (iii) free Bicycle scheme (iv) monetary help to medical and engineering students to get instructional equipments upto Rs 1000/- (v) money payment scheme to S. T. faculty students and (vi) Balwadi theme within which ninety per cent to a hundred per cent Grant-in-aid was provided. Underneath the housing sector, help upto Rs.40,000 is provided to scheduled Tribes to construct or purchase a brand-new house or repair of the recent house.

Some of the opposite welfare schemes {are also|also area unit|are} functioning like Social education camps are organized to teach the S.T individuals to require out from slowness and to present data concerning these schemes and for these camp Rs.5000/- has been sanctioned. the general public cell scheduled Tribe Atrocities help additionally provides atrocity help. Kunwar bair Noo Mameroo help and Saat Phere Samooh Lagna theme were additionally modish and Rs.1000 to Rs.5000 area unit given [3].

## Reservation in commission For Sc & ST

In this Unit we tend to shall discuss the provisions accessible within the Constitution of Bharat, supported that orders concerning reservations in services for regular Castes (SCs), regular Tribes (STs) and different Backward categories (OBCs) are issued by Department of Personnel and Ministries of Social Justice of presidency of Bharat. The provisions created within the Articles sixteen, 335, 338, 340, 341 & 342 of the Constitution relate to reservation, protection and safeguards, publicly employment in respect of the persons happiness to the SCs/STs and different backward categories.

## Constitutional Provisions

Every Constitution has philosophy of its own. The Preamble of our Constitution proclaims the resolution of individuals OF india to represent India into a Sovereign, Socialist, laic AND Democratic Republic and to secure to any or all its citizens [4]:

Justice, social, economic and political; Liberty of thought, expression, belief, religion and worship; Equality of standing and opportunity; and to push among all ; FRATERNITY reassuring the dignity of the individual and therefore the unity and integrity of the state. The ward 'social justice' within the Preamble implies

recognition of bigger sensible to a bigger variety while not deprivation of legal rights of anybody. The thought of equality, enshrined within the Preamble has conjointly found expression as a basic right in Article fourteen to sixteen, that we tend to shall discuss within the next section.

## Right to Equality-Article 14

The Article fourteen of the Constitution is one in every of the elemental rights of the Constitution of Bharat. allow us to currently realize this text. Article fourteen of the Constitution reads: "The state shall not deny to a person equality before the law or the equal protection of the laws inside the territory of India" What do the 2 phrases during this Article particularly "equality before the law" and "equal protection of law" mean? On the face of it the two phrases could appear to be identical, however in reality, they mean various things. While "Equality before the law" is negative concept; "equal protection of laws" could be a positive one. the previous declares that everybody is equal before law, that nobody will claim privileges which all categories ar equally subject to the standard law of the land. "Equal protection of Law", on the opposite hand means that, that among equals, the law ought to be equal and equally administered. That like ought to be treated as like. Or in different words, persons otherwise circumstanced needn't be treated within the same manner. for instance 'Equal protection of Law' doesn't mean that each persons shall be taxed equally, however that persons beneath identical class ought to be taxed by identical commonplace. The guarantee of "equal protection" so could be a guarantee of equal treatment of persons in "equal circumstances" allowing differentiation in several circumstances. If there have been an inexpensive basis for classification, the legislative assembly would be entitled to create totally different treatment. Thus, the legislative assembly might (i) exempt bound categories of property from taxation the least bit, like charities, libraries etc; (ii) impose different specific taxes upon different trades and profession [5].

## Safeguards for public employment (Art-16)

In the previous section we have a tendency to learnt concerning Article fourteen and therefore the philosophy of equality". during this Unit we'll learn thoroughly concerning Article sixteen, that is concerning equality of chance within the matter of employment underneath State Article sixteen of the constitution provides for equality of chance for all voters in matters concerning employment or appointment to any workplace underneath the state. Article sixteen reads as under:

**Clause (1):** There shall be equality of chance for all voters in matters concerning employment or appointment to any workplace underneath the State.

**Clause(2):** No national shall on grounds solely of faith, race, caste sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment of workplace underneath the State.

<sup>3</sup> Ram Ahuja, Social Problems in India

<sup>4</sup> social Problems in India, Author – Ram Ahuja

<sup>5</sup> SE\_GUJARAT 06-07\_CHAPTER IX

**Clause (3):** Nothing during this article shall forestall Parliament from creating any law prescribing, in relevancy a category or categories of employment or appointment to AN workplace underneath the govt. of or any native or alternative authority among, a State or Union Territory, any demand on residence among that State or Union Territory before such employment or appointment.

**Clause (4):** Nothing during this Article shall forestall the State from creating any provision for the reservation of appointments or posts in favour of any backward category of voters that within the opinion of the State, isn't adequately painted within the services underneath the state" [6].

**Clause (4-A):** Nothing during this article shall forestall the State from creating provision for reservation in matters of promotion to any category or categories of posts within the services underneath the State in favour of the regular Castes and therefore the regular Tribes, that within the opinion of the State aren't adequately painted within the service of the State.

**Clause (4-B):** Nothing during this article shall forestall the State from considering any empty vacancies of a year that square measure reserved for being stuffed up therein year in accordance with any provision for reservation created underneath clause (4) or Clause (4-A) as a separate category of vacancies to be stuffed up in any succeeding year or years and such category of vacancies shall not be thought of at the side of the vacancies of the year within which they're being stuffed up for deciding the ceiling of half reservation on total range of vacancies of that year (Constitution 81st Amendment Act, 2000).

**Limitations of the Safeguard-Article 35**

Article 335 of the Constitution originally browse as under:- “The claim of the members of the regular castes and therefore the regular Tribes shall be taken in to thought, systematically with the upkeep of potency of administration, within the creating of appointments to services and posts in reference to the affairs of the Union or of the State.” The Hon’ble Supreme Court has command in a very range of cases, that Article 335 operates as a limitation to the availability contained in Article 16(4) tho’ Article [7]

16(4) doesn't specifically see Article 335 or raise any question of maintenance of potency of the administration. Thus, reservation for the backward category are affected

down as offensive of Article fourteen and 16(1), if it's immoderately excessive. whereas forming AN opinion for creating reservations the State shall conjointly take knowing of the limitation began in Art.335 i.e. whether or not creating reservation is in keeping with the upkeep of potency of administration. 82nd change Act, 2000, amended the Article 335. The background for the change was that the Hon’ble Supreme Court within the case of S.Vinod Kumar Vs. U.O.I had command that the varied directions of state providing for lower qualifying marks/lesser customary of analysis in matter of promotion for candidates happiness to SC/ST aren't permissible visible of the provisions contained in Article 335. visible of this call the varied orders concerning lower qualifying marks/standard of analysis for SC/ST within the matter of promotion were withdrawn by the govt. w.e.f. 22.7.97. However, the Parliament determined to all over again restore the relaxations and concession in promotion and therefore the following precondition to Art.335 were added:- “Provided that nothing during this Article shall forestall in creating of any provisions in favour of the members of the regular Castes and regular Tribes for relaxation in qualifying marks in any examination or lowering the standards of analysis, for reservation in maters of promotion to any category or categories of services or posts in reference to the affairs of the Union or of a State”

**Percentage of reservation**

The percentage of reservation for each category viz. SC, ST and OBC in Promotion and Direct Recruitment as these are the only two methods of recruitment to which the orders on reservation are applicable. In general of SC it is 15%, for ST it is 7.5% & for OBC it is 27%.

**Reservation in direct recruitment**

In the previous Unit, we learnt about the three categories of direct recruitment viz. (i) All India basis by open competition (ii) All India basis otherwise than open competition and (iii) recruitment to Group ‘C’ and ‘D’ posts normally attracting candidates from a locality or region. Until September 1993, in the method of ‘Direct recruitment’, reservations of posts were only for SCs and STs. From September 1993 reservation for OBCs has also been provided in the case of direct recruitment [8]. The percentage of reservation for SC, ST and OBC is different in each of the three types of direct recruitment and is shown in

**Table 1**

Sr. No.	Category	Share of Entitlement		
		SC	ST	OBC
1	Direct recruitment on all-India basis by open competition	15	7.5	27
2	Direct recruitment on all-India basis otherwise than by open competition	16 2/3	7.5	25.84
3	Direct Recruitment to Group ‘C’ & ‘D’ posts which normally attract candidates from a locality or region	Generally in proportion to the population of SCs, STs and OBCs in the respective States/Union Territory.		

<sup>6</sup> Pandey, J.N., the constitutional law of India

<sup>7</sup> Raju.C.B., Social Justice & The Constitution of India (with reference to sc’s and st’s)

<sup>8</sup> Sandeep Mukherjee, Institute of Secretariat Training & Management

%age in Recruitment made through Staff Selection Commission (SSC) by Open Competition In the previous section we learnt about the percentage of reservation in the three types of direct recruitment. So far as recruitment by Staff Selection commission is concerned, the percentage of reservation is further governed by the OPT's O. M. No. 36011/9/82-Estt.(SCT) dated 8.2.03.

The examination conducted by SSC involves a mixture of following two kinds of nomination:

1. On the basis of a single common All India list and;
2. On the basis of zone-wise lists

**Recruitment Made Through SSC**

**Table 2**

Sr. No.	Method	Share of Entitlement		
		SC	ST	OBC
1	Organisations, which receive candidates from a single common All India, list.	15	7.5	27
2	Organisations which receive candidates from the list prepared by SSC on the basis of Centre linked zonal basis	Proportion to the population of SC/ST/OBC of State.		
3	Organisations spreading into more than one State/Union Territory	Roster to be drawn up in consultation with DOPT taking into consideration the population of SC/ST/OBC in such areas		

The percentage of reservation for SC, ST and OBC in respect of each State and Union Territory has been prescribed by the Department of Personnel & Training and is available in the 'Brochure on Reservation in Service' (8th Edition) at P.P 494-502)<sup>[9]</sup>

For example the percentages of the following States are Andhra Pradesh - 15 SC/ 06 ST/ 27OBC Karnataka - 15 SC/ 05 ST/ 27 OBC Tamil Nadu - 19 SC/ 01 ST/ 27 OBC Manipur - 01 SC/ 27 ST/ 22 OBC Sikkim - 06 SC/ 23 ST/ 21 OBC West Bengal - 22 SC/ 06 ST/ 22 OBC

**Percentage of reservation in promotion**

In the previous section we learnt that the percentage of reservation in the case of direct recruitment varied according to the various types of direct recruitment. However, the percentage

The whole country having been divided into a number of zones where each zone corresponds more or less to a State/U.T) drawn up in accordance with the centre-linked-zonal scheme under which candidates are eligible to be considered for appointment to posts in offices located in the Zone in which the centre of examination opted by the candidates falls, though the examination is common . where they have taken the examination. In view of this the percentage of reservation applicable in case the recruitment is through SSC can be put in tabular form as under.

of reservation in promotion is uniform i.e. 15% for SC and 7.5% for ST, irrespective of the mode of promotion. We had seen in the case of direct recruitment that reservation is applicable to all level of posts. Is the position same in the case of promotion also? The answer is 'NO'. In seniority-cum-fitness mode, reservation in promotion is applicable to all level of posts i.e. in Groups C & D, Group C to Group B, within Group B, from Group B to Group A and within Group A. But in selection mode, reservation is NOT applicable in promotion within Group 'A'. Promotion "Within Group A " means, that the lower post (feeder post) and the higher post to which promotion is taking place, both belong to Group 'A'.

The applicability of reservation in various modes of promotion can be indicated in the table-3 below:

**Table 3**

Mode of promotion		Reservation applicable:	
		Yes	No
Limited Departmental Competitive Examination (LDCE): Groups B,C & D.		Yes	
Seniority-cum-fitness: In all groups (Groups A, B, C & D.)		Yes	
selection	Groups C & D, Group C to Group B, within Group B, from Group B to lowest rung of Group A.	Yes	
	Lowest rung of Group A to higher group A posts.		No

In the table-3 you can see that reservation in "Selection" mode is applicable upto the lowest rung of Group 'A'. The lowest rung of Group A can either be the scale of Rs.8000-13500 (pre-revised 2200-4000) or could be 10000-15200 (pre-revised 3000-4500), depending on whether the promotion in the particular service takes place from group 'B' to 8000- 13500 or directly to 10000-15200 For example in the Central Secretariat Service, Section Officers (Rs.6500- 10500, Gp.'B') with 8 years of service are eligible for promotion to the post of Under Secretary ( Rs.10000-

15200, Gp.'A') and there is no intermediate scale of pay of Rs.8000-13500. Thus in the CSS, the lowest rung of group A will be 10000-15200 and reservation is applicable in the promotion from Section Officer to Under Secretary<sup>[10]</sup>.

**Concession in Promotion**

In the previous section we've got learnt that in promotion reservation isn't applicable in mere one state of affairs i.e. if the mode of promotion is selectively and promotion is going down at

<sup>9</sup> J.N.Pandey, The Constitutional Law of India, 47th Ed. Reprint 2011

<sup>10</sup> Raju.C.B, Social Justice & The Constitution of India (with reference to sc's and st's)

intervals cluster 'A'. though there's no reservation in such cases and, therefore, no posts are reserved for SC or ST however a 'concession' is accessible to SC/ST staff. within the next paragraph we are going to learn what's this 'concession'. however it's vital to grasp that the 'concession' is accessible solely in promotion selectively at intervals cluster 'A' that carry AN final remuneration of Rs.5700 (pre-revised scale) or less p.m. The concession obtainable to the SC/ST Officers is, that those SC and ST Officers UN agency are senior enough within the Z.O.C therefore on be at intervals the amount of vacancies that the choose list needs to be drawn, would be enclosed therein list provided they're not thought-about unfit for promotion <sup>[11]</sup>.

### Statement of Problem / Research Question

However the task reservation policy has 3 vital flaws. First, it's a "discriminatory bias against Muslims World Health Organization don't like such policies". Second, it emphasises caste or tribe rather than financial gain or wealth: The goal of reservation in Republic of India has been to originate Associate in Nursing improvement within the welfare World Health Organization, traditionally, are economically and socially depressed. But, in incoming at this judgement regarding World Health Organization ought to be eligible for reservation, the criterion has been a person's caste instead of his financial gain or wealth. Consequently, teams happiness to what Article a hundred and fifteen of the Indian Constitution calls "socially and educationally backward classes" have benefited from reservation although, in observe, several of those teams couldn't be considered "backward". This has meant that several of the advantages of reservation are captured by well-off teams from the depressed categories (for example, chamars from the SC) whereas poorer teams from the depressed (for example, bhungs from the SC) have did not profit.

### Objective

The objective of this project is:

- To study the implementation of reservation policy.
- To find out the actual need of the reservation policy.

### Hypothesis

The researcher has made certain assumption in the beginning of the research project which are going to be tested during the project, they are the following.

- The reservation policy for jobs for SC & ST should be changed. As there is vast change in today's condition.
- The reservation policy should be based on the economical basis not on the class or caste basis. If it caste based then we are only creating discrimination with them.

### Scope of the study

The research is a doctrinal research. The researcher here would like to study only the judicial viewpoints in the appointment of SC & ST in various jobs in public and private sector. The researcher has tried to analysis the topic by studying various authors, experts, cases of The Indian Apex Court and High courts,

articles, etc. The researcher has strictly followed the boundary and has studied only with reference to Indian authors, experts, cases, etc.

### Critical analysis on Reservation policy and Conclusion

Now we've got seen that government had unbroken numerous welfare schemes for the SC and ST in Republic of India. If we tend to take few examples than reservations in academic systems, land allotments for residents( freed from cost), agricultural land assigned freed from value for farming etc I believe that there ought to be reservation within the academic system of Republic of India. because of that they will additionally get sensible and better education, however at the time of the jobs/ public service there ought to be a reservation. someone possesses nearly twenty two to twenty five years advantage of reservation policy and had completed his studies. currently he ought to stand on his own feet and may face the competition within the market. they need got all the items that someone born in different solid possesses by currently. If government still needs to stay reservation policy then currently it mustn't be supported caste or category, it ought to be supported the annual financial gain of the person. If the person is earning but he needs extra money for his family and kids and this issue he will get solely by employment or publically service. By this implies solely such persons will give sensible education to their youngsters. Judiciary has contend nice role within the reservation policy. the nice example of this N Nagrajan's case, Ashok Kumar Thakor, and Indira Shawnay's case. during this cases, supreme court has given passing relevancy the reservation on the SC & ST in jobs. however Supreme court has aforesaid that reservation mustn't increase then five hundredth in any condition however in most of North japanese state this reservation is hyperbolic to eighty fifth and still they need started a move to extend it to the ninety fifth and court isn't taking any steps against it. By this manner we will see that judiciary is additionally palying a task in increase of reservation for SC & ST <sup>[12]</sup>.

Now days politicians are taking part in a serious role in reservation policy. The reservation policy was just for ten years after the independence, for upliftment of SC and ST however until currently it's continue and nobody has taken any step to amend it or revise it or to vary it. The explanation behind this is often the population of SC and ST in country. Nearly thirty third choice is finished by SC and ST therefore currently if they create any amendment within the reservation policy against the SC and ST then they need to suffer plenty for identical. so that they aren't taking any steps against the reservation policy.

Now if you concentrate on the idea of John Rawls of justice then he has clearly aforesaid that "starting line ought to be / should be identical for all the Persons." By providing reservation within the academic systems we tend to be giving identical line to any or all the persons. He more additionally aforesaid that by providing equality in education they're providing equal likelihood to begin to any or all the persons and more there's no would like of reservation in commission additionally. I am whole in agreement with the perspective of John Rawls on reservation. Policy and there's clear would like of editing the current reservation policy.

<sup>11</sup> # S.C.Tripathi, Social Justice & The Constitution of India (with reference to sc's and st's)

<sup>12</sup> Yusuf V. State of city, AIR.1954 S.C.3213.1.2

**References**

1. JN Pandey. The Constitutional Law of India, 46th Ed. Reprint 2009
2. Raju CB. Social Justice & The Constitution of India (with reference to sc's and st's)
3. Ram Ahuja, Social Problems in India
4. Social Problems in India, Author–Ram Ahuja
5. SE\_GUJARAT 06-07\_CHAPTER IX
6. Pandey, J.N., the constitutional law of India
7. Raju CB. Social Justice & The Constitution of India (with reference to sc's and st's)
8. Sandeep Mukherjee, Institute of Secretariat Training & Management