RESERVATION IN INDIA: MISUSE AND COMPARATIVE INQUIRY

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ABSTRACT

Reservation in India, is an old constitutional mechanism aimed at promoting social justice and equal opportunities to the weaker ones and relatively underprivileged sections of the society. Despite continuous efforts, reservation policies deviate from their original purpose, and result in the rise of questions about fairness and efficiency. The misuse of reservations is prevalent in the current times which lead to questioning the transparency of these policies. Fake certifications and migrations to avail reservation benefits destroy the whole purpose of these policies which were meant to benefit the weaker. The current study aims to dive into the misuse of these reservation policies and how the policies change when countries change. The study highlights the relevance of judgments to combat the misuse of reservation.

This study employs a mixed-method approach using library-based materials for research and secondary sources. Findings suggest that while reservation is an important tool for social justice, reforms are needed to overcome the misuse and ambiguity. The study has also employed a comparative approach, providing contrast between the reservation policies of different nations. In the end, this research concludes that reservation must evolve into a tool of equality rather than a mere remedy.

Keywords: Reservation, Scheduled Caste, Scheduled Tribe, Certificate, Creamy Layer, Misuse, Comparison.

INTRODUCTION

India being such a diverse country has gone through social inequality and cultural prejudice for certain classes which made them less seen. Reservation in India emerged due to the longing struggle faced by the suppressed classes in India.

This paper aims to study the Reservation in India, misuse of these reservations and the contrast between reservation laws of India with other nations. The history of Reservation dates back to 1882 when reservations based on caste was introduced by William Hunter and Jyotirao Phule. In its true sense, the Reservation system seen now was introduced by Ramsay Macdonald, British Prime Minister in 1933. Soon after Independence, reservations were provided only for Scheduled Castes (SCs) and Scheduled Tribes (STs). After the recommendations of the Mandal Commission, Other backward classes (OBCs) were also included in the ambit of Reservation.

The commission in its reports stated that India consists of 52% OBCs, so a total of 27% jobs in the government sector should be reserved for the category.[1] These Reservation policies aimed at uplifting the marginalized grounds by ensuring them equal representation in all sectors of the society.

The Indian Constitution already provided us with Article 14 which guarantees Equality to all and Equal protection of laws for all [2], and Article 16 which guarantees equality in employment and states that no citizen shall be discriminated against on matters of employment on the basis of religion, race, caste etc.[3] Though these articles do not provide a straight jacket formula to Reservation, it was through the First Constitutional Amendment in 1951 which introduced Article 15(4) which specifically addressed reservations in India. This article vested the State with the power to pass any such provisions required to uplift the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes.[4] This amendment in the Constitution was seen after the case of State of Madras v. Champakam Dorairajan[5], where the Supreme court held communal reservations violative of Right to Equality.

The Indian Constitution provides with Article 16(4) which vests the state with the power to

[1] Reservation in India, Drishti Ias: TO THE POINT (last visited 16 August, 2025) https://www.drishtiias.com/to-the-points/Paper2/reservation-in-india
[2] INDIA CONST. art. 14
[3] INDIA CONST. art. 16
[4] INDIA CONST. art. 15, § 4, amended by The Constitution (First Amendment) Act, 1951
[5] State of Madras v. Chapakam Dorairajan, AIR 1951 SC 226

make any provisions necessary to provide reservation to the backward classes in services under the state[6].

RESEARCH METHODOLOGY

The research methodology adopted in this study is a mixed-method approach, which combines doctrinal, descriptive, analytical and comparative techniques to explain the concept of Reservation in India, in detail. The study relied on library-based research going through Constitutional provisions, Statutes, and Precedent laws. Similarly, Secondary sources like books, commentaries, articles and previous scholarly works have been extensively referred to, in order to provide a 360 bird view of opinions inculcated in the study. To complement this, internet-based sources such as SCC, India Kanoon and government portals have been consulted. This study applies a comparative approach as it compares the reservation laws of India with other countries. The study is descriptive in nature as it analyzes the emergence of reservation in India and traces the history of reservation.

REVIEW OF LITERATURE

Reservation in India is supported by most but repealed by many. Reservation is an important institution in India as it ensures Socio-Economic justice in the society by providing equal opportunities to the socially and economically backward. However, the reservation policies in India have deviated from their true path, and have been acting as a means of acquiring benefit. It has constantly been seen that politicians, for the sole purpose of electoral gains, utilize the reservation policies. The whole attention shifts to the interests of a particular section. Caste becomes a political resource when reservation is used as an electoral tool rather than bridging socio economic differences. This results in capturing the policies and transforming the quota into politics.[7]

It has also been observed that the constitution till date has not given any proper guidelines on the backward classes which create ambiguity in identifying which sections are fit for reservation. This leads to the policy of reservation benefiting the upper sections within these reservations, not reaching the ones who truly need it. Further, people come together and create

[6] INDIA CONST. art. 16 § 4
[7] Rajni Kothari, Caste in Indian Politics, Orient Longman, 1973

groups who look down upon the weaker within their sections.[8]

The creamy layer ambiguity is also visible, the reservation policies benefit the socially and economically better within the OBCs and ST/SCs rather than the ones who are in dying need of these reservations within these sections.[9] It is often observed that the reservation does not reach the poorest and the most disadvantaged, and only benefits the well off , resulting in zero improvement in existing inequality. Instead of reinforcing equality, sometimes the reservation policies create a divide amongst different caste groups leading to inter-caste conflicts and tensions in various parts of the society.

Reservation also hampers with merit-based candidates, as reservations compromise on the quality of education and workforce by admitting people into professions on the basis of caste and not merit. This leads to decline in standards and also resentment in the merit-based candidates.[10]

Misuse of reservation happens due to weak governance, poorly designed laws and lack of transparency which make these reservations distributive to all rather than to the ones who need it the most.[11] To prevent misuse of reservations, sub division within different sections of people is also required. This helps in identifying people who are economically stronger within that group and fall in the exclusion of creamy layer, it also helps identify people who are economically weaker or the ones who require reservation the most, within these sections.[12]

While existing scholars have already examined the causes of misuse in reservation at various levels and grounds, what remains less seen in recent scholarly articles about reservation is the comparative analysis of the Reservation laws of India, with that of any other nation or country. This can help in the in depth understanding of where India needs to reform the laws, or adopt that of the other countries. It will help us analyze the better set of rules by comparing them side by side and choosing the best option.

[8] Hina Kausar & Kauser Husain, Reservation in India: Deviating from Its Original Purpose, 2 Law Mantra, 3 & 4, 24.pdf
[9] Dr. Pobon Kr. Gogoi & Dr. Himanshu Bora, Reservation Politics in India: An Analysis of the Indian Reservation System, 11 Quest Journals 74, 75 & 76 2023, 11107478.pdf
[10] Lavish, Reservation Politics in India: Issues and Challenges 04 Amoghvarta 313, 317 & 318 2004, 1735355197eservation-Politics-in-India-Issue-and-Challenges.pdf
[11] Madhav Godbole, Good Governance: Never on India's Radar, 2014
[12] The Creamy Layer Controversy in OBC Reservations: Daily News Analysis, DHREYA IAS, 29 July, 2024 https://www.dhyeyaias.com/daily-current-affairs/the-creamy-layer-controversy-in-obc-reservations

Reservations system in India is rooted in the Indian Constitution providing right based articles to grant reservations to the oppressed, socially and economically backward communities. It immediately came into force post-independence, and has seen a lot of changes and amendments till date. The reservation quotas in India are provided in employment, educational sectors, government services and even representing the state. Though the reservations in India have often been criticized for being subject to misuse for political gains and obtaining benefits through forged and fake documents.[13]

Affirmative Action in the United States aims at addressing historical, racial and ethnic discrimination. It helps ensure that everyone gets equal opportunities in education and employment. Unlike India, this is not mentioned in the constitution and the courts have the ability to reshape. Affirmative action in the US focuses on racial disparities. The Supreme court in the case of Regents of the University of California vs. Bakke held that, use of quotas in university admission is unconstitutional but race can be used to avail it. Affirmative action too is a political issue in the United States.

It has often been argued that affirmative action is violative of the equality principle as race-based reservations are held discriminatory in nature.[14]

China has a programme named by Thousand talents to attract top quality academics with amenities and excellent wages, this programme is merit based. Talking about reservations, women and ethnic minorities are given priority in China.[15]

CONCEPT OF CREAMY LAYER

It was in the case of Indra Sawhney v. Union of India[16], where the Supreme court distinguished

[13] Sujal Garg & Manjari Tripathi, Affirmative Action in Higher Education: A Comparative Analysis of the Indian Situation and the U.S. Supreme Court Ruling, The Indian Lawyer, 12 July, 2023 https://theindianlawyer.in/affirmative-action-in-higher-education-a-comparative-analysis-of-the-indian-situation-and-the-u-s-supreme-court-ruling/

[14] Simonne Kapadia, A Comparison of the Reservation System in India to Affirmative Action Policies in the United States, Michigan State International Law Review, 22 March, 2021 https://www.msuilr.org/new-blog/2021/3/22/a-comparison-of-the-reservation-system-in-india-to-affirmative-action-policies-in-the-united-states

[15] Sushree Sahu, *Reservation System India And Abroad: Is Reservation Still Needed*, LawyersClubIndia, 29 July, 2021 https://www.lawyersclubindia.com/articles/reservation-system-india-and-abroad-is-reservation-still-needed-14200.asp

[16] Indra Sawhney v. Union of India, AIR 1993 SC 477

between the creamy layer of OBCs. The court examined the validity of Article 16(4A)[17], which provides with reservation in promotion, and held that the creamy layer of OBCs which included the socially, educationally and economically advanced members within these OBC groups, to be excluded from the list of beneficiaries of this reservation. The court also held that the reservation quota should not exceed 50%.

In another case of Jarnail Singh v. Lachhmi Narain Gupta[18], the supreme court upheld the same creamy layer concept for reservation in promotions for Scheduled Castes and Scheduled Tribes. The judgement stated that all those who are socially, educationally and economically advanced within the SC/ST groups, shall be excluded from the list for Reservation in Promotion.[19]

RECENT DEVELOPMENTS

More recently, India witnessed The Constitution (103rd Amendment) Act, 2019 which led to the inclusion of Article 15(6)[20] and Article 16(6)[21]. Article 15(6) grants the state the power to make any such provisions required for the advancement of the Economically Weaker Sections (EWS). It states that such reservations can be made in any educational institutions including private institutions except minority institutions. These reservations were subject to a limit of 10%. Article 16(6) vests the state to make any such provision required in regards to appointment of Economically Weaker Sections (EWS). This too is subject to a limit of 10%. This amendment was decided in the case of Janhit Abhyan v. Union of India.[22]

This addition of 10% is clearly breaching the 50% cap set by the Supreme Court in one of its previous judgments, Indra Sawhney v. Union of India. Similarly, imposing reservations on all educational institutions, even those unaided by the state, is a clear violation of the Principle of Equality.[23]

It was 2023 which saw the emergence of the Women's Reservation Act. The Women's Reservation bill was passed in 2023, which led to The Constitution (106th Amendment) Act, 2023 which reserves One-Third of all seats for Women in Lok Sabha and State Legislatures,

[17] INDIA CONST. art. 16 § 4A, amended by The Constitution (77th Amendment) Act, 1995
[18] Jarnail Singh v. Lachhmi Narain Gupta, AIR 2018 SC 4729
[19] Dr. Pallavi Gupta, Backward Class Reservation and Concept of Creamy layer, Deep and Deep Publications 2012
[20] INDIA CONST. art. 15 § 6, amended by The Constitution (103rd Amendment), 2019
[21] INDIA CONST. art. 16 § 6, amended by The Constitution (103rd Amendment), 2019
[22] Janhit Abhyan v. Union of India, 2022 SCC OnLine SC 1540
[23] Janhit Abhyan v. Union of India, EWS RESERVATION, Supreme Court Observer (last visited 17 August, 2025) https://www.scobserver.in/cases/janhit-abhiyan-union-of-india-ews-reservation-case-background/

including those reserved for SCs and STs. This reservation policy aimed at removing the visible gender gap in representation of women in Democracy and aimed to ensure fair representation of women in politics.[24]

MISUSE OF RESERVATION

The Constitution of India vests its underprivileged citizens with Reservations in order to uplift the marginalized. These reservations act as a tool to ensure social justice and uphold the principles of Equality by ensuring fair and equal representation to all. The main focus area of reservation provisions is to protect the interests of the socially and economically backward classes who have been discriminated against and looked down upon for years and decades. However, the current scenario speaks differently.

The reservation policies which were originally included to protect certain sections are now seen being misused by privileged groups for electoral gains and fraudulent purposes. Current trends in misuse of reservations are snatching the opportunities from the hands of the needy people and placing them in the hands of the wealthy. This defeats the sole purpose of reservation policies by disregarding the interests and benefits provided to the underprivileged. This misuse excludes the needy people from the institution of reservation as it gets dominated by the creamy layer within these backward classes. Instead of uplifting the weaker sections, reservation often helps the politically dominant groups.

FORMS OF MISUSE

1. Misuse of The Creamy Layer Provision – In the case of Indra Sawhney vs. Union of India, the Supreme court emphasized on the exclusion of the creamy layer from the reservation in OBCs.[25] Similarly, in the case of Jarnail Singh vs. Lachhmi Narain Gupta, the Supreme court talked on the exclusion of the creamy layer in reservation for SCs and STs in promotion.[26]

- Misuse of the creamy layer results in the representation of the privileged sections of OBCs and SCs/STs failing to represent the sections which are needy and discriminated against. The economically stronger benefit from the misuse of creamy layer which sidelines the efforts of

[24] Women Reservation Act, 2023 – Women in Politics, Drishti Ias: TO THE POINT (last visited 17 August, 2025)
https://www.drishtiias.com/to-the-points/Paper2/women-reservation-act-2023-women-in-politics
[25] Id. at 7
[26] Id. at 9

the ones who really deserve the reservations.

- The misuse of creamy layer deviates the main purpose of reservations by failing to uplift the most marginalized and benefitting the economically better. This leads to inequality in reservations, as the truly deserving candidates are left out. The use of reservations by the creamy layer has also led to the citizens being discriminated against and questioning the fairness of the reservation system. This leads to a continuous cycle of the creamy layer benefiting from the reservations, while the economically and socially backward OBCs and SC/STs are left in dying need of these reservations, and never get a chance to experience them and remain unserved.[27]

2. False Caste Certifications – Reservations in India provide benefits to the socially and economically weak sections of the society. To avail these benefits, a citizen must prove their caste identity which can be done through the issuance of a Caste Certificate and its verification by a competent authority. To avail the benefits reserved for some, many create fake caste certificates and misuse the certification system. Fake certifications can be issued by altering all the background details of a person including the place he was born, the place he studied, family background and many more to show a lineage of reserved category, which is not true in its own nature. This is a punishable offence of Cheating under Section 318, Bharatiya Nyaya Sanhita, 2023.[28] Fake caste certificates can also be issued on the basis of forgery of documents by obtaining fake signatures and seals showing that the fake fabricated certificate is real. Forgery refers to falsely obtaining signatures or creation of fraud documents with an intention to cause harm or defraud someone and is a punishable offence under Section 336, Bharatiya Nyaya Sanhita, 2023.[29]

- The usage of fake caste certificates to avail reservations can be seen all over India. Recently, Bangalore has seen the rise of fake certifications. Under the Scheduled Caste benefits of Budaga Jangamas, it is seen that more than 4 lakh people are availing the reservation benefits, whereas the genuine population of this community is just close to 25,000. The ones apart from the 25,000 are believed to be availing these benefits by the means of fake Scheduled Caste

[27] In light of recent cases of misuse…., PWOnlyIAS: Mains Answer Writing, 2 October, 2024 https://pwonlyias.com/mains-answer-writing/recent-cases-of-misuse-of-the-creamy-layer-provision/
[28] Bharatiya Nyaya Sanhita, § 318, 2023
[29] Bharatiya Nyaya Sanhita, § 336, 2023

certificates.[30]

- In another case, Pooja Khedkar was accused of submitting fake certifications to the Union Public Service Commission to pass the extremely competitive exam. It was found out that she used multiple fake certificates to get a reservation under the disability category including mental illness and low vision.[31] A case titled as R. Balasundaram vs The Tamil Nadu State Level Scrutiny Committee[32], where the petitioner was found in the possession of a certificate belonging to Hindu Konda Reddy and based on this certificate, he was appointed as the khalasi. The court observed that the family members of the petitioner were all belonging to different castes and held the petitioner's certificate to be fake as it did not match with any records. The Court held that the policy of reservation was considered as pride for the country and any misuse cannot be justified even if detected late.[33]

- Misuse of caste certificates are also seen in high profile police constables, back in 2024, Satyanarayan Vaishnav, an Indore Cop, got his job by submitting a caste certificate of Kori Community, but upon investigation it was found that his father and brother are all Vaishnav Brahmins. He was further convicted for a Jail time of 10 years and fine.[34] Prestigious courses and exams which are difficult to clear, have also seen cases where a fake certificate was submitted just to avail the benefits. Much recently, a student submitted a fake Scheduled Caste certificate, and obtained admission in a famous MBBS college in Prayagraj. Upon finding the facts, the court convicted him with a Jail time of 7 years and fine.[35]

- Previous judgements given by the Supreme Court give us a clear view that fake certification

[30] Karnataka: Misuse of Budaga Jangama Caste Certificate a Worry, The New Indian Express, 15 July, 2025 https://www.newindianexpress.com/states/karnataka/2025/Jun/15/karnataka-misuse-of-budaga-jangama-caste-certificate-a-worry

[31] Has She Committed Murder? Supreme Court grants anticipatory bail to Puja Khedkar in IAS Fraud Case, The Times of India, 21 May, 2025 https://timesofindia.indiatimes.com/india/has-she-committed-murder-supreme-court-grants-anticipatory-bail-to-puja-khedkar-in-ias-fraud-case/articleshow/121305225.cms?

[32] R. Balasundaram vs The Tamil Nadu State Level Scrutiny Committee, W.P.No.13526 of 2022

[33] HC: Any exploitation or misuse of Reservation Policy, even if detected late, cannot be a justification for such misuse, LatestLaws.com, 19 March, 2023 https://www.latestlaws.com/case-analysis/hc-any-exploitation-or-misuse-of-the-reservation-policy-even-if-detected-late-cannot-be-a-justification-for-such-misuse-read-judgment-197074/

[34] 10-Year Jail for Indore Cop…., NDTV, 3 February, 2024 https://www.ndtv.com/india-news/cop-gets-10-year-jail-for-getting-job-using-fake-caste-certificate-4987127

[35] Barsha Misra, MBBS Admission: 7-Year Jail to student who submitted Fake SC Certificate, Medical Dialogues, 14 November, 2024 https://medicaldialogues.in/news/education/mbbs-admission-7-yr-jail-to-student-who-submitted-fake-sc-certificate-138076

will not be accepted. Similarly, in the case of Madhuri Patil vs. Additional Commissioner[36], when the court found out that Madhuri secured her admission in the educational institution with the help of a Fake caste certificate, it held her admission as cancelled.

3. Changing Religions – Sometimes people convert into desired and specific religions just to claim the similar benefits as the people of that community. These conversions lack genuine belief and faith in the particular religion and are done just to avail the benefits surrounding it. The Supreme Court in the matter of C. Selvarani V. The Special Secretary- Cum District Collector and Others, where conversion of religion was done solely to avail the benefits of reservations, held that conversion done just to get reservation benefits without any actual belief defeats the policy of reservation and is a Fraud to the Constitution of India. Reservations on such grounds shall not be granted.[37]

SUGGESTIONS

- Caste based census should be conducted to find out the actual numbers of people belonging to the particular caste, so that fake benefiters can be found.
- Inner quotas should be made for each caste to identify the creamy layer and only provide reservations to the underprivileged and needy ones.
- Reservation policies from different countries should be examined to adapt to the best which will benefit the whole economy.
- Stricter verification guidelines should be implemented to check for any fake caste certifications or misuse of reservations.
- Reservation should be limited to 1 person from a family or 1 generation from a family, so that the merit-based candidates do not feel unjustified.
- Instead of Reservations, money-based incentives should be provided to the backward to pursue education.

[36] Madhuri Patil vs. Additional Commissioner, 1994 SCC (6) 241
[37] Religious Conversion for Benefits of Reservation, Drishti Judiciary, 28 November, 2024 https://www.drishtijudiciary.com/current-affairs/religious-conversion-for-benefits-of-reservation

- Wealthy and high rank families, whether backward, shall be removed from the purview of reservation.[38]

CONCLUSION

The Reservation system in India was introduced to uphold the principles of socio-economic justice. Over the years, the reservation policies have seen an expansion by providing reservations in multiple sectors such as education, employment and even political representation of the marginalized. Though, reservation in India as of today reveals challenges that need to be reformed.

Even though reservation aims to uplift the marginalized, it often fails to do so as the privileged sections within the scope of reservations acquire these benefits, leaving the underprivileged stuck in a loop of not receiving any benefits. The Supreme court advocated for the clear exclusion of creamy layer within these sections for the purpose of reservations. Exclusion of the creamy layer, will benefit the most needy and underprivileged ones within the particular section of people. Benefits of reservations are also availed by highly privileged citizens by obtaining fake caste certificates, or forgery which is, both, a punishable offence under the Bharatiya Nyaya Sanhita, 2023. Obtaining benefits like this kills the whole purpose of the reservation policies as the needy and underprivileged do not receive the benefits.

Although, reforms are much needed in the reservation system to curb out the misuse. Inner quotas shall be made and caste-based census should be conducted to understand the privileged and weaker better. Reservation policies from all over the globe can be reviewed and our nation could inculcate the best one which serves the needs of the underprivileged.

Reservation, therefore should be granted based on actual evidence of caste reviewed upon multiple verifications. Strengthening the reservation policies will bring transparency and accountability, and help in serving its actual true purpose.

[38] Sanchit Meena & Vishakha Meena, Is the Reservation System Making or Breaking India?, Libertatem Magazine, 22 March, 2021
https://libertatem.in/government/is-the-reservation-system-making-or-breaking-india/