



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“FROM CONSTITUTIONAL GUARANTEES TO POLITICAL REALITIES: UNPACKING INDIA’S RESERVATION SYSTEM”

AUTHORED BY - JATIN VERMA & VISHESH CHHABRA

ABSTRACT

- ❖ **Introduction:** Reservation policy was introduced in India to uplift the weaker section of the society who are deprived of the given rights. India's reservation policy is an affirmative action aimed at providing social, economic and political justice to marginalized communities. However, the policy has been controversial and contested since its inception, raising questions about its rationale, implementation and results.
- ❖ **Purpose:** This paper critically evaluates the reservation policy in India by looking at its historical development, constitutional framework, legal interpretations and empirical evidence. Instead of undermining constitutional guarantees, we seek to illuminate their vulnerability. Analysing historical origins, legal decisions and electoral dynamics, we explore how caste politics and reservation politics intersect. Does this system really uplift marginalized communities or perpetuate divisions?
- ❖ **Methods:** Using a qualitative approach, we study legal texts, jurisprudence and political narratives. Our research is based on legal literature, analysis of legal cases and comparative studies. Our research bridges theory and reality, revealing a delicate balance between constitutional ideals and political pragmatism. Use comprehensive assessments. We examine relevant legislative measures, amendments and declarations to assess the effectiveness of law enforcement.
- ❖ **Results:** Our results show that legal acts played an important role in the drafting of the constitution. Citizens have the right to challenge oppression, protect civil liberties and seek redress. However, gaps remain and must be properly addressed and strengthened. The document proposes some reforms and ways to improve the policy and make it more inclusive, fair and efficient.

HISTORICAL BACKGROUND OF RESERVATION

POLICY OF INDIA:-

The main objective behind adopting the concept of reservation is to promote and uplift the group of people who were the disadvantaged sections of the society. Like SC, ST, OBC and economic weaker section and they were provided by the many different opportunities like reservation in parliament, government jobs, quota in government exams, scholarship and many more so they can represent and uplift themselves. Currently the reservation in higher education institution and parliament is 49.5 percent and it can vary from state to state and currently in Maharashtra it is highest. The system of reservation was framed post-independence in the constituent assembly which was chaired by 'Dr. B.R. Ambedkar'. Initially it was introduced for a term of 10 years which they thought to be sufficient for the upliftment of the weaker sections which was suppressed by the upper sections for so many years but those 10 years were not sufficient and the legislatures found the necessity for continuing the reservation policy to overcome the discrimination faced by the certain sections of society.

In my opinion the reservation system should be abolished as if any kind of help is given to uplift them it should be in other form but not in the form of giving the position of deserved one who has more Caliber to work because the person is getting better marks and maybe have done more preparation than the person who is getting his position by getting lesser marks because of quota. There are approximately 25 crores of SC in total and by reservation few are getting jobs and creating an assumption that all are being benefited from the reservation and those who are availing reservation are from creamy layer only.

The main purpose for the reservation is to avoid the discrimination but, in my consideration, it created more discrimination as the cutoff in exams are different for each category which is helping in uplifting them but has not abolished the discrimination. Because the general category has to score more marks to get the same job which any suppressed section will get by scoring less than the general category.

It is clearly seen that reservation is serving the divide and rule policy between the political leaders as they are creating a hatred between SC/ST/OBC/EWS and upper castes as an upper caste youth may not get a job even after getting 85 percent and the same position will be given to that person who got 50 percent just because he/she belongs to the lower caste.

In today's generation it is considered that being from a general category is sin for any person because all the benefits are being availed by SC, ST, OBC or EWS.

Major of the population who belongs to the general category are trying to get any of the lower caste certificate just to avail the benefits because they are unable to get any of the benefits being a general category person.

In my opinion political leaders are majorly using this reservation policy to create their vot bank so this is not helping in upliftment of weaker section rather it is helping the politicians to build up their vote bank Suppose there are two persons one is from lower caste and other is from upper caste Both have the same tendency to learn the things and can compete with each other in any exam But the concept of reservation creates a thing in the mind of lower caste person that if I score this, I will get job anyhow so why should a study that much but the person from upper caste still have to struggle the same Both have got equal opportunities but the person from lower caste gets an upper hand in getting the job The philosophy of reservation is itself impaired as it itself created a discrimination between the caste and promoting the caste system rather than minimalizing It.

The concept of reservation in nowadays creating a hatred among the people of society and a sense of inequality amongst everyone as the reservation is based on the caste which is against the societal interest and is contradictory to the purpose why it was introduced.

Many of the communities which are in majority in their area are protesting violently to get the reservation and if all these continues than everyone will suffer For instance, jaat community has set everything on fire just to get reservation and the whole area has to suffer because of that who are innocent.

And if we say there is no need for reservation now as the main purpose of this was uplifting the weaker section of society and it was achieved at its best and now those persons are availing this who are from creamy layer.

“Article 16(4) of the constitution says that one of the main purposes is to provide adequate representation of all classes in government services. Economic reservation introduced is actually

against this concept as it does not take into consideration the caste-based representation”

“In the case of Indra Sawhney vs union of India¹ a cap was set on caste based reservation and court stated that no provision of reservation or preference can be pursued as to destroy the concept of equality and this whole concept of reservation is destroying this concept of equality as the cut off clearly shows that the reason belongs to SC/ST/OBC can score less marks than a general category person to avail the job and general category has to suffer because of that because of the discrimination in number and his right to equality is also being violated Affirmative action in the form of the Indian reservation system aims to raise the socioeconomic standing of historically marginalized communities.” It seeks to give these communities fair access to legislative positions, educational opportunities, and government employment. The quota system was put in place to make up for past injustices based on caste identity and to guarantee that Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) were represented in a variety of sectors.

The original purpose of this system was to address historical injustice that has been committed against India's lower classes and to guarantee that all castes would have equal representation in government and centre functions. It also gives everyone, regardless of caste, an equal platform.

The Indian Constitution supports the reservation policy, which has changed significantly over time. It was first restricted to SCs and STs, but in 1991, on the advice of the Mandal Commission, it was broadened to include OBCs.

PROVISIONS RELATED TO CONSTITUTIONAL PROTECTION

India's Constitution, which establishes the framework for a varied and inclusive society, it is a testament to the country's commitment to social justice and equality. The Indian Constitution grants specific safeguards to (SCs), (STs), and (OBCs) in recognition of the historical marginalization of these populations. With the help of these laws, we hope to guarantee that these groups will be afforded equal opportunity to engage in politics, the workforce, and education. The Constitution aims to establish an environment where every citizen can thrive, contributing to the advancement of the country while conserving their cultural identity and history by protecting their rights and dignity.

¹ “Indra Sawhney v. Union of India, AIR 1993 SC 477.”

The above introduction lays down the groundwork for a more thorough on examination of the particular articles and amendments that specify the safeguards and affirmative action policies for the SC & ST.

The various provisions of Indian Constitution which protect reservation are: -

1. "Article 15(4) of the Indian Constitution allows for special provisions to be made by the state for the advancement of Scheduled Castes (SCs), Scheduled Tribes (STs), and other backward classes."
2. "Article 17 of the Constitution abolishes and prohibits the practice of untouchability."
3. "Article 46 mandates that the state shall promote the educational and economic interests of SCs and STs, protecting them from social injustice and exploitation."
4. "Article 164(1) specifies that the states of Bihar, Madhya Pradesh, and Orissa shall each have a minister responsible for tribal welfare."
5. "Articles 330 and 332 reserve seats in the Lok Sabha and state legislative assemblies for SCs and STs."
6. "Articles 338 and 338A establish the National Commission for SCs and the National Commission for STs, respectively, to safeguard their rights and interests."
7. "Articles 341 and 342 empower the President to specify which castes and tribes shall be deemed as SCs and STs in various states and union territories."
8. "Articles 244 and 275 govern the administration and control of Scheduled Areas and Scheduled Tribes, providing for grants-in-aid to states for promoting ST welfare."
9. "Article 335 mandates that claims of SCs and STs be considered in appointments and promotions in public services."
10. "Article 243 provides reservation of seats in Panchayats and Municipalities for SCs and STs."

Additionally, reservation for the various communities like SCs, STs, and OBCs in direct recruitment on an all-India basis by open competition is set at 15%, 7.5%, and 27% respectively.

How Caste Politics and Reservation Politics Intersect the Reservation System of India: -

In India, reservations have been a divisive topic since they are frequently viewed as a political weapon rather than just a way to achieve social justice. Reservations, which were first introduced with the

goal of assisting the less fortunate members of society, have developed into a sophisticated system. The unwillingness to adopt the "creamy layer" idea for some categories, which implies that reserves are more of a vote-bank tactic than a tool for policymaking, demonstrates the political nature of reservations. Although reservations were only intended to be temporary, they have been extended indefinitely by a number of revisions, which has led to concerns about the influence on merit, the number of reservations, and the requirements for being considered backward.

“The Constitution of India provides for justice: social, economic, political, which is part of the concept of natural justice. Article 311 of the Constitution of India contains many features of natural justice without specifically mentioning it. The concept of natural justice in India promotes the equality of people. Violation of natural rights amounts to violation of Article 14 Equality of Indian Constitution. But in certain parts of India, the system of reservation in jobs and educational institutions continues, violating the concepts of natural justice and equality. Reservation violates natural justice because it leads to denial and rejection of the undeserving and acceptance and recognition of the undeserving. Sections of society that do not get reserves of ability, intelligence and dedication to a cause do not achieve their aspirations, while the modest class, even if they have less ability, determination and ambition, make the cut quite easily. As a result of this violation of natural right, the reservation system promotes inefficiency which is disastrous for the development of the beneficiaries themselves as well as the nation. When inefficient people replace efficient people in government offices and educational institutions, the concept of natural justice becomes more distorted. This is because these inefficient people are unable to respect the ideals of natural justice themselves when they interact with the general public, which also violates many of their fundamental rights.”

Caste-Based Reservations: In order to rectify past injustices and improve underprivileged people, the Indian reservation system originally concentrated on “Scheduled Castes (SCs) and Scheduled Tribes (STs).”

Caste as a Political Identity: Historically, caste has played a major role in Indian society, affecting people's opportunities and social standing. Caste identification is a common tool used by political parties to organize voters and build voter bases based on caste affinities.

Using Reservations as a Political Tool: The introduction of reservations was intended to address historical injustices experienced by OBCs, SCs, and STs. During elections, political parties woo these populations with the promise of reservations.

Policy Formulation and Implementation: Political factors often play a role in the implementation of reservation rules, as parties seek to satisfy their supporters by promoting higher quotas or modified criteria. Political debates on the efficacy of reservation rules are common, with some advocating for more inclusive policies and others for a system that is more merit-based.

Formation of Caste-founded Parties: As a result of the reservation system, political parties founded on the interests of people belonging to SCs, STs, and OBCs have grown in number. These parties are now powerful in influencing social justice and reservation policy and rhetoric. Over time, parties based on caste, such as the “Rastriya Janata Dal” (RJD) and the “Bahujan Samaj Party” (BSP), came into existence. These parties work to address the issues that certain social groups have and promote the interests of particular castes.

Impact on Social Dynamics: Caste identities are frequently reinforced by the confluence of reservation politics and caste, which has important consequences for social dynamics. When groups vie for special seats and perks, it also has the potential to give rise to new types of social stratification.

Interventions by the Judiciary: The judiciary is essential in interpreting the reservation system and frequently intervenes to prevent caste-based reservations from becoming politicized. The goals of landmark rulings and directives have been to strike a compromise between the demands of equality and meritocracy and the necessity for social justice.

Some Landmark Judgements are: -

1. “A lawsuit from 1951 called **State of Madras v. Champakam Dorairajan**² resulted in the first amendment to the Indian Constitution. A government decree allowing for caste-based reservations in engineering and medical schools was overturned by the Supreme Court on the grounds that it violated Article 15(1) of the Constitution.”

² “State of Madras v. Champakam Dorairajan 1951 SCC 351.”

2. “In **M.R. Balaji v. State of Mysore**³ (1963), the Supreme Court limited the government's 68% college admissions reservation to 50% after ruling that it was excessive and irrational.”
3. “In the seminal 1992 judgment of **Indra Sawhney v. Union of India**⁴, the Supreme Court of India maintained the 27% quota for Other Backward Classes (OBCs) while also establishing the notion of the "creamy layer" and capping total reservations at 50%.”

HOW CAN WE IMPROVE RESERVATION SYSTEM OF INDIA: -

1. The review suggests that eligibility criteria for reservations should be closely examined to ensure they reach those who truly need them.
2. Transparency in reservation practices is vital to build trust and ensure fairness.
3. Economic criteria should also be considered to help economically disadvantaged individuals, regardless of their caste.
4. Investing in education and skill development can empower marginalized communities and offer more opportunities for success.
5. Regular reviews and adjustments to quotas, along with merit-based incentives, can enhance the effectiveness of the reservation system.
6. Legal and social awareness is crucial to prevent abuse and promote social justice.
 - 6.1 **Preventing abuse:** by informing the public about the legal framework and purposes of reservations, people are less likely to abuse the system for personal gain.
 - 6.2 **Promoting equity:** awareness programs can help ensure that reservations are used fairly and reach the intended beneficiaries, especially the most vulnerable sections of society.
 - 6.3 **Encouraging accountability:** As people become more aware of the law, they can hold officials accountable for properly implementing reservation policies.
 - 6.4 **Promoting inclusion:** Understanding the social justice goals of reservations can promote a more inclusive society where people support affirmative action as a means of redressing historical injustice.
 - 6.5 **Reducing stigma:** Awareness can help reduce the stigma associated with belonging to a reserved class because it emphasizes the role of the system as promoting equality rather than creating divisions.

³ “M.R. Balaji v. State of Mysore 1963 Supp (1) SCR 439.”

⁴ “Indra Sawhney v. Union of India, AIR 1993 SC 477.”

6.6 Guideline. political reforms: informed public debate can lead to more effective political reforms that respond to society's changing needs and principles of social justice.

6.7 Balancing rights and responsibilities: legal and social awareness helps people understand their rights and responsibilities in a reservation system that promotes balance. between individual aspirations and collective well-being.

7. Implementing comprehensive social programs can address the main cause of the social backwardness and the educational backwardness, completing reservation system's objectives.

THE “CREAMY LAYER” EXCLUSION WITHIN THE INDIAN RESERVATION SYSTEM

Which aims to prevent economically well-off individuals from reserved categories from availing reservation benefits.

Problems faced by the youth Due to the exclusion of “Creamy Layer”

1. **Addressing economic disparities:** Exclusion does not fully address economic inequalities in reserved classes because it is based on income and does not consider wealth, resulting in a situation where some wealthy individuals continue to benefit from reservations.
2. **Potential exclusion of deserving candidates:** Administrative complexity and bureaucratic inefficiency can lead to the unintentional exclusion of real beneficiaries. Errors in data collection, verification or interpretation of criteria can prevent suitable candidates trying to overcome historical disadvantage.
3. **Social stigma and discrimination:** Young people of all backgrounds face social stigma and discrimination, but also in their own communities because they are excluded. and because of general category advantage, which leads to feelings of exclusion.
4. **Little opportunities for social mobility:** Severe exclusion can limit the opportunities for social mobility of people who are slightly above the income threshold but are still socially disadvantaged. hindering their education and professional growth.
5. **Performance pressure:** Young people excluded from crust criteria may experience additional pressure to perform in an open category where competition is more difficult, increasing stress and anxiety.

Conclusion, based on the historical context and constitutional provisions of India, the reservation policy works as a central mechanism of social justice aimed at the upliftment of marginalized communities. The intersection of caste politics and reservation has shaped the current framework, which is useful but needs constant refinement to maximize efficiency and equity. Improving the reservation system requires a reassessment of the “eligibility criteria” to ensure aid reaches the intended recipients, increase “transparency” to increase confidence and add “economic status” as a factor to support the economically weaker sections of all castes. Investments in “training and skills development” are essential to empower marginalized groups and provide equal opportunities for advancement. In addition, promoting “legal and social awareness” is essential to prevent abuse of the system, promote equality, and to encourage accountability. Such awareness can also facilitate political reforms, balance rights and responsibilities and reduce stigma associated with reserved classes. Finally, comprehensive social programs that address the root causes of underdevelopment can complement the reservation system and ensure that its goals are more fully met. Removing the "creamy layer" from reservation system which highlights the need to develop a nuanced approach that recognizes the diversity of disadvantaged groups and tailors support accordingly. By adapting to the ever-changing social landscape, the reservation system can better serve as a catalyst to create an inclusive and just society where every person has the opportunity to succeed.

