

# RIGHT TO EQUALITY IN INDIA VIS-À-VIS RESERVATIONS IN FAVOUR OF BACKWARD CLASSES

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## **ABSTRACT**

The Constitution guarantees equality to all citizens and establishes a rule of non-discrimination by the state in any manner. It ensures the state to treat all citizens equally and allows equality of status and opportunity to all and specifically provides that discrimination on the basis of religion, sex, colour, caste or race are impermissible. The high objective was to convert a society fragmented on the lines of religion, caste and economic status into a homogenous society.

Reservation at the time of independence was meant to achieve the ultimate goal of development. But now it has resulted in further fragmentation and division of the society on caste lines which was never the objective with which special provisions for upliftment had been incorporated.

.Therefore the Constitution accords to these weaker sections of society protective discrimination in various articles, including Article 15(4) and 16(4). This clause empowers the stateto make special reservation for the advancement of any socially and educationally

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backward classes of citizens or for scheduled castes and scheduled tribes. This article aims to discuss equality and reservation given to us by the constitution and also deals with Mandal Commission and how it affected the reservation policies.

**KEY WORDS**

Constitution, Equality, Reservation, Article 15(4), Article 16 (4), Mandal Commission

## **INTRODUCTION**

Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally. This means that laws, policies and programs should not be discriminatory, and also that public authorities should not apply or enforce laws, policies and programs in a discriminatory or arbitrary manner.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

Sometimes it may be necessary to treat people differently to achieve equality. This is because differences between people may make it difficult for them to enjoy their rights without support. Different treatment may not amount to prohibited discrimination if the criteria for the differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the International Covenant on Civil and Political Rights.

The right to equality and non-discrimination encompasses both positive and negative obligations - the obligation to refrain from discriminating or eroding equality and the obligation to protect and advance the fulfilment and enjoyment of the rights to equality and non-discrimination for all people.

Right to equality means the absence of legal discrimination against any one individual, group, class or race.

Equality in India is a relatively recent concept as enshrined in our Constitution. The Right to Equality is a Fundamental Right, and our Constitution gives all Indians the right to practice it, irrespective of caste, creed, economic status, race or gender. Ancient Indian civilization was steeped in inequalities, mostly of caste. With the advent of Buddhism and Jainism, the caste system received a jolt, as the common man started questioning its very basis. Later, Christianity and Islam too, spoke of the equality of all men in the eyes of God. The Bhakti

movement in medieval India borrowed from these concepts and the majority of Indians became familiar with the concept of equality. With India achieving independence in 1947, equality became a matter of State authority. The framers of the Constitution made sure that future governments should be able to apply its principles to the social fabric of the nation. This has resulted in all Indians being provided with equal opportunities to excel.

The concept of reservation was enshrined in the Constitution to allow the so-called deprived classes to come at par with the so-called privileged ones. The Constitution of India allows this kind of positive discrimination in order to bring about equality of opportunity and status in the society. The founding fathers had never intended Reservation to be a temporary phenomenon. Reservations to the underprivileged were to be extended until they were uplifted socially and stabilized economically. Reservations with the view of helping the deprived classes to gain a better footing and avail equal benefits of an independent and free nation was introduced in the system.

### **RIGHT TO EQUALITY**

Foremost among the fundamental rights guaranteed by the constitution of India is the right to equality. Articles 14-18 constitute the Right to Equality in India. As such article 14 was considered generally a negative right of an individual not to be discriminated in access to public offices or places or in public offices generally. It did not take into account of existing inequalities arising even from the public policies and exercise of public power. The makers of Indian Constitution were not satisfied with that kind of undertaking of the right to equality. They knew that even though Buddha was one of the earliest proponents of equality in this land followed by many others, wide spread social and economic inequalities sanctioned by public policies and exercise of public power supported by religion and other social norms and practises existed. Such inequalities could not be removed, minimised or taken care of by a provision like Article 14 alone. But even though they could be so taken care of, it would have been a very slow process. Therefore, they expressly abolished and prohibited some of the existing inequalities practised not only by public power or state but even by private persons and expressly authorised the state to take necessary steps to minimise and remove them. Articles 15 -18 clearly expresses such intention of the constitution makers. Thus the right to equality in India is not merely a negative right not to be discriminated against but also a positive right to be treated as an equal.

## Article 14

Art 14 states that “*The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*”

The two phrases—(a) **equality before the law** and (b) **equal protection of the law** do not mean exactly the same thing. The former is negative in content implying absence of special privilege in favour of any section of the people or any individual. Equal protection of the law is positive in content. It implies equality of treatment in equal circumstances.

Again “equality before the law” implies that all are equal in the eyes of law and from the highest to the humblest, all will be tried by the same law and will be given the same punishment for same crime.

The phrase “equal protection of the laws” is borrowed from the 14th amendment of the U. S. constitution. It means that like should be treated alike, that none should be favoured and none should be discriminated, against. This allows the Parliament to classify persons for the various purposes. The classification should be reasonable.

### Test of Reasonable Classification

While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be “arbitrary, artificial or evasive”. A legislative classification to be valid must be reasonable. In order to pass the test of reasonable classification two conditions must be fulfilled, namely:

1. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group
2. The differentia must have a rational relation to the object sought to be achieved by the statute in question<sup>3</sup>

In *E.V. Chinnaiah v. State of A.P.*<sup>4</sup>, the main question before the court was whether sub-classification or micro-classification of Scheduled Castes for the purpose of reservation is violative of Article 14 of the Constitution or not? The Supreme Court held that such sub classification is violative and liable to be struck down. The Court rightly pointed out that in

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<sup>3</sup>The test was clearly expressed by Das, J in *State of West Bengal v Anwar Ali Sarkar*, AIR 1952 SC 75 and has been repeated in many more cases. For its continuing assertion see *Motor General Traders v. State of A.P.*, (1984) 1 SCC 222, 229; *PrabodhVerma v. State of U.P.*, (1984) 4 SCC 251

<sup>4</sup> (2005) 1 SCC 394

*Indira Sahaniit* was specifically held that sub-division of backward classes is not applicable to Scheduled Castes and Scheduled Tribes.

### Article 15

Art 15 states that “*the state shall not discriminate against any citizen on grounds only of religion, race, caste sex, place of birth or any of them.*” This article ordains that no citizen shall be denied

- a. “access to shops, public restaurants, hotels or places of public entertainment or
- b. the use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of state funds.”

This article however does not forbid the state from making special provisions for women and children. The state is equally free to make special provisions for socially and educationally backward classes and for the scheduled castes and tribes.

Supreme Court in *Nain Sukh Das v. State of UP*<sup>5</sup> invalidated an Act of State Legislature which provided for elections on the basis of separate electorates for members of different religious communities. In *D.P. Joshi v. State of M.B*<sup>6</sup>, the Supreme Court held that a law which discriminates on the ground of residence did not infringe Article 15. Place of birth in Article 5(1) is different from residence. In a significant judgement<sup>7</sup>, a five judge bench of the Supreme Court has held that a person belonging to Scheduled Caste or Scheduled Tribe, bearing the same nomenclature in two States is entitled to the rights, privileges and benefit only in the State of his origin but not entitled to those rights and benefits in other States where he immigrates.

**Clause 5** was added by Constitution (93<sup>rd</sup> Amendment) Act, 2006. It has been enacted to nullify the effect of the three decisions of the Supreme Court, i.e., *T.M. Pai Foundation v. State of Karnataka*<sup>8</sup> and *Islamic Academy v. State of Karnataka*<sup>9</sup>. It provided provision for reservation of backward and SC & ST classes.

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<sup>5</sup>AIR 1953 SC 384

<sup>6</sup>AIR 1955 SC 334

<sup>7</sup>The Hindustan Times, July 22, 1994

<sup>8</sup>AIR 2003 SC 355

<sup>9</sup>AIR 2003 SC 3724

## Article 16

Art. 16 guarantees equality of opportunity in matters of public employment. The article states that:

- i. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. The article also forbids discrimination on grounds only of religion, race, caste, sex, descent, and place of birth or any of them in matters of public employment. There are five exceptions to prohibition of discrimination under Art. 16. (I) The Parliament may lay down residence qualification for some appointments in states.
- ii. The state may reserve some appointments for backward classes if they are not adequately represented in the state services.
- iii. Offices in the religious institutions may be kept reserved for the followers of the religion concerned.
- iv. Posts in the state services may be kept reserved for the scheduled castes and tribes.
- v. Finally Art. 16 forbid discrimination in matters of state employment only on the grounds stated in the article itself. It does not forbid preferential treatment on other grounds such as efficiency or mercy.

Under Article 16 the guarantee against discrimination is limited to ‘employment’ and ‘appointment’ under State. Equality of opportunity in matters of employment can be predicated only as between persons who are either seeking the same employment or have obtained the same employment, and that “equality of opportunity in matters of employment under Article 16(1) means equality between members of the same class of employees and not equality between members of separate independent classes.” Equality of opportunity in matters of appointment does not, however, prevent the State from prescribing the necessary qualifications and selective tests for recruitment for Government services.

## Article 17

Art. 17 of the constitution says, “*Untouchability is abolished and its practice in any form is forbidden.*” The position is further fortified by the Abolition of the Untouchability Act of 1955. Though the term untouchability has not been defined in either the constitution or the Act of 1955, practice of untouchability in any form is strictly forbidden. Refusing admission

to public institutions like schools and hospitals on grounds of untouchability is a punishable crime.

### **Article 18**

Art. 18 *forbid titles* except military or academic distinctions. Title from foreign governments such as knighthood is forbidden. However honours conferred by the government of India such as Bharat Ratna or Padmashri etc. are not titles but are only recognition of meritorious services. Right to equality in all its forms are available to Indian constitutional remedies against the violation of fundamental right to equality.

### **RESERVATION SYSTEM IN INDIA**

Reservations were introduced during the last decades of the 19th century at a time when the subcontinent could be broadly divided according to two main forms of governance British India and the 600 princely states. Some of these princely states were progressive and eager to modernize through the promotion of education and industry; and by maintaining unity among their own people, like Mysore in south India and Baroda and Kolhapur in western India. Thus, the very first records of implementing reservations policies are from these princely states. The question of reservations was also discussed in the “*Round Table Conferences*”<sup>10</sup> and provisions were made in the *Communal Award of 1935* in spite of opposition by Mahatma Gandhi. Dr. B.R. Ambedkar was appointed member of the Viceroy’s Executive Council and he submitted a memorandum titled, ‘*On the Grievances of the Scheduled Castes*’. The scheduled castes were allowed 8.5 per cent reservation in central services and other facilities for the first time in the history of India in 1942.

Immediately after the adoption of the Constitution, the provision of reservation under Article 16 was challenged through a writ petition filed in the Madras High Court – “*State of Madras v ChampakamDorairajan*,”<sup>11</sup>. The case came before the Supreme Court of India. The Madras government’s policy, which stipulated admission to medical and engineering colleges in a proportion, based upon caste and religion, was challenged, *inter alia*, under Article 15(1) [recall that 15(4) did not exist at the time]. The State made an argument that reservations in educational institutions were

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<sup>10</sup>The three Round Table Conferences of 1930–32 were a series of conferences organized by the British Government to discuss constitutional reforms in India They were conducted as per the recommendation by the report submitted by the Simon Commission in May 1930

<sup>11</sup>1951 AIR 226, 1951 SCR 525



justified under Article 46, part of the Directive Principles of State policy, which required the State to “*promote with special care the educational and economic interests of the weaker sections of the people.*” The Court rejected the argument on two grounds: *first*, obviously, that the Directive Principles were not enforceable. *Secondly*, however, it argued that if reservations could be justified under Article 46, this would make 16(4) redundant. It logically follows, then, that Article 16(4), which allows for reservations under the broader Article 16 scheme of equality of opportunity, is an exception to Article 16(1), and that 16(1) *itself* does not contemplate reservations in its guarantee of the equality of opportunity – because if it did, finding *another* source for the government’s reservation-making power, in Article 46, would not make Article 16(4) redundant. In other words, the redundancy argument works only if we assume that Article 16(4) is the *source* of the government’s power to make reservations, and from that it follows that Article 16(1) *cannot be*. This, precisely, is the ideal of colour-blindness that we discussed in the last post: even for remedial purposes, equality under the colour-blind theory does not permit classification on prohibited bases, and such classification can be justified only by carving out a specific constitutional exception (16(4)). Since Article 15 had no parallel 15(4), the Court struck down the Madras Government’s policy.

### **Mandal Commission Report:**

The Mandal Commission<sup>12</sup> was established in India in 1979 by the Janata Party government under Prime Minister Morarji Desai with a mandate to “identify the socially or educationally backward. It was headed by Indian parliamentarian *Bindheshwari Prasad Mandal* to consider the question of seat reservations and quotas for people to redress caste discrimination, and used eleven social, economic, and educational indicators to determine backwardness. In 1980, the commission's report affirmed the affirmative action practice under Indian law whereby members of lower castes (known as Other Backward Classes (OBC) and Scheduled Castes and Tribes) were given exclusive access to a certain portion of government jobs and slots in public universities, and recommended changes to these quotas, increasing them by 27% to 49.5%.

In **Mandal Commission II**, SC held that total number of reserved seats even after carrying forward of the unfilled seats by the candidates belonging to ST/SC/OBC group cannot be extended beyond 50%.

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<sup>12</sup>IndraSawhney v Union of India, 1992 Supp (3) SCC 217; AIR 1993 SC 477

Suggestions given by Mandal Commission:

- Reservation of 27% jobs for backward classes
- Socially advanced layer i.e. creamy layer from the said backward class is to be excluded
- Reservations should confine to initial appointments and not to promotions
- Total reservation shall not exceed 50%

The **93rd Constitutional Amendment** allows the government to make special provisions for “advancement of any socially and educationally backward classes of citizens”, including their admission in aided or unaided private educational institutions. Gradually this reservation policy is to be implemented in private institutions and companies as well. This move led to opposition from non-reserved category students, as the proposal reduced seats for the General (non-reserved) category from the existing 77.5% to less than 50.5% (since members of OBCs are also allowed to contest in the General category).

#### **Scope of Article 15(4) and Article 16(4)**

**Article 15(4)** of our constitution empowers the government to make special provisions for advancement of backward classes. This was added by the Constitution (First Amendment) Act, 1951, as a result of the decision of the SC in *State of Madras v. Champakam Dorairajan*<sup>13</sup>.

*“Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”*

The provision made in 15(4) is only an enabling provision and does not impose any obligation on the State to take any special action under it. It merely confers a discretion to act if necessary by way of making special provision for backward classes. A writ cannot be issued to the State to make reservation. The principle behind Article 15 (4) is that a preferential treatment can be given validly where socially and educationally backward classes

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<sup>13</sup>AIR 1951 SC 226

need it. Article 15 (4) is not an exception but only makes a special application of the principle of reasonable classification.<sup>14</sup>

**Article 16(4)** empowers the state to make special provision for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the state are not adequately represented in the services under the State.

Thus two conditions have to be satisfied:

1. The class of citizens is backward
2. The said class is not adequately represented.

Clause (4-A) in Article 16 was added by **77<sup>th</sup> Amendment, 1955**. It empowers the state to make any provision for reservation in matters of promotions for SC and STs which, in the opinion of the State, are not adequately represented in the services under the State. Legislature intended to nullify Supreme Court's decision in Mandal case by passing this amendment. The **Constitution (81<sup>st</sup> Amendment) Act, 2000** has added a new Clause (4-B) in Article 16 of the Constitution which seeks to end the 50% limit for SC and STs and other Backward Classes in backlog vacancies which could not be filled up due to the non-availability of eligible candidates of these categories in the previous year or years.

It has often been stated by various Indian Courts that Articles 15(4) and 16(4) do not guarantee a fundamental right to reservation and are merely enabling provisions. However, the march of law includes a number of cases where views to the contrary have been expressed.

In *M. R. Balaji v. State of Mysore*<sup>15</sup>, Gajendragadkar, J. observed that Article 15(4), like Article 16(4) was in the nature of an enabling provision and imposed no positive obligation on the State. This, however, did not constitute the ratio decidendi of the judgment.

One of the first cases in which it was laid down as part of the ratio decidendi, that Article 16(4) does not grant a fundamental right to the backward classes is *C.A. Rajendran v. Union of India*<sup>16</sup>. A petition was filed under Article 32 praying for the issue of writ quashing an

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<sup>14</sup>GulshanPrakash v State of Haryana, AIR 2010 SC 288

<sup>15</sup>AIR 1963 SC 649. See also K.N.ChandraShekara v State of Mysore, AIR 1963 Mys 292, B.S.KesavaIyengar v. State of Mysore, AIR 1956 Mys 20, Prayag Das v. Civil Judge, AIR 1974 All 135.

<sup>16</sup>AIR 1968 SC 507. See also *State Bank of India Scheduled Caste / Tribe Employees Welfare Association v. State Bank of India* AIR 1996 SC 1838.

Office Memorandum providing for no reservation for Scheduled Castes (SCs) and Schedule Tribes (STs) in post filled by promotion. The Court rejected the petition and one of the grounds for doing so was that Art. 16(4) was merely an enabling provision and did not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for SCs and STs, either at the initial stage of recruitment or at the stage of promotion.

In *P. and T. Scheduled Caste/Tribe Employees' Welfare Association (Regd.) v. Union of India*<sup>17</sup>, the withdrawal of reservations for SCs and STs in the Posts and Telegraphs Department pursuant to an agreement between the Ministry of Communications and certain associations of employees, was challenged by beneficiaries of the reservation. The Supreme Court held that while there was no right to reservation, in the present case the State action was discriminatory as the SCs and STs working in the Posts and Telegraphs Department were discriminated against when compared with SCs and STs holding similar posts in other Government departments.. Moreover, they were discriminated against vis a vis those SC and ST beneficiaries, who had availed of reservations prior to withdrawal of the same.

However there exist case laws to the contrary. These are primarily based on Comptroller and Auditor-general of India, *GianPrakash, New Delhi v. K.S. Jagannathan*<sup>18</sup> where a relaxation of minimum qualifying marks for SCs was prayed for by an SC candidate and ordered by the Court. This amounted to stating that there was a right guaranteed by Article 16(4) that could be claimed by backward classes.

This ratio was followed in *Superintending Engineer, Public Health, U. T. Chandigarh v. Kuldeep Singh*<sup>19</sup>. The respondent had, before the Tribunal, challenged the promotion of another candidate ahead of him. The Respondent was a SC candidate and claimed that pursuant to the rule which stated that in the absence of any ST candidate the vacancy could be filled by an SC candidate, he ought to have been considered in the ST quota. The Tribunal accepted the contention and allowed the petition. It was argued by the Petitioners that the Rules stated that if there were no SC or ST candidate the vacancy would be carried forward for three years and then it would lapse. In the present case, it had lapsed.

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<sup>17</sup>AIR 1989 SC 139

<sup>18</sup>AIR 1987 SC 537

<sup>19</sup>AIR 1997 SC 2133

However, the Supreme Court laid down that there was a constitutional duty on the Petitioners to implement reservations as it was a case of power coupled with constitutional duty.

A similar approach was adopted in *JagdishLal v. State of Haryana*<sup>20</sup> and *Ashok Kumar Gupta v. State of U. P.*<sup>21</sup>

All the above cases were considered in *Ajit Singh v. State of Punjab*<sup>22</sup> where it was contended that Article 16(4) conferred a power and a duty and it would be possible to enforce this duty by filing a writ of mandamus. However, the Supreme Court rejected this contention.

It was held that Comptroller and Auditor-general of India, *GianPrakash, New Delhi v. K.S. Jagannathan*<sup>23</sup> and *Superintending Engineer, Public Health, U. T. Chandigarh v. Kuldeep Singh*<sup>24</sup> had been decided without any reference to earlier decided precedents and was per incurium. The Supreme Court looked at the phrase “Nothing in this Article shall prevent the State from making any provision for reservation. . . . .”, used in Article 16(4) and noted that the language was very different from Article 16(1). The former did not contain a directive or command like the latter, and this indicated that Article 16(4) was merely an enabling provision that granted no right to reservation. This view was again reiterated in *Dr.GulshanPrakash v. State of Haryana*<sup>25</sup>.

In a case *Balaji v. State of Mysore*<sup>26</sup>; it was held that ‘caste of a person cannot be the sole criteria for ascertaining whether a particular caste is backward or not. Determinants such as poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. The court further held that it does not mean that if once a caste is considered to be backward it will continue to be backward for all other times. The government should review the test and if a class reaches the state of progress where reservation is not necessary it should delete that class from the list of backward classes.’

Similar claims were again taken up in the Chitralekha case<sup>27</sup> - In this case, the Supreme Court interpreted the Balaji case somewhat differently. *K.S.Jayasree v. State of Kerala* (1976), the Supreme Court accepted the logic of the Kerala High Court that economic backwardness

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<sup>20</sup>AIR 1997 SC 2366

<sup>21</sup>(1997) 5 SCC 201

<sup>22</sup>AIR 1999 SC 3471

<sup>23</sup>AIR 1987 SC 537

<sup>24</sup>AIR 1997 SC 2133

<sup>25</sup>(2010) 1 SCC 477

<sup>26</sup>(AIR 1963 SC649)

<sup>27</sup>Chitralekha v State of Mysore, 1964

plays a part in social and educational backwardness. It was held that neither caste nor poverty is the sole test for determining backwardness but both are relevant for it.

In the Thomas case (State of Kerala vs N H Thomas, 1976) the Supreme Court upheld caste based reservation. The Supreme Court also observed that the aim of the Constitution is to eliminate caste from the affairs of the state. Yet certain backward castes have to be recognized and classified for compensatory measures so that caste can be abolished ultimately.

### **EQUALITY AND RESERVATION**

Equality has been promised by State under Article 14 of the Indian Constitution and Article 14 is considered as the soul of the Indian Constitution because without equality no country can be considered as republic and it is the need of equality which have forced human beings to come under state so that they can get security, equal protection of law and equality in all aspects. In our Preamble, the word equality is derived from the *French Revolution* which itself shows the aims of our Constitution and Article 14 further is a step forward towards the accomplishment of that aim.

Equality itself means that like should be treated alike and not unlike should be treated like. That is why Article 14 permits reasonable classification between likes and unlike so that unlike should be given special treatment to bring them on the equal footing with the likes and in fact identical treatment in unequal circumstances would itself amount to inequality. Goal of equality will not be considered to be achieved till everyone will be on the equal footing. Thus idea to attain equality has given birth to the concept of reservation or affirmative action. Reservation is a special treatment given to the unlike till they come on the equal footing with the likes in the society. Reservation is a concept developed with a view to provide special help to the weak so that they can overcome their weakness and can compete with the strong.

In landmark judgments of *D.V. Bakshi v. Union of India*<sup>28</sup> and *Air India v. Nargesh Mirza*<sup>29</sup>, The Supreme Court's judgments have proved that inequality anywhere will never be tolerated and therefore Judgments of these cases have established new landmarks in the concept of Equality. Equality is a state of complete justice and in order to attain it

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<sup>28</sup>(1993)3 SCC 662

<sup>29</sup>AIR 1981 SC 1829

reservation is a powerful remedy. Reservation have proved to be highly successful in many countries for e.g. United States has affirmative action for blacks and in various other countries reservation is playing major role in narrowing the gap between different classes.

In the historic Mandal Commission case the Supreme Court by the 6-3 majority has held that the sub classification of the backward classes into more backward classes and backward classes can be done for the purpose of Article 16(4). **But as a result of sub classification the reservation cannot exceed more than 50 percent.** The distinction should be based on the degree of social backwardness. In fact such classification would be necessary to help the more backward classes otherwise those of the Backward Classes who are little more advanced than the more backward classes might take away all the seats.

“Thus reservation and equality are two sides of the same coin and if equality is the aim then reservation is the best possible way to reach that aim”

### **CONCLUSION**

If one takes a look at the issue objectively one will realize that the intention behind reservations is not faulty at all but it is the implication and the application of it that has proved ineffective. The way reservation has been implemented all these years has deepened and aggravated the caste distinctions in the society, marginalised the poor and the needy and has benefited only the topmost layer of the so called Backward classes. The benefit of reservation has failed to trickle down to the lowest section of the society. Moreover, it has killed the spirit of brotherhood and healthy competition, the desire to surge forward and to work hard. Reservations based on the narrow concept of caste are thus, fundamentally wrong and hence has proved to be a failure.

Thus, it is time to introspect, while keeping aside the greed of political mileage and think objectively about where things have gone wrong. It seems that nobody really cares about the welfare of the underdog but wants to gain a bit of the large chunk of political boost for the next elections. Reservation should not be forsaken because, in fact, everyone wants that society should develop as a whole and everyone should reap the benefits of development. But reservations instead of being caste-based to meet the political needs of our power hungry politicians should be based on a more acceptable criteria through which every section of the

society is benefited. For instance, it can be based on economic status or anything else that can work truly for our society and state. We should take a lesson from the United States in this regard. It is the most market-oriented country and has a policy of affirmative action. US universities and the government give preference to Black and Hispanic applicants in admission as well as jobs. Yet the US economy remains among the most competitive in the world. The trick lies in undertaking affirmative action by providing incentives rather than quota-based restrictions.

The US has long abandoned the quota system for affirmative action. They have put in place a point system under which candidates from among the Blacks, backward regions, immigrants, etc., are given a few extra points in admission and appointment procedures. This leads to nominal increase in the cost of production. The additional points only lead to nominal lowering of standards. In contrast, the quota system can lead to a heavy lowering of standards. Similar, is the case in South Africa where the new constitution envisages a programme of affirmative action.

We need to identify the ones who are really needy, downtrodden and under privileged. Then, we need to provide them with proper incentives such as education, opportunities and financial backing. After that real talent and hard-work should be awarded and accepted instead of blindly guaranteeing anyone a secure future merely on the basis of caste even though he/she is least deserving. Merit should be the criteria because the country needs the best of its people in order to develop and not those who are harnessing the unmerited and undeserved benefits just because they belong to a section of society which has been luckily marked in the Constitution as under-developed. It is so disheartening to see a well deserving candidate with a promising future to lose out to another less deserving candidate because he happens to be from a reserved section of the society-fortunately or unfortunately. Why should a deserving individual suffer only because he happens to be a part of the so-called privileged class of society-unfortunately or merely because of the faulty policy of the state?

Nothing much has changed since the past 60 years proving that we have misdirected our energies in the wrong direction. We have failed utterly in bringing the under-privileged at an equal footing with the rest of the society. Rather, many a times, it seems that the reservation policy tries to avenge the wrong done to the non-privileged all these years. We have successfully paralysed a section of the society permanently and blocked their upward mobility by killing their zeal to work hard and be rewarded. Who will want to work hard if



one gets an opportunity and other incentives without burning the midnight oil? Instead of encouraging this kind of lethargy, the policy should be formulated in such a way as to harness the real cream of every section of the society regardless of their caste or community for the betterment of the society.