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Exploring the Evolution of Reservation Policies in India: A Constitutional Analysis of Social Justice and Affirmative Action

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ABSTRACT

In a democratic system of governance, all citizens are considered equal before the law of the land. There should be no room for disparities among them at any stage of life. While natural differences may exist, political and legal equality must prevail for all. In India, pervasive social, economic, and educational discrimination has persisted since its inception. Weaker sections of society have long been denied their rights. Thus the reservation policies have been utilized as a means to mitigate historical inequalities and empower marginalized communities. This paper investigates the intricate relationship between reservation policies and social justice in the Indian context through an analysis of theoretical frameworks surrounding social justice, as well as an examination of the Indian Constitution's provisions affirmative action. This study delves into the role of reservation as a tool for advancing social justice objectives. By adopting a multifaceted approach, the study scrutinizes how the Indian Constitution addresses various dimensions of social justice. Ultimately, the paper argues that reservation policies play a pivotal role in redressing historical discrimination and fostering social justice in India.

Keywords: Reservation System, Right to equality, Social Justice, Marginalized class, Constitution.

I. INTRODUCTION

Affirmative action policies, often referred to as reservation policies, aim to address social inequality by distributing opportunities more equitably among lower castes. These measures aim to increase educational access and representation in government positions for historically marginalized groups, granting them a voice that has long been suppressed. Essentially, these policies serve as a corrective measure, countering historical injustices through a form of reverse discrimination and providing compensation to rectify systemic imbalances. Consequently, the key goal of implementing reservation policies is to mitigate historical inequalities entrenched in religion, caste, or gender by reducing the disparities between privileged and marginalized

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segments of society. In Indian society, a profound structural inequality and discrimination persist, rooted in the principles of the caste system. This system based on notions of purity and pollution, assigns unequal and hierarchical economic and civil rights at birth. According to Hindu scriptures, 'Jatis' belonging to the Brahmin, Kshatriya, and Vaisya Varnas are deemed "twice-born", affording them participation in Hindu ceremonies and a higher status compared to Sudras and untouchables, who are considered "polluting." This dichotomy of purity versus pollution governs inter-caste interactions, with the touch of an untouchable viewed as defiling to upper-caste Hindus. Beyond the four-fold Varna system, the so-called lower castes or 'Avarna' endure the stigma of "untouchability," facing various forms of social exclusion and discrimination that still persist in contemporary society.²

To tackle discrimination, governments introduced affirmative action in the form of reservations. Affirmative action policies encompass two primary strategies: firstly addressing discrimination against Scheduled Castes (SCs) and Scheduled Tribes (STs), and secondly implementing compensatory measures such as reserved seats in educational institutions and government employment for these communities. These reservation policies aim to boost the representation of SCs and STs across multiple spheres of public life including legislatures, employment, education, and other sectors. By doing so, these policies aim to ensure these communities have a meaningful presence in governance and society. Reservations have played a crucial role in advancing greater equality among historically disadvantaged groups. Reservation or affirmative action serve as a cornerstone in the pursuit of social justice, aiming to address historical injustices and inequalities. It is not primarily intended as a tool to alleviate poverty, but rather as a mechanism to provide educational and employment opportunities to marginalized individuals who have been historically exploited, discriminated against, and underrepresented. In Indian society, which has long been structured around a caste-based hierarchical system, lower castes have often faced marginalization and neglect. Reservation policies, therefore, represent a proactive measure by the government of India to ensure social justice by actively including these historically marginalized groups in educational and employment opportunities. Nevertheless, challenges persist in achieving equality among equals, highlighting the ongoing need to address systemic discrimination and advocate for inclusive policies. India's welfare state concept, enshrined in the Constitution, underscores the government's duty to safeguard citizens' welfare. By actively delivering social services, the welfare state aims to uphold a minimum standard of living, thereby fostering social justice and

² Dr. Manosanta Biswas, "Reservation Policy In India: Urge For Social Justice And Equality In Education And Government Services", *Ijrar* Volume 5, Issue 3(July 2018).

reducing social exclusion.

II. HISTORICAL PERSPECTIVE OF CASTE AND RESERVATION

The caste system in India traces its roots to ancient times, stemming from the Hindu tradition's division into four Varnas: Brahmin, Kshatriya, Vaishya, and Shudra. Each Varna was associated with specific occupations, establishing a rigid social hierarchy with Brahmins at the top and Shudras at the bottom. As time progressed, internal divisions within the Varnas led to the emergence of the caste system characterized by social discrimination and untouchability, particularly towards those performing menial tasks, such as the Shudras and Atishudras. These practices became deeply ingrained in Indian social life over centuries. The 19th century witnessed the rise of significant anti-caste movements, exemplified by leaders like Jyotiba Phule, who, alongside with his wife Savitri bai, dedicated themselves to the education and empowerment of untouchables. Their efforts were complemented by progressive policies adopted by rulers of six princely states. These rulers introduced reservations in administrative positions for backward classes, pioneering such measures in princely states like Baroda, Kolhapur, and Travancore during the early 20th century.³ To ensure the social justice and equality among marginalized class, one of the affirmative action that came from government of India was reservation. As per the Oxford Dictionary of Politics, "Reservation" denotes a quota system where a percentage of government positions, educational opportunities, and elected positions are reserved for individuals belonging to a specific group. This concept, also known as "preferential treatment" or "protective discrimination," entails the allocation of particular rights or benefits to specified groups.⁴ The concept of reservation gained significant attention during the nationalist movement, particularly with Dr. B. R. Ambedkar, a prominent leader of the untouchables, advocating for separate electorates for backward castes as per the Communal Award provisions. However, Mahatma Gandhi's staunch opposition, demonstrated through a fast unto death, led to Ambedkar withdrawing his demand, resulting in the Poona Pact⁵. Under this agreement, seats were reserved for backward castes in provincial legislatures, but elections were conducted through a joint electorate. This compromise reflects a collectively agreed and historically accepted decision regarding the provision of reservation for backward castes. The origins of reservations in the Indian Constitution primarily targeted Scheduled

³ Despande, Ashwini. "Affirmative Action in India: Oxford India Short Introductions" (Oxford University Press, 2012), p.p. 44-47.

⁴ Dr. Md. Altamash Imam, "Reservation Policy and Social Justice in India: A Constitutional Perspective" <https://rrjournals.com/2024>.

⁵ Das, Bhagwan. "Moments in a History of Reservation" *Economic and Political Weekly*, Vol. 35, No. 43/44 (Oct. 21 - Nov. 3, 2000), pp. 3833.

Castes and Scheduled Tribes, with Scheduled Castes first mentioned in the Government of India Act, 1905, during the British Raj. Following India's independence in 1947, significant initiatives were undertaken to support Scheduled Castes, Scheduled Tribes, and, later, Other Backward Classes (OBCs), particularly since the 1980s. At the time of independence, Scheduled Castes constituted 16.6 percent of the population, encompassing 1206 main castes considered untouchables within the Hindu caste system, previously referred to as depressed classes and Harijans. Scheduled Tribes comprised 701 tribes, making up 8.6 percent of the population, often referred to as adivasi and girijans⁶. However, a shift from caste-based reservation to class-based reservation has been observed in recent times. The S R Sinho Commission in 2010 recommended a constitutional amendment to extend reservation to economically weaker sections (EWS) in education and government jobs. In line with this recommendation, the Indian Government introduced a 10 percent reservation for economically weaker sections through the One Hundred and Third Constitutional Amendment Act⁷, aiming to uplift the economically disadvantaged segments of society.

III. SOCIAL JUSTICE: A THEORETICAL AND CONSTITUTIONAL PERSPECTIVE

The theoretical perspective on the concept of social justice revolves around the idea of fair treatment, equality, and equity within society. It encompasses principles aimed at ensuring that all individuals have equal access to opportunities, resources, and rights, regardless of factors such as race, gender, socioeconomic status, or other forms of identity. Social justice theory emphasizes the need to address systemic inequalities and injustices, advocating for policies and practices that promote inclusivity, diversity, and the redistribution of resources to uplift marginalized communities. It serves as a framework for analyzing and critiquing societal structures and institutions to advance the goal of creating a more just and equitable society for all. The universal concept of justice in human societies is rooted in the principle of matching rewards with an individual's investment and contributions, or their investment and costs. In traditional Indian socio-cultural contexts, characteristics such as gender, age, and caste have historically been considered legitimate factors in determining justice, contrasting with the achievement-based criteria prevalent in modern secular societies. Homan (1961) describes this as a theory of distributive justice, highlighting that social justice hinges on how a society distributes its resources among its members. When distribution methods are perceived as

⁶ VinaySitapati, in Sujit Choudhry, Madhav Khosla & Pratap Banu Mehta (eds), *The Oxford Handbook of Indian Constitution*, (Oxford University Press, New Delhi, 2016).

⁷ The 103rd Amendment inserted Articles 15(6) and 16(6) in the Constitution to provide up to 10 per cent reservation to the economically weaker sections (EWS) among non-OBC and non-SC/ST sections of the population.

unfair, they can lead to negative outcomes and inter-group conflicts. Equality, however, entails the equal distribution of resources regardless of individual contributions, representing the highest norm. The notion of social justice extends beyond individual freedoms; it aims for equitable access to justice within a state. This is especially critical in democracies that embrace the welfare state model, where prioritizing claims of social justice is paramount. Achieving this may involve regulating individual freedoms to realize this ideal, considered an integral aspect of a fair democratic society.⁸ Thus, in order to ensure equitable allocation of resources among various groups, irrespective of hierarchical orders, the principle of equality is crucially linked to social justice.⁹

Social justice is a complex concept that receives varied interpretations across academic disciplines. Political scientists examine social and political institutions aimed at promoting the welfare of marginalized groups by analyzing their composition and functioning. Economics defines social justice in terms of the equitable distribution of material resources, whereas legal philosophy concentrates on elucidating individuals' rights and responsibilities.¹⁰ When assessing the state's fair allocation of opportunities for moral and material advancement, philosophers contribute ethical viewpoints. In liberal and democratic countries, even as marginalized groups contend with enduring injustices, the concept of social justice retains its significance, bridging disciplinary divergences. Some theorists promote a human-centered approach to social justice, prioritizing the establishment of a 'just society' that eliminates discrimination and guarantees access to essential needs.¹¹ Reservation, intricately intertwined with the fundamental principles of social justice, emerges as a contentious yet crucial pathway for its realization. The discourse on justice itself has persisted for centuries, with seminal philosophers such as Plato and Aristotle presenting contrasting perspectives, particularly on the concept of proportionate equality. The modern era, marked by thinkers like John Rawls and Robert Nozick, further deepens this divergence, as seen in their contrasting views. Rawls advocates for state-driven distributive justice, whereas Nozick prioritizes individual liberty and minimal government intervention, aligning with capitalist ideals. This intricate web of thought reflects the ongoing quest to define and attain social justice, with reservation policies

⁸ Sameer Pandit, "Marginalisation and Reservation in India: An Analysis in the Light of Rawlsian Theories of Justice and Equality," *Socio-Legal Rev.* 1 (2005): 40.

⁹ Manmohan S. Gill, "Reservation - An affirmative action of social justice", *Social Change* :Vol. 32 NOS. 1&2 page 27-38 (March-June 2002)

¹⁰ Michael Reisch, "Defining Social Justice in a Socially Unjust World," *Families in Society: The Journal of Contemporary Social Services* 83, no. 4 (August 22, 2002)

¹¹ Anirudh Prasad, *Reservational Justice to Other Backward Classes (OBCs): Theoretical and Practical Issues* (India: Deep & Deep Publications, 1997).

occupying a central, albeit fiercely debated, position within this framework.¹²

In India, social justice is intimately tied to affirmative action, particularly through reservations. The Constitution directs the state to promote the welfare of its people by establishing a social order grounded in principles of social, economic, and political justice, which are to be reflected across all national institutions.¹³ The Indian Constitution employs a dual approach to ensure Social Justice. Firstly, it prohibits discrimination in public life. Secondly, it enables affirmative action by empowering the state to enact special provisions for the advancement of Scheduled Castes, Scheduled Tribes, Other Backward Classes, as well as women and children. The Preamble to the Constitution pledges to uphold social, economic, and political justice for all citizens and to ensure equality of status and opportunity¹⁴. Achieving the goals of social and economic justice, as well as equality, requires addressing the needs of all segments of Indian society. Therefore, the Preamble lays a strong groundwork for special measures to support the disadvantaged sections of society. The Fundamental Rights enumerated in Part III of the Constitution are legally enforceable and subject to judicial review.¹⁵

Article 14 of the Fundamental Rights talks about citizen's right to "Equality before law, it 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."¹⁶ Article 15 (1) provides that "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place, of birth or any of them". Article 15 (2) states "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard"- (a) "access to shops, public restaurants, hotels and places of public entertainment;" or (b) "the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public." Article 15(3) states "Nothing in this article shall prevent State from making any special provision for women and children." Similarly, Article 15(4) directs the State to make "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 and educationally backward classes of citizens or for the Scheduled Caste and

¹² Dr. Md. Altamash Imam, "Reservation Policy and Social Justice in India: A Constitutional Perspective" <https://rrjournals.com/2024>.

¹³ Sandanshiv, Reservations for Social Justice: A Socio-Constitutional Approach.

¹⁴ WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity, and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

¹⁵ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020).

¹⁶ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020).

the Scheduled Tribes.”¹⁷ Moreover reservation for economically weaker Sections has been provided by way of 103rd amendment in Indian Constitution. Article 15(6) states that “nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category. Similarly article 16 (1) provides that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.” and 16 (2) states “no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.” Under Article 16 (4) “nothing in this article shall prevent the state from making any provision for the reservation of appointment or post in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.”¹⁸

Moreover, in addition to overarching principles, the Constitution incorporates specific provisions aimed at addressing deep-rooted inequalities, which are as:

Article 17 provides “Abolition of Untouchability”. It provides that untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law and under article 25- “Freedom of conscience and free profession, practice and propagation of religion” is provided. Article 25(1) states “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion”¹⁹.

These provisions aim to prevent discrimination in social and public spheres. Together with the constitutional assurance of equality before the law and equal protection of laws for all individuals within India's territory, they strive to fulfill the commitment made in the Preamble

¹⁷ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020).

¹⁸ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020).

¹⁹ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020)

to ensure equality of status and opportunity for all citizens. Additionally, Part IV of the Constitution, which includes the Directive Principles of State Policy, adopts a more inspirational stance. It offers directives for the government to develop policies in accordance with the overarching objectives of social justice as delineated in the Preamble. The articles within the Directive Principles of State Policy pertain to social justice are as follows:²⁰

Article 38(1) which states that “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.” Article 38 (2)- “The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”²¹

Furthermore Article 39 provides that “The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”²² Article 39(A) states that “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” Article 46- “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”²³

Moreover, these reservation provisions are accompanied by various safeguards, such as Article 330 mandates the reservation of seats in the Lok Sabha for Scheduled Castes and Scheduled

²⁰ P M Bakshi, *The Constitution of India* (India: LexisNexis, 2018).

²¹ P M Bakshi, *The Constitution of India* (India: LexisNexis, 2018).

²² Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur,India: Lexis Nexis, 2020)

²³ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur,India: Lexis Nexis, 2020)

Tribes in proportion to their population. Initially set for ten years, this reservation has been extended seven times. The One Hundred and Fourth Amendments extended the deadline by another ten years, prolonging the reservation of seats in the Lok Sabha and state Legislative Assemblies for Scheduled Castes and Scheduled Tribes members until January 25, 2030.²⁴ Article 335 which is related to Claims of Scheduled Castes and Scheduled Tribes to services and posts, provides that "the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."²⁵ Articles 338 and 338A establish a National Commission for Scheduled Castes and Scheduled Tribes respectively, tasked with investigating, monitoring, advising, and assessing the progress of these groups under socio-economic development schemes. Additionally, Article 338B creates another commission to examine the conditions of socially and educationally backward classes. Article 340 of the Indian Constitution pertains to appointing a commission to examine and evaluate the status, living conditions, and overall well-being of socially and educationally backward classes.²⁶

IV. CONCLUSION

The notion of social justice goes beyond individual liberties; it aims for equal access to justice throughout a state. This is especially vital in democracies adopting the welfare state model, where prioritizing claims of social justice becomes paramount. Achieving this may involve regulating individual freedoms to realize the ideal, viewed as an essential facet of a fair democratic society. In India, social justice is closely associated with affirmative action, often referred to as reservations. The Constitution directs the state to advance the welfare of its citizens by fostering a social order grounded in social, economic, and political justice, which extends across all national institutions. Reservation policies in India embody a constitutional commitment to social justice. These policies, rooted in the principles of equality and affirmative action, seek to address historical injustices and uplift marginalized communities. Embedded within the constitutional framework, reservation provisions are accompanied by safeguards to ensure fair implementation. Furthermore, the constitutional mandate for commissions and institutions dedicated to the welfare of Scheduled Castes, Scheduled Tribes, and other marginalized groups underscores the state's commitment to promoting social justice.

²⁴ Dr. Md. Altamash Imam, "Reservation Policy and Social Justice in India: A Constitutional Perspective" <https://rrjournals.com/2024>.

²⁵ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020)

²⁶ Durga Das. Basu, *Introduction to the Constitution of India* (Nagpur, India: Lexis Nexis, 2020)

While reservation remains a contentious issue, its constitutional foundation reflects a proactive approach towards creating a more inclusive and equitable society. Although the Indian Constitution's dedication to social justice is evident in its foundational documents, notably the Preamble, which articulates the ideals of social, economic, and political justice, it adopts a comprehensive approach to addressing inequity. This approach encompasses fundamental rights, directive principles, targeted interventions such as reservations, and a commitment to dismantling discriminatory structures. Affirmative action, particularly through reservations, emerges as a vital means of advancing social justice in India. The Constitution empowers the state to provide special benefits to specific segments of the population, aiming to redress past injustices and foster equality of opportunity. It underscores that reservations serve as a tool for social equilibrium, aligning with the broader objective of enhancing the welfare of citizens.
