



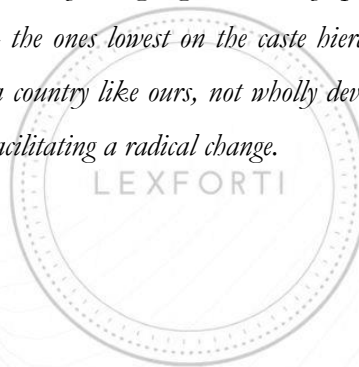
DISMANTLING THE RESERVATION SYSTEM – A WIN OR LOSS?

Malini Mukherjee

ABSTRACT

“Ours is a battle, not for wealth, nor for power. Ours is a battle, for freedom, for reclamation of human personality.” –
Bhimrao Ambedkar.

Ambedkar, the man behind our constitution wrote it with aspirations – aspirations to bring about an inclusive society, an accepting society. He set up the system of reservations to facilitate this process with respect to the caste system and to provide them with a helping hand that would pull them out of the recesses that years of oppression had pushed them into. In this paper, I seek to highlight how recent arguments against the caste - based reservation system - the proposal to set up an economic status - based reservation system go against the very spirit of the constitution, and the system. This argument is based on data that proves - the ones lowest on the caste hierarchy – still occupy the lowest rung on the economic hierarchy. It will do better for a country like ours, not wholly developed with decades of efforts to go to work more effectively on the current lines that facilitating a radical change.





INTRODUCTION

On the 12th of January 2019, the One Hundred and Third Amendment to the Constitution received the required Presidential Assent. This Amendment spoke about reservations for the ‘Economically Weaker Sections’ of society. It raised multiple eyebrows and several contentions. It were these contentions that revived the debate on a question reverberating around the nation for years now- “Should caste-based reservations be replaced by those based on economic status?”

This paper seeks to address the flaw in the aforementioned argument, by acknowledging the interrelation between economic status and caste. Notwithstanding the same: this paper also strives to highlight the reasons why reservations based on economic status would fail to serve the purpose for which the reservation system was set up.

WHAT PURPOSE DOES THE 103RD AMENDMENT SERVE?

The One Hundred and Third Amendment, was introduced by the Modi Administration to grant 10% reservation to ‘Economically Weaker Sections’ of the society in public employment, public and private educational institutions. It brought about changes in the ordinary definition of ‘Economically Weak’ to include people who have an annual income of less than Rs 8 lakh, who own less than five acres of farm-land, or who have a house less than 1,000 square feet in a town (or 100 square yard in a notified municipal area)¹. One of the main contentions that was raised with it, was that it added Article 15(6) (to provide reservations to economically weaker sections for 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) and Article 16(6) (to provide reservations to people from economically weaker sections in government posts) of the Constitution, thus amending the parent articles. This move of the Government was questioned on

¹ Shubham Borkar and Neha Rani, *103rd Constitutional Amendment Act, 2018 "Economic Reservation In India" Highlights And Analysis*, MONDAQ (Jan. 12, 2019), [https://www.mondaq.com/india/constitutional-administrative-law/773144/103rd-constitutional-amendment-act-2018-economic-reservation-in-india-highlights-and-analysis#:~:text=Article%2015%20\(6\)%20is%20added,\(1\)%20of%20Article%2030.](https://www.mondaq.com/india/constitutional-administrative-law/773144/103rd-constitutional-amendment-act-2018-economic-reservation-in-india-highlights-and-analysis#:~:text=Article%2015%20(6)%20is%20added,(1)%20of%20Article%2030.)

the grounds of it amending the ‘Basic Structure’- an action against the judicial norm baked into the Constitution- established in *Kesavandana Bharati v. State of Kerala*².

Additionally, it breached the 50% ceiling on reservations highlighted in *M.R. Balaji v State of Mysore*³ - totaling the amount of reservations provided by the State to 50.49%⁴. It was so stipulated to ensure that that the only exception to Article 16, laid down in clause 4, which allowed for reservations- does not swallow the parent article itself. This idea was held up in the *Indra Sawhney* judgement by an eight-judge, Supreme Court bench.

Apart from the aforementioned, it is also important to note that these newly established reservations do not reduce the pie for those priorly reserved for Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) but create a whole new provision for the same. While this Amendment does hold up the ruling party’s idealogue of establishing economic status-based reservations to slowly do away with caste-based reservations- it does chip away at the concepts laid down and contradicts the intentions of Bhimrao Ambedkar, while he drafted this section.

WHAT WAS THE RESERVATION SYSTEM SET UP FOR?

To address the very first question, what is the reservation system itself? It is a system of providing certain advantages by those who have the power and the means to do so, to uplift those who are a step back from the privileged individuals in society owing to a lack of the same privilege. Reservations can take the form of financial aid, setting aside seats for those who do not have the resources to access them, lesser qualifications while for being selected at employment opportunities, among others. Reservation is provided to Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) at the rate of 15%, 7.5% and 27% respectively⁵ (in case of direct recruitment on all India basis by Open Competition). This system was established because of certain provisions of the constitution, i. e., Article 15, which called for equality and clause 4 of the same which allowed exceptions to the parent article for educationally and socially disadvantaged people along with Article 46 which says, “*The State shall promote with special care the educational and economic*

² *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*, W. P. No. 135 of 1970.

³ *M. R. Balaji And Others vs State Of Mysore*, 1963 AIR 649.

⁴ Gautam Bhatia, *Is the 103rd Amendment Unconstitutional?*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Jan. 13, 2019), <https://indconlawphil.wordpress.com/2019/01/13/is-the-103rd-amendment-unconstitutional/>.

⁵ RESERVATION POLICY, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1564231> (last visited Feb. 22, 2021).

interests of the weaker sections of the people, and in particular, the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.

While arguing against the system of Caste Based Reservations, many contenders highlight the fact that the provision was inserted for 10 years only. It was in fact so, and it has been amended several times to keep it from expiring- the latest one in 2020, delaying the expiry to 2030. Considering the reason behind the insertion of this very provision juxtaposed against the restricted time period, it becomes evident that Ambedkar was unable to correctly judge the depths to which the caste system had rooted itself into the society. The reason was to phase out the effects of the ‘social and educational disadvantage’ to bring equality in the Indian society. Has there come to the surface, any equality at all?

WHY ECONOMIC STATUS BASED RESERVATIONS CONFER NO ADDITIONAL BENEFITS

RELEVANT DATA

In *Wealth Inequality, Class and Caste in India, 1961-2012*⁶, economist Nitin Bharti calculates the inequality in income among various broad social groups in the country using raw data from the National Family Health Survey- India Human Development Survey of 2011. The relevant data is mentioned below.

Category	Average Annual Household Income
Scheduled Caste	89,356
Scheduled Tribe	75,216
Other Backward Class	104,099
Forward Class (Brahmins)	167,013
Forward Class (Non-Brahmins)	164,633

⁶ Nitin Kumar Bharti, *Wealth Inequality, Class and Caste in India, 1961-2012*, WORLD INEQUALITY DATABASE (Nov. 20, 2018), <https://wid.world/document/n-k-bharti-wealth-inequality-class-and-caste-in-india-1961-2012/>.

Category	Assets Held (0-33)
Scheduled Caste	12.7
Scheduled Tribe	10.2
Other Backward Class	14.7
Forward Class (Brahmins)	18.2
Forward Class (Non-Brahmins)	17.9

While the aforementioned data might not be maintainable for comparison with data from other years owing to economic changes, Bharti did create standardised values (indexes) while placing these classes on a Wealth (comprising of various assets) spectrum.

The representation of the social group in the category:

1. Top 10%

Category	Proportion
Scheduled Caste	-0.75
Scheduled Tribe	-0.79
Other Backward Class	-0.17
Forward Class	0.98

2. Bottom 50%

Category	Proportion
Scheduled Caste	0.4
Scheduled Tribe	0.32
Other Backward Class	-0.05
Forward Class	-0.3

Lastly, to highlight where the lower classes are situated in the pool of those lying Below Poverty Line, reference can be made to Ashwini Deshpande and Rajesh Ramachandran's⁷ calculations:

⁷ Ashwini Deshpande and Rajesh Ramachandran, *The 10% quota: Is caste no longer an indicator of backwardness?*, IDEAS FOR INDIA (May 17, 2019), <https://www.ideasforindia.in/topics/social-identity/the-10-quota-is-caste-no-longer-an-indicator-of-backwardness.html>.

Category	Average Annual Household Income
Poor Brahmins	88,070
Poor Upper Castes (non-Brahmins)	89,012
Poor Scheduled Castes	65,643

Category	Total Household Assets (0-33)
Poor Brahmins	11.94
Poor Upper Castes (non-Brahmins)	11.44
Poor Scheduled Castes	9.68

ANALYSIS

What is made clear via this information is that caste still dictates the economic status of an individual. The lower classes dominate the lower ends of the economic spectrum while the upper castes hold most of the wealth in the country, the two are thus, interrelated. Even within those who fall below the poverty line, a caste based economic hierarchy operates. The inference drawn is as follows: the beneficiaries under an Economic Status based reservation system would largely be dominated by those benefitted under the Caste Based reservation system. *How would an economic-status based system confer any additional benefits?*

An obvious question that arises from the above question is ‘If the number of lower caste individuals at the bottom rung of the economic ladder is so large, is the reservation system beneficial at all?’ The answer to this question, to this question would – in contrast to the above information – would be ‘yes’. Consider the 17.49% occupied by SCs, 8.47% by STs and 21.57% by OBCs in public offices⁸. Would these numbers be possible in the absence of reservations? Lower castes are historically aligned to lose out on opportunities owing to the discrimination they face (explained below) – as a result, the answer would be no. It is not to say that the lower castes are incapable of reaching great levels of success, but they do have to make it past years of oppression that have set them back, much further back than the ‘upper’ castes. On the contrary, a study by Ashwini Deshpande and

⁸ REPRESENTATION OF RESERVED CATEGORIES. <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579065>, (last visited Mar. 11, 2021).

Thomas Weisskopf revealed that the prevalence of SCs/ STs in public offices (railways) increased efficiency⁹, breaking down the infamous argument: ‘reservations destroy merit’.

However, the proportion of lower castes occupying the upper echelons is marginal. This can be derived from the above information or from our day- to- day lives, for how many lower castes can be found in leadership positions today?

While the immediate points made may seem contradictory- they must be juxtaposed against one another. On doing so, it can be observed that while progress is indeed happening, it is slow. The equality that Ambedkar hoped to see prevail in our society is far off, but certainly achievable.

WHY WILL THE SYSTEM CAUSE DETRIMENT

The above question points to the fact that lower castes are even today the economically weakest section. So why would economic-status based reservations affect them at all?

During the debates of the Constituent Assembly, the inclusion of economic status as a criterion for reservation was considered but the idea was let go of, as a ‘disadvantage’ culminating from the lack of economic resources could not warrant Government support¹⁰. Subsequently, in 1951, Nehru spoke against KT Shah’s criticism of his exclusion of economic status as a criterion in the First Amendment. He claimed that disadvantage arises from a culmination of multiple factors, and economic status is only a part of them. It was his contention that if a disadvantage was that of an individual’s- such as economic deprivation- and not a class at large- such as social exclusion, it would be incorrect for the State to direct its resources and efforts to alleviate said disadvantage. What these two led to, was the Mandal Commission’s report of 1980, submitted by P. B. Mandal.

The report rejected the use of economic status for reservation, as doing so would ignore where the genesis of social backwardness lay: the caste system. It linked social backwardness to the system, which it claimed subsequently led to backwardness in multiple areas. The Mandal Commission also executed a study to prove the same- based on their value of assets, living standards and consumption

⁹ Rukmini S., *Quotas do not hurt efficiency, says study*, THE HINDU (Apr. 02, 2016, 03:41 A.M.), <https://www.thehindu.com/news/national/quotas-do-not-hurt-efficiency-says-study/article6857563.ece>.

¹⁰ Malavika Prasad, *From the constituent assembly to the Indra Sawhney case, tracing the debate on economic reservations*, THE CARAVAN (Mar. 28, 2019), <https://caravanmagazine.in/law/economic-reservations-constituent-assembly-debates>.

loans taken. What it found was that the exclusion that the lower caste individuals faced was the cause of their backwardness. Similarly, as highlighted above- the lower castes are the most economically backward. But why? Let us begin with a single point in the cycle: the low education levels of these classes.

Category	Highest adult education (in years)
Scheduled Caste	6.7
Scheduled Tribe	5.9
Other Backward Class	7.8
Forward Class (Brahmins)	11.5
Forward Class (Non-Brahmins)	10.3

Hence, it is clear that the backward classes do not receive the same years of education as the forward classes. The reason behind this lies in the discrimination that they face at educational institutions, highlighted in the India Exclusion Report of 2014¹¹. Those from the scheduled castes and other backward classes- mostly girls- are made to clean the premises; those from the marginalised communities often are subjected to harsher punishments than their ‘forward’ counter-parts. There is also a lack of mention of the struggles of these communities in the curriculum taught to the young minds, thus resulting in a lack of sensitivity towards them. This manifests itself in the attitudes of the teachers, who undertake active discrimination towards the children from these communities. Unsurprisingly, most of these children drop out, being unable to suffer or choose not take it up at all.

Subsequently, they take up jobs which the forward castes believe is ‘beneath’ them, such as manual scavenging and sanitation work. For example, in 2012, 63% of SCs, 44% of Other Backward Classes and 42% of upper castes¹². On the other end of the spectrum, the share of the former two in White Collar Jobs lay far below 20%. Additionally, in 2015, the Scheduled Castes (SC), Scheduled Tribes

¹¹ INDIA EXCLUSION REPORT, 2013-14, <http://www.indianet.nl/pdf/IndiaExclusionReport2013-2014.pdf> (last visited Feb. 22, 2021).

¹² Roshan Kishore, *The many shades of caste inequality in India*, LIVE MINT (Oct. 21, 2016, 05:28 AM), <https://www.livemint.com/Politics/ino3tfMYVsd6VVGUdWXB8H/The-many-shades-of-caste-inequality-in-India.html>.

(ST) and Other Backward Castes (OBC) earned only 56%, 55% and 72% of upper caste earnings, respectively¹³.

They are compelled to take up these jobs which do not guarantee security of pay, as they are often do not have basic education. In the event that they do have the required qualifications- caste discrimination interferes and takes away their opportunity. It is an established fact that for equally qualified individuals of forward class and backward class, the latter has a 67% less chance of being selected¹⁴. 22% of salaried SCs reported high caste employers giving preference to persons of their own caste in employment and 23% said high caste persons were being selected with less qualification. This discrimination spreads from urban to rural jobs as well.

Thus, the aforementioned cycle or the ‘poverty trap’ continues. What is a poverty trap? It is a number of self-reinforcing mechanisms that ensure the ones caught stay poor, until outside intervention. In this scenario, the cycle will perpetuate- with the poor backward families giving rise to another poor generation, while the rich upper castes only get richer, furthering the social and economic divide between them. The purpose of reservation is ‘compensation’ for the disadvantages faced¹⁵, for providing a helping hand for the ones oppressed to climb out of the recesses they have been pushed to and for acting as the ‘outside intervention’ which may help break the cycle. The upper castes do not have to face the additional struggle of discrimination faced by the backward classes, nor have they had to fight against years of oppression to get where they are. By opening up reservations to economically weak, upper caste individuals- the ‘compensatory’ effect of reservation is nullified, as it gives the upper castes an upper hand again. While the backward classes will assuredly receive reservations, the benefits of it are diluted as they have to fight the upper castes to get to the top, a battle they are socially aligned to lose. As a result, economic status based reservations chips away at the very foundation of the reservation system.

¹³ MIND THE GAP: THE STATE OF UNEMPLOYMENT OF INDIA, <https://d1ns4ht6ytuzzo.cloudfront.net/oxfamdata/oxfamdatapublic/2019-03/Full%20Report%20-%20Low-Res%20Version%20%28Single%20Pages%29.pdf> (last visited Feb. 22, 2021).

¹⁴ Sukhdeo Thorat, *Scheduled Castes among worst sufferers of India’s job problem*, HINDUSTAN TIMES (Sep. 07, 2018, 10:45 A.M.), <https://www.hindustantimes.com/india-news/scheduled-castes-among-worst-sufferers-of-india-s-job-problem/story-Qh0hyHy9UUTg1cIOpi5l2K.html>.

¹⁵ Umesh Kumar, *Caste-based Reservation Is Compensation For Historical Exploitation And Marginalisation*, OUTLOOK (Jun. 20, 2020), <https://www.outlookindia.com/website/story/opinion-caste-based-reservation-is-compensation-for-historical-exploitation-and-marginalisation/355100>.



CONCLUSION

Even today, 72 years after the constitution was drafted and the call for equality was set forth – the caste system finds place to operate, which is indicative of the depths it has permeated to. Reservation, as Ambedkar believed is the way to undo the inequality, to compensate those who have suffered at the invisible hands of this system. While it may not be easy to tell what is morally correct, considering the facts- would it be so if years of effort, gone into propelling the lower castes were unfurled? Economic based reservations would be doing so, and it would be pushing society down the spiral that Ambedkar had, barely begun to pull us out of.

