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With this thought, we hereby present to you

***LawPublicus*** The Legal Portal

# *The Need for* *Modern* *Reservation System* *in India*

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# **The Need for Modern Reservation System in India**

*By: Dipendra Singh Tomar*

## **INTRODUCTION**

On 7<sup>th</sup> of August 1990, a historic decision was made by the then prime minister V.P. Singh that changed Indian politics and the way of ensuring social justice.<sup>1</sup> An announcement was made of 27% reservation to be provided in central government services and public sector. The establishment of Mandal Commission had taken place on 1<sup>st</sup> January 1979 under the leadership of Janata party Government under Prime Minister Morarji Desai.

## **HISTORY OF MANDAL COMMISSION**

Mr. Kaka Kalelkar was the chairman of the first commission set up by the Mandal Commission. In March 1955 in a report submitted by the Mandal commission they had listed 2,399 Backward castes and communities, among them 837 of those were classified as 'Most Backward'. However, the report was never implemented. On December 31, 1980 Bindeshwari Prasad Mandal who was appointed as the head of Second Backward class Commission submitted his report.

## **ISSUE RAISED**

Since the creation and implementation of reservation and Mandal Commission it has been highly used as a vote bank by the political parties. "although after getting 27% reservation in employment and education the implementation of the same remains inadequate."<sup>2</sup> Even though the reservation was provided to create an equal level of treatment amongst all the citizens of the nation, many still thrive for it. The problem in Reservation currently is that the second

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<sup>1</sup> 30 years of Mandal Commission, Drishti, (08 Aug 2020), <https://www.drishtias.com/daily-updates/daily-news-editorials/30-years-of-mandal-commission>.

<sup>2</sup> How Mandal Commission changed, and did not change, Tejas Harad, Hindustan Times, (06 Aug 2020), [https://www.hindustantimes.com/analysis/how-mandal-changed-and-did-not-change-india/story-K9gS9hXivYSKuX5lMYHPPI\\_amp.html](https://www.hindustantimes.com/analysis/how-mandal-changed-and-did-not-change-india/story-K9gS9hXivYSKuX5lMYHPPI_amp.html).

backward class commission was set up in 1980 and since then many things have changed in the country, the number of castes has increased, the number of people prevailing in those cases have been increased. With the passage of time people opposing reservations are increasing in a high number, people oppose reservation because of the inadequate implementation of the policy and the misconception of the creamy layer. To determine the 'Backwardness' 11 social, economic and educational indicators were taken into consideration by B.P Mandal, after 30 years there should be changes in the backward class indicators as life of citizens have changed economically, educationally and socially. Various protests have taken place to abolish caste-based reservation, in today's time OBCs are not as backward as they were during the inception of the Mandal commission and that fact should be taken into consideration during making modern changes in the reservations system. Reservations can only benefit less than 1 percent of the total. In India there are about 22 crore SCs but only few lakhs of them get reserved jobs.

### **CREAMY LAYER AND ECONOMICALLY WEAKER SECTION**

Creamy layer in India is used to refer to some members of socially backward classes, who are highly advanced in terms of education as well as economically. The creamy layer criteria were defined as gross annual income of parents more than 100,000 in 1993, which was further revised to Rs 2.5 Lakh in 2004 and later on to 4.5lakh in 2008 and in 2013 it was raised to Rs 6 lakh and finally to Rs 8 lakh in 2017.<sup>3</sup> The Creamy layer should be stripped from the rights of reservations as they are developed enough and using reservations causes harm to the real backward castes. In India there are many misconceptions regarding the Creamy layer which causes various protests and only with proper information and decisions by the government can the issue of creamy layer can be resolved.

The Economically weaker section is a subcategory which belongs to the general category but the annual family income is less than Rs. 8 lakhs, as they don't belong to the SCs or STs or OBCs they didn't had reservation but in present times the EWS are provided with 10% reservation. India is an under-developed country with 6.7% population surviving under the poverty line. The percentage of reservation provided to the Economically weaker section should be increased and new changes should be made with proper reviews over the condition prevailing in the country.

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<sup>3</sup> Creamy layer, Wikipedia, [https://en.wikipedia.org/wiki/Creamy\\_layer](https://en.wikipedia.org/wiki/Creamy_layer)



## **CASE LAW**

### ***State of Madras v. Champakam Dorairajan***<sup>4</sup>

It is a landmark decision of the supreme court of India, this judgement led to the first amendment of the constitution of India. The Government Order had provided caste-based reservation in government jobs and college seats. The supreme Court's verdict held that providing such reservations was in violation of Article 29(2) of the Indian Constitution.

### ***Jaishri Laxmanrao v. Chief Minister, Maharashtra***<sup>5</sup>

In this particular case the Supreme court had a hearing for a challenge regarding the constitutional validity of Maharashtra's Socially and Educationally Backward Classes. On 5<sup>th</sup> May 2021, a bench consisting five judges pronounced their judgement on The Maratha Reservation case. The decision consisted of striking down the reservations exceeding the 50% limit on reservations.

## **CONCLUSION**

The government of India should dissolve the prevailing reservation system in India and make new changes which fulfil modern time requirements. The Scheduled castes should reject the crutches of reservation with a statement that they will become equal with hard work and compete with the upper caste. According to a report by the Rohini Commission, out of a total approx. 6000 castes and communities in the OBCs, a very minimal number equal to 40 from all the communities had received 50% reservation.<sup>6</sup> Which clearly shows that the reservation system is not working properly and it requires to be looked upon and to change some aspects which have evolved with time. In 1970 India was a country with many social evils prevailing in the citizens but with time and science people have discontinued to follow such beliefs and orthodox thinking. Discrimination and untouchability do not prevail in today's time as much as it used to in older times.

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*This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.*

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<sup>4</sup> State of Madras v. Champak Dorairajan, AIR 1951 SC 226

<sup>5</sup> Jaishri Laxmanrao Patil v. Chief Minister, Maharashtra, SLP © 15737/2019

<sup>6</sup> 30 years of Mandal Commission, Drishti, (08 Aug 2020), <https://www.drishtiiias.com/daily-updates/daily-news-editorials/30-years-of-mandal-commission>.