



Reservation-A Contemporary Analysis

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ABSTRACT

This article provides a detailed understanding about the current scenario of the reservation system in India. The authors begin by giving a brief on equality and its quintessential nature. Equality is dynamic in nature and is the doctrine which is subject to various interpretations. There is an emphasis placed on equality of laws and equal protection of laws. The paper then dwells into the backward classes commissions set-up by the government of India namely the Kalelkar Commission and the Mandal Commission. The Mandal Commission report defines the contours of what constitutes a backward class in social, educational, and economical angle. This is followed by a brief on positive discrimination. The paper further explores the problems faced by the backward community, these problems are social, economical and religious. The authors then attempt to unfurl the conundrum that is the women's reservation bill with a touch of Gandhi's personal life. The paper then proceeds into various happenings in the legislature. Further, the social classes and its history is explained by the authors with a touch of Supreme Court cases. India is a mixture of different castes, religion, cultures. The single most powerful tool that unifies this very platform of diversity is education. The conflict between merit based system and reservation system has been addressed by the authors in this paper. One of the cases which was instrumental in shaping the reservation policy for years to come, that is, State of Madras vs. Champakam Dorairajan, has been discussed in this paper. Various interpretations for Article 14 of the Indian Constitution have been discussed in detail. After reservation in educational institutions the most heated discussion is about the reservation in public employment. The authors argue that implementation of reservation in public sector will have a negative impact on the competitiveness of the sector compared to its counterpart that is the private sector. In the author's point of view reservation for employment will bring

down the number of skilled and educated labours in the industrial sector. The authors conclude by stating case laws and by quoting one of the finest activists in the world, Nelson Mandela

KEY WORDS: Reservation, quota, SEBC, India, equality, public employment, education.

INTRODUCTION

The battle cry of the French revolution was 'Liberty, Equality and Fraternity'. Not surprisingly, it is also the motto of our constitution. Many great thinkers and philosophers have been inspired by the craving that equality provides. Wars have been fought over equality. Indeed, one needs to just glance at the proportion of protests that are fought for the sake of attaining equality. Almost any protest can be traced to a claim for equality. It can therefore be concluded that the doctrine of equality has many facets. It is an evolving concept which has a level of dynamism to it. Under the Indian constitution, it has been referred to in the preamble and in the Articles from 14 to 18.

It has been stated in Article 14 that the constitution will not deny 'equality of laws and equal protection of laws.' Many of the constitutions across the world speak of either "equality before the law" or 'the equal protection of the law'. Very few constitutions across the world speak of the both. The concept of equality of law visualises the minimisation of the inequalities in income and in trying to eliminate the inequalities in status, facilities and opportunities among not only individuals but also groups of people like the marginalised communities and to protect them from injustice that is in the social landscape and from all forms of exploitation. There is much in common though the content may not be the same. Our founding fathers have attached much significance to the equality before the laws. It can be observed from reading the Articles 15 to 18. These laws have been

stated in an affirmative manner. To proceed further, it becomes imperative to understand the meaning and scope of Article 46 which is an extension of article 14 through 18. Article 46 states that 'Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. - 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'. It is to be noted that the state shall promote with 'special care'. The above law is in favour of positive discrimination. It is evident that "the weaker sections of the people "include the "backward class of citizens" as contemplated by Article 16(4).

BACKWARD CLASSES COMMISSION

The government had set up the first backward classes commission which was also known as the Kalelkar Commission. The purpose of the commission was to 'to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove difficulties and to improve their conditions'. The report of the committee was submitted on March 30, 1955. The report concluded that the factor that are relevant are the traditional occupations and professions in addition to literacy in adults. It was also concluded that priority must be given to classes which are socially neglected.

The Second Backward Classes commission:

This commission was popularly known as the Mandal Commission. It was appointed to investigate the conditions of both educationally and socially backward classes within the territory of India.

The following were the objectives of the commission:

1. Determining the criteria for defining the socially and educationally backward classes.
2. Recommending ways for the advancement of economically and socially backward classes.
3. To present to the President the findings of the commission.

The report of the Mandal commission was to be submitted by 31st December 1979. This date was later

extended by a year. The commission had come up with the definitions of social, economic and educational classification:

WHAT CONSTITUTES A BACKWARD CLASS?

A. Social:

1. Castes/Classes considered as socially backward by others.
2. Castes/Classes which mainly depend on manual labour for their livelihood.
3. Castes/Classes where at least 25% females and 10% males above the state average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas.
4. Castes/Classes where participation of females in work is at least 25% above the State average.

B. Educational:

5. Castes/Classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the State average.
6. Castes/Classes where the rate of student drop-out in the age group of 5-15 years is at least 25% above the State average.
7. Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.

C. Economic:

8. Castes/Classes where the average value of family assets is at least 25% below the State average.
9. Castes/Classes where the number of families living in Kuccha houses is at least 25% above the State average.
10. Castes/Classes where the source of drinking water is beyond half a kilometer for more than 50% of the households.
11. Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average.

It was held that equality had various shades. Social conditions, economic conditions and political conditions have shaped the fundamental understanding of equality. Since 18th century, it has been the state's responsibility in reduction of disparities amongst various sections of the population. Liberty and equality seem in a way to pull in different directions. The actual difficulty lies in making this practically applicable. It has been finally held by the

court in *Indira Sawhney Vs Union Of India*¹ that : 'Constitutional bar under Article 16(2) against state for not discriminating on race, religion or caste is as much applicable to Article 16(4) as to Article 16(1) as they are part of the same scheme and serve same constitutional purpose of ensuring equality. Identification of backward class by caste is against the Constitution.' In addition to that, it was also held that reservation was a form of protective measure and it should be confined to minority of the total seats. Though there is no specific constitutional bar, the total amount of reservation cannot exceed fifty percent. Not only that, the sum of the total reservations made cannot also exceed 50%. For example, within backward classes, there would be various classes. If reservation was provided to every one of those classes, then cumulatively reservation would add up to more than fifty percent. This is what the courts addressed in the first place.

POSITIVE DISCRIMINATION:

Positive discrimination is the term for reservation for the socially weak classes. It has been practiced in India for decades. Whether it has actually achieved the objective for which it was introduced is still unclear. It is however certain that it has had an enormous impact upon the Indian economy. It still continues to play a dominant role not only at an economic level but at a political level too. One valid argument against reservation could be questioning one of the fundamental philosophies that gave rise to this concept. Whether, being oppressed for thousands of years is justifiable by positive discrimination, that is reservation? It is undisputed that the SCs and STs have been oppressed for thousands of years. They were also called as the untouchables who were also described as being 'oppressed of the oppressed and lowest of the low'. These marginalised sections of the society were not even considered human. Even animals were treated better when compared to them. They faced many hardships.

PROBLEMS FACED:

The problems can be categorised into:

Social Problems: The marginalised communities were often referred to as the untouchables. They were considered 'polluted'. Consequently, they were given a very low position in the society. Many basic amenities of life were denied to them. They were deprived of educational opportunities which in turn

led to lack of progress in life. As whole communities suffered from this, it led to a downward spiral in terms of progress as a human unit. With the path of progress blocked at every angle imaginable, it naturally resulted in a sense of powerlessness of the whole community. The notions of 'dharma' and 'karma' are associated with roles and obligations as per the caste hierarchy in India. It is expected of the group towards the bottom half of the hierarchy to adhere to his hereditary occupation. It is also expected of him that he strictly adheres to the norms which have been associated with his caste in relation to other caste groups. Certainly, this applies to every caste group within the caste hierarchy. But the lower one traverses down the hierarchy, the more stringent and unfriendly the norms turn out to be. India as a society thrived based on this hierarchy for thousands of years. Those who are situated at the upper half of the hierarchy are subject to less oppression, suppression or exploitation. It is evident from the above lines that a human life was not treated as it is today. The constitution according to Article 14 provides for 'equality of laws' and 'equal protection of laws'. The most defiling occupations were occupied by those at the lower end of the caste-based hierarchy. India is a family-based country. Therefore, informal social connections play a much more important role than formal rules. This has been happening for thousands of years. Social exploitation and social isolation form the two ends of the spectrum for oppressed classes. Social exclusion from resources leads the oppressed classed further into poverty.

Economic Problems: There has been an economic stagnation for the oppressed classes in the context of the Indian society. One of the major problems that they faced was the situation of landlessness. They were forced to work for free under the landlord. No remuneration was paid to them. No significant compensation was made to them. Their work conditions were often hostile. Couple this with a lack of supportive working environment and the odds are stacked against the landless labourer. This gave the landlord a significant leverage over the lives of the landless labourers. Therefore, they were stuck in a vicious cycle of poverty and powerlessness. This continued for generations furthering the trap that were in. This is just accentuated by the fact that it was almost impossible to change their profession. This inability to change the profession stemmed from the age-old practice of families practising the same occupation for generations. This basically meant that

¹ AIR 1993 SC 477, 1992 Supp 2 SCR 454

no matter what the talent of a person lay in, the person was supposed to only practise his family occupation. Every person has different talents. This restriction to practise profession of the person's choice ultimately created a trap like scenario from which escape was next to impossible. All these factors added up to reservation.

Educational problem: The oppressed classes were outright denied education. Education would have been the only ticket out of poverty. The oppressed classes were not allowed into public educational institutions. As a result, most of the poor consisted of illiterate people. No individual person belonging to the upper caste was allowed any kind of relationship with the lower castes. Due to lack of educational opportunities, the marginalised communities faced hardship in equipping themselves professionally. This translated into a scarcity of job opportunities for them. Usually jobs that paid well needed skills. These skills could only be learned from formal educational institutions. This adversely affected all avenues of life in the case of the oppressed classes. Being denied opportunities at every level and at every aspect of life kept them in the condition that they were.

Religious problem: The SCs and STs were excluded from the religious ceremonies as well. In fact, they were not even allowed entry into the temples. It was wrongfully held that they had no right to worship the Gods. There were numerous protests and violence associated with this rule. The lower castes were subject to punishment. These punishments were often cruel in nature. They were aimed at violating the dignity of the offenders.

WOMEN'S RESERVATION BILL:

Throughout the history of India, women have always been treated subordinate to men. In the book "An autobiography- The story of my experiments with truth" Gandhiji had stated that he always wanted implicit obedience from his wife, Kasturba Gandhi. He never let her leave the house without his permission and once when in South Africa, Gandhi wanted his wife to clean the chamber-pot of a low-born clerk who had visited his house, when his wife refused to clean the chamber-pot he started to shout at her, Kasturba resisted and cried. Gandhiji later realized his mistake and could never forgive himself for all the misery that he had caused his wife. Gandhi believed that women were a companion to men, she was gifted with equal mental capacities and she has

the right to participate in all debates, deliberations, and other activities that the men did. Gandhi was an ardent believer of ahimsa and he explicitly mentions that an army of women is enough to bring peace in the future. Gandhi concluded by saying that the women did not realize what tremendous advantage she has over men.

In the year 1993, there was an amendment made to the constitution of India to reserve one-third of council leader or Pradhan positions for women. During H.D. Deve Gowda's governance, the women's reservation bill was tabled, and it envisaged to reserve one-third seats of all Lok Sabha and State Assembly for the women. It also envisions to reserve one-third of all the Lok Sabha and state assembly seats for the SC and ST women. It is a lapsed bill in the parliament of India which proposed thirty-three percent reservation of seats in the lower house of the parliament and in all state legislative assemblies for the women. On 9th March 2010, the Rajya Sabha passed the women's reservation bill but the Lok Sabha did not give its consent and the bill became lapsed after the dissolution of the 15th Lok Sabha in the year 2014. The women's reservation bill could not be passed because of the lack of political consensus. A research was conducted in two locations namely: Birbhum, West Bengal and Udaipur, Rajasthan. The research was of two stages. In the first stage the researchers conducted an interview session with the Pradhan, asking about his/her family background, previous political endeavours, education, his/her ambitions in politics and the recent development made by him/her. In the second stage, three villages were selected randomly and were surveyed for the availability of public goods and developments required for existing infrastructures. They also collected the minutes of every village meetings and gathered data of the complaints made to the village council within the past six months. The results collected by the researchers indicated that a politician's gender or identity does not affect the policy decisions. In the May 2004, general elections, the total number of candidates that were elected to the 14th Lok Sabha were 539 and out of these numbers only 44 of them were women candidates. The smaller number of women elected to the Lok Sabha induced the Election commission to write a letter to the government addressing the need for providing suitable representation to women. The bill is lapsed and couldn't be passed because of the vicious competition between different religion, caste, ethnicity, and

gender. The people who opposed the bill in the parliament contended that the reservation for women in the lower house of the parliament and state legislative assemblies will favour the wealthy upper caste women as they will be more educated than the women of the lower caste. As India is a rural country most of the women in India belong to rural or village areas where there is no education and awareness of any sort. The women that belong to those area are not well aware of the rights that is awarded to them. Many critics of the amendment stated that passing the bill will only worsen the current scenario as the powerful and rich men will engage their wives and daughters in the political arena and will provide them with all powers. There is no intelligible differentia as the object that has sought to be achieved is not achieved and it will violate article 14 of the Indian constitution. If the women of the upper caste have seat reserved in the parliament through the women's reservation bill, then there will be no equality before law. It states that every person must be treated equally irrespective of their place of birth, gender, caste, sex, religion, birth, race and so on. There will be class legislation and no reasonable classification, it means that the law is applicable to only a class of people. If a law makes classification based on the class of the people, then it is violating the very fabric of equality enshrined in article 14 of the Indian constitution.

We live in a Democratic and free country and the Indian constitution gives its subjects various freedoms and fundamental rights enshrined in part 3 of the Indian constitution. Part 3 also provides the people with the right to equality under Article 14 of the constitution. Article 14 explicitly mentions that every person is equal in the eyes of law and all of them will be treated equally. It is important on the part of the state to ensure that equality prevails in all parts of the society. However, there is a hindrance in the process to ensure complete equality and that is the "reservation system". As a developing country, India is facing a lot of challenges, equality being one of its challenges. The reservation system was given birth to by the age-old caste system prevailing even now in India, the main aim of the caste system was to divide the people on the basis of their work and nature of the person. Basically, the caste system is a demeaned form of varnasrama. Varnasrama means Hinduism and it is a Sanskrit word which means order, class or type. It refers to social classes and it classifies the society into four varnas:

1. Brahmins
2. Kshatriyas
3. Vaishyas
4. Shudras

If a community belongs to any of the four communities then it is called a Savarna. In the modern day, they include all the forward castes (FC), the Dalits and the Scheduled tribes belong to Avarna. This classification is also similar to the reservation because according to the varnas the upper-class people were given certain privileges which were denied to the lower under-privileged class. Reservation was used as a tool to divide the society on the basis of caste. The primary purpose of the reservation system is to uplift the social and educational status of the underprivileged class of community and increase their standard of living. Reservation started growing even before the independence of India, king Shahu (1874-1922) of the Bhosle dynasty was the Maharaja of the princely state named Kolhapur, brought in reservation in favour of non-brahmins and backward classes. He provided them with free education and he started several hostels to make it easier for them, he also took a stand to remove untouchability. In the year 1902, there was 50 percent reservation based on his measures. After India got independence there were some major initiatives to uplift the lower class. In the year 1954, after the independence, the education ministry decided that 20 percent of seats in the educational institutions must be reserved for the SCs and ST's with a condition to minimize their qualifying marks/grades as compared to that of students belonging to the forward class. Significant changes were made to reservation after the Mandal commission was established in the year 1979 under article 340 of the constitution under the chairperson B.P. Mandal to investigate the socially and educationally backward class of people in the country and to recommend steps to uplift them including reservation of seats in government jobs. The commission submitted its report in the year 1980. The commission had identified as many as 3743 socially and educationally backward classes in the country and recommended for them a reservation of 27 percent in government jobs. When this report was submitted the government of India issued the office memoranda on August 13, 1990 reserving 27 percentage of the seats in government jobs for the SCs and ST's. This commission threw the nation into turmoil and a writ petition on behalf of the Supreme court bar

association was filed challenging the validity of the office memoranda. The five-judge bench stayed the operation of office memoranda till the final disposal of the case on October 1990. The government of India issued another office memorandum in September 1991 but made two changes to the OM, issued by the previous government in office, I) Introduction of economic criterion in the reservation, II) reserving another 10 percent for people from higher classes of the society. The five-judge bench referred this matter to the constitutional 9 judges in view of settling the matter. The 9- judge bench decided on the ratio of 6:3, the majority held that the decision of bringing economic criterion in the reservation policy is constitutionally valid as it helps to remove creamy layer from the report (people who are socially advanced in the backward classes) and it held that the reservation must only be for the purpose of getting a government job and not for a promotion and the total reservation shall not exceed fifty percentage. Relaxation of the fifty percent rule is required in extra-ordinary cases. The rest of the 3 judges held the Mandal commission as unconstitutional and recommended for the appointment of another commission for identifying the socially and economically backward citizens. The reservation system in India creates discrimination amongst the upper and the lower class.

When we write any competitive exams, their admission form has a question *choose your category* and it has options of *OBC, ST, SC, FC, MBC, BC etc.* there are people with some of the worst economic conditions in the forward class and they don't come into the reservation policy just because they are of forward caste. Even if a person of the backward communities or *SCs or STs* scores lesser as compared to the scores of a person from the forward community, he has higher probability of clearing the exam because he is protected by the reservation policy which explicitly states that the cut-off of a person from the backward community is much lesser than the cut-off of the person from the forward community. Reservation can also be as a great tool for increasing the votes of politicians. We can see that in our constitution, that everybody must be treated equally, and they are equal in the eyes of law and on the contrary, there are policies such as reservation which creates caste based discrimination amongst the people of different community and which treats people on a biased basis. Reservation cannot be the only possible way where a person from the backward community

can be helped, there are many other ways in which the backward communities can be helped. If proper education is provided to the people of such communities at grass root level, then there is no need of reservation system. As reservation is mostly based on the category of community many people who are economically backward even in the forward community miss to avail the chance in reservation policy, the reservation policy must be based on solely on economic criteria, in that way there will be no creamy layer and everybody no matter what his/her caste is will have a chance to be protected by the reservation policy, thus it leads to a win-win scenario. There is no need for a reservation policy if everybody is treated equally. Many universities take bribes in the form of donations and admit students who are from forward community if their cut-off score is less and the socially and economically backward students whose cut-off score is more is unable to pay the money and that is when reservation plays an important role, it is in those situations that the reservation policy comes in handy. Reservation based on caste and not based on the financial condition is unfair and unacceptable. Reservation must be to uplift the people who are financially crippled, it must be just and fair. Reservations can also be made based on genders; many women are disadvantaged than men since a very long period in all aspects of life but after the reservation policy came into force many women have been treated equally and they have seats reserved in every office of the government.

RESERVATION IN EDUCATION:

India is a mixture of different castes, peoples, communities, religions, languages, and cultures. Although in India there is complete political freedom there is a part of the society that is illiterate and lives below the poverty line. Education is the single most powerful tool that can be used to enhance such diverse communities. With limited resources at hand, the state is unable to uplift the poorer section of the people, the students are made to study books which are devoid of the additional material content thus succeeding in making the students pen-pushers instead of making them self-reliant because of which enough employment opportunities are not available. These are the scenarios where there is a lack of quality education available for the students. Many educationists, philanthropists, religious and linguistic minority groups have established an adequate number of schools and private educational institutions which houses highly qualified teachers who can impart

quality education. But there is an unnecessary and unproductive load on these institutions in the form of government control, by the ways of rules, regulations, and policies, and this has destroyed the quality education that was originally intended to be given in the first place. The private educational institutions whether aided and unaided contend that the government must not interfere in its matter and that they must be allowed to impart quality education without any interruption by the way of rules and regulations. The government should help these institutions in imparting quality education rather than implementing policies. Implementation of policies and formulation of rules and regulations on the private and minority institutions whether aided or unaided shows the inability of the government to impart quality education to every person with the present educational infrastructure. Educated and skilled labour is an essential requisite to sustain the current economy. The 27-percentage reservation for OBC students in central-funded universities which was proposed by the union HRD minister, which was mentioned in the Mandal report, has again given rise to the debate of merit over caste. Reservation in the matter of education is a great advantage to the people belonging to the lower caste as their cut-off percentage is lower as compared to that of the upper class and they have the benefit to join the top universities through reservation. It spoils the fabric of Article 14 of the Indian constitution that speaks about equality. Educational reservation is like guiding the roots of the trees deep into the soil, it will only make the tree weaker because if a tree needs to stand tall the roots of the tree must find its way deeper into the soil by itself. In this context the reservation policy is the guiding methodology and the roots are the lower-class people, if they are guided through the reservation policy they will only become weaker and they will become more dependent on such government policies, to make them stronger and independent merit system must be put into effect. Using merit system in the admission process we can filter the best and the brightest from the dull and the weak. The creamy layer in the backward community also is benefitted from the reservation policy as they are also given the tag of backward. Even though they are rich, their children get the benefit of the low cut-off percentage provided to the backward community during admissions into reputed universities. The reservation system has degraded the educational system in India. The reservation system was brought to uplift the backward community and provide them with their

basic rights and powers, but with the effluxion of time the people started misusing the reservation system. The students who are more eligible than the backward class students are denied education in many universities because the cut-off percentage of the upper class is way higher than that of the cut-off percentage of the backward class. Students from humble and lower middle-class backgrounds are denied seats so that an SC, ST and OBC student, who has a financially strong background, can take that seat owing to his/her caste. The “creamy layer” criteria as mentioned by the Mandal commission report should be made more stricter and no matter what caste a student is from, if they are from a well-off family background then they must be denied the access to reservation quota. Many of the students who hail from the upper class and who are far more potential than the backward class students miss out the opportunity to join the best Universities in the country owing to the support given to the backward class through reservation system.

STATE OF MADRAS VS CHAMPAKAM DHORAIRAJAN²:

In this case, Mr. Srinivasan had applied for admission in one of the government engineering colleges. After his application was rejected, he filed a petition at the Madras High Court, for a writ of mandamus which would restrain the State of Madras from enforcing, maintaining and observing the GO which was communal, by which, the admission into the colleges were regulated in such a manner in such a way that the fundamental right of the petitioner was being infringed under Article 15(1).

According to Article 29:

1. Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same
2. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

It can quite clearly be deduced that the first point clearly relates to the protection of language, script of citizens. It is however, the second part which guarantees the fundamental right of any individual citizen. It can be concurred that the right to get an

² 1951 AIR 226, 1951 SCR 525

admission into any educational institution mention in clause(2) is not a right that can be availed as a member of a community or any class of citizens, rather it is an individual right. Any person who is to be admitted to the course, who has not met the academic requisites, can be denied admission on the basis of the fact that they do not meet the academic requisite. That person cannot complain that his fundamental right has been infringed. If his admission was denied on any other grounds like caste, race or religion then the denial is invalid.

It is basically unfair to give admission on the basis of caste, religion and race. It is directly indicative of class legislation. The Indian constitution only permits classification. If any form of reservation is based on class legislation and not of classification, then it is violative of Article 14 of the Indian constitution. Usually, the courts look into the rationale behind this reservation and attempt to find out whether the reservation had been done on the basis of classification or class legislation.

In the judgement of this case, it has also been mentioned that the State cannot appropriate the seats and provide them to the candidates who are from reserved categories that are given admission with marks which are less than the usual. The court has also held that as far as the reservation policy is concerned, there isn't much of a difference between a minority aided and unaided educational institutions.

In the PA Inamdar case, the judgement was merely a logical continuation of the TMA Pai foundation case on the issues of admission. In the PA Inamdar case, the Supreme Court extends the protection for the minority institutions to the non-minority institutions as well. It can be considered that there is significance departure jurisprudence.

PUBLIC EMPLOYMENT

Right to equality is a fundamental right and it is guaranteed to all the citizens in the country. Article 16 of the Indian constitution deals with equality of opportunity in public employment. The article deals with the wide scope of reservation pertaining to public employment. Under article 16 the term public employment gives diverse meaning to the term and there is no precise meaning interpreted for the term. And therefore, the interpretation gives a wide angle to the constitution. There are certain factors to which the principle of equal opportunity applies, 1. Access to

the job, 2. Conditions to employment, 3. The relationship in the workplace, 4. evaluation of opportunity and for training and development. There shall be matters relating to the employment and appointment in the state employment office. The state office places an emphasis on the qualification and such eligibility for the employment recruited for government servants. The expression employment and appointment are interpreted in a distinct ways, the word employment defines the number of persons who have undertaken employment whereas the term appointment deals with post situation of employment in which the employee is getting recruited. With regard to the statement, the author places reliance on a reservation in public employment. Basically, the article 16 deals with the criterion of reservation in public employment. By looking at the clauses under article 16, where article 16(1) deals with the representation of equality in opportunity. And in 16(2) deals with discrimination of caste, and the 16 (2) and 16 (4) are interconnected where status of the caste will also be placed on the backward classes and it totally shifts from 16 (1) stood it I textually differ from the discriminated classes or group of classes in which they have been targeted historically but now it is governed under the clause 16. According to words of Bernard Williams "In a society, the prestigious role placed by the sense of equality, mere equality prevails in the society. Ultimately the poor will also be considered too weak. In the light of case *M Thomas vs state of Kerala*³ with regard to the backward classes where justice Krishna Iyer pointed out the backward classes in understanding the reservation, the benefits were shown at large and snatched away from the creamy layer of the backward classes. And keeping the weak amongst the weak and fortunate those weak to have the whole. In this judgment, they substantiate more on the equality of employment and not precisely stand on the reservation of the backward class. By relying on the abovesaid judgment, the equality of opportunity must be considered as a whole. When we allow a reservation to the backward classes, the injustice arises when the equals are treated unequally and unequals treated equally, and there is no balance of equality in reservation. Moreover, even the people on the other side of the class also struggle for the opportunity. With regard to the percentage levied by the government, it is considered vicious. There should be balanced background safeguards for the members in the education institutions and

³ N.M Thomas v State of Kerala, 1976 AIR 490, 1976 SCR (1) 906

employment. So, that it will make for an equality of opportunity. In India, the classes and other castes sections will play a dominant role. However, there is also a quota system which prevails in most scenarios. And the rights of backward classes are guaranteed under article 342 of Indian constitution⁴. Article 16 (4) entails for the provision to make the reservation to the backward classes and make them adequately represented the society of minorities. With regard to the reservation, the minority prevail over other classes. The author places a reliance on the case “*Mohan Kumar Singhania vs Union of India*”⁵ this case is an enabling provision of article 16 (4) and confronts the discretionary power of the state in making appointments with a concern to post in favor of backward classes. Article 16 (4) does not enact any form of constitutional duty or deliberate any fundamental right for claiming reservation. The doctrine of equality flows from the article 14 and 16. Both the article confront article 39 (d) with the concept of equal pay and work. Where no citizens should be discriminated for pay and work. Under the article 39(d) directive principles of state policy has been mentioned towards the state, advocates the policy in the road to achieving and securing the equal pay and equal work for men and women. There are two constitutional amendments under article 16 (4) which are pronouncements by the supreme court. The first amendment in 16 (4A) which author relies on is “*The general manager, southern railway vs Rangachari*”⁶ the Supreme Court held that the reservation was not only applicable for gaining employment, but also can be availed in the case of promotions. With regards to the above-said statement, the backward classes play a major part in promotion also. The author also criticizes the interpreted the term “Appointment” as it includes initial appointment and promotion also. The upper classes did not avail the myriad of opportunities that was given to the backward community. In the case of “*Indra Sawhney Versus Union Of India*”⁷ it was held that no reservation can be made for the promotion of posts for the OBC’s. In the eighty first amendment of the constitution under article 16 (4B) with regard to the requirement of unfulfilled posts and that it should not be carried forward and it should be distinct from the previous year and subsequent year, the vacancy

should be fulfilled without any reservation. The author concludes by relying on the suggestion which provides for an equal chance to all persons and exclude reservation. Hence state must provide equal opportunity to the people.

“we pledge ourselves to unshackle all our peoples from the continuing oppression of poverty, deprivation, suffering, gender, and discrimination”-
Nelson Mandela

⁴ Dicey "Introduction to the study of Law of Constitution: Chapter 4 page 104

⁵ 1992 AIR, 1 1991 SCR Supl. (1) 46

⁶ 1962 AIR 36, 1962 SCR (2) 586

⁷ AIR 1993 SC 477, 1992 Supp 2 SCR 454