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# Critical Analysis of Interlocking in the Indian Reservation System: Focusing on Women Reservation

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## ABSTRACT

*Reservation in India is the process of reserving seats in government jobs, educational institutions, scholarships, even in legislatures in some sections. It is also known as affirmative action in India, connoting positive discrimination. The landmark Mandal case brought in the concept of the vertical and horizontal reservation to uplift the downtrodden section of the country. The method of reservation provided in the country can be heterogeneous or homogeneous.*

*A heterogeneous system is where the vertical reservation cuts across the horizontal reservation resulting in an interlock. Lately, a lot of discourse has emerged as to how this heterogeneous system should be put to effect in the case of migration within classes. There are two main standpoints of the Indian judiciary on this subject. One group is of the view that migration from reserved to unreserved category impermissible based on merit. However, the High Court of Allahabad and Madhya Pradesh held that migration within the horizontal category would amount to unjustified results. These courts held that for vertical reservation migration is permitted however it must be counted against the respective horizontal category.*

*The recent Supreme Court judgment in the Saurav Yadav case affirmed the first view of permitting migration based on merits. However, by delivering this judgment the court did not take into account how this implementation would amount to injustice to the open category candidates. Amidst this scenario, the paper tries to analyze the implementation of different types of reservation systems in India. The paper also attempts to emphasize the need for change in the present approach by examining the special reservation for women. Finally, it aspires to make suggestions to attain a balance between conflicting interests arising out of the various reservation policies in India.*

**Keywords:** *Interlock Reservation, Women Reservation, Reservation System*

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## I. INTRODUCTION

Indian society is divided into different strata on the basis of the financial, social, and cultural ground. It is filled with inequality of opportunity and resources. In such a stratified and hierarchical society there is a denial of several basic fundamental rights to various people of distinct caste and classes. The society was economically and socially dominated by the upper castes that ultimately resulted in the exploitation of the lower castes. It is pertinent to note that long back in 1858 the British mechanism to rule India by their infamous ‘divide and rule’ policy. Through their policy of ‘divide and rule,’ our nation was subject to various severances on grounds of religion, castes, communities, and classes. The implementation of this policy led to a huge class gap and had shaken the unity of the entire nation. However, it is distressing to notice that even after independence, nothing has substantially changed. Nevertheless, the framers of the constitution had come up with the provisions of the reservation system to eradicate the prevalent inequalities and help the underprivileged secure equal status.

These reservations were incorporated with a view to operate for a limited number of years and were aspired to be scrapped once equality was achieved. However, these provisions continue to operate and have been used as powerful weapons by politicians for political purposes that did no benefit to the underprivileged. Comprehensively, this propitious method evidently resulted in giving rise to more political and social issues as compared to the benefits offered. Though this system has its own disadvantages and advantages, the appropriate implementation could play a crucial role in deciding its relevance. This paper would discuss in detail the implementation of the reservation systems in India.

Reservation in India is the process of reserving seats in government jobs, educational institutions, scholarships, even in legislatures in some sections. It is also known as affirmative action in India, connoting positive discrimination. So, when a pre-decided number of seats are set aside for a specific community or tribe in sectors like public sector units, union and state government departments, union and state civil services, and all the public and private educational institutions, it is known as reservation.

reservation in India is both horizontal and vertical. The system which favors people who are physically disabled, women, ex-servicemen, etc. of each category, under Article 16(1)<sup>3</sup> is called ‘Horizontal Reservations’ whereas the method which favors scheduled castes, scheduled tribes, and other backward classes under Article 16(4)<sup>4</sup> is called ‘Vertical Reservations’. When

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<sup>3</sup> INDIA CONST. art. 16, cl. 1.

<sup>4</sup> INDIA CONST. art. 16, cl. 4.

Horizontal reservations cut across the Vertical reservations, they are known as ‘Interlocking reservations’.<sup>5</sup>

Lately, a lot of debate has ignited on the implementation of the interlocking system of reservation, especially in case of special reservation for women. The question regarding migration of women from her social category to the open category based on her merit has gained a lot of attention. It is pertinent to note that horizontal reservation can either be overall or compartmentalized. A special reservation for women falls under compartmentalized reservation.<sup>6</sup> This means that if a 30% reservation is provided for women it will be 30% in all categories and not just overall. Hence, the reservation provided to women is a special compartmentalized reservation (watertight compartments). Therefore, migration based on merit would negate the difference between the vertical and horizontal systems. It is submitted that the horizontal reservations differ from the vertical reservations by dis-allowing migration from one category to the other.<sup>7</sup> In the later stage the point of permissibility of migration and its impact with special emphasis on woman reservation would be discussed in detail. By addressing the question of female reservation, it aims to address the larger question regarding impact on the standing of the open category candidates.

Amidst this scenario, the paper tries to analyze the implementation of different types of reservation systems in India. It conceptualizes a compartmentalized reservation system in India and endeavors to analyze the various judicial approaches, and also examines the impact of the existing approach by listing the impacts and outcomes of the same. The paper also attempts to emphasize the need for change in the present approach by examining the special reservation for women. Finally, it aspires to make suggestions to attain a balance between conflicting interests arising out of the various reservation policies in India.

## **II. CONSTITUTIONAL FRAMEWORK BACKING THE RESERVATION SYSTEM**

The constitution of India was carefully drafted, keeping in mind that it is requisite to incorporate these provisions to provide equality to people. The provisions through which the reservations were provided were framed such that they cast a discretionary power on the states. It is upon the state to decide what reservations are to be provided and in what proportion. By providing these provisions, framers intended to empower the state to work towards elevating the position of the downtrodden and make India an egalitarian society. The only way that made this seem possible was to uplift the socially backward classes by providing them equal

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<sup>5</sup>Indra Sawhney Etc. v. Union of India and Others, (1993) AIR 477 (India).

<sup>6</sup>Ajay Kumar v. State of U.P. And Others, (2019) MANU 2071 (India)

<sup>7</sup>Rajesh Kumar Daria v. Rajasthan Public Service Commission and Ors, (2007) AIR 3127 (India).

opportunity through the enabling provisions under Articles 14, 15 and 16.

**(A) Article 14**<sup>8</sup>

This article highlights two broad concepts namely equality before law and equal protection of law. Every person irrespective of whether or not a citizen of the country is entitled to this guarantee, however the actual scenario is different. The admission into educational institutions has been in question for years due to the reservation provisions. Article 14<sup>9</sup> forms the basis for scrutiny of the preferential treatment provided on various grounds.

**(B) Article 15(3) and 15(4)**

Article 15(3)<sup>10</sup> recognizes the fact that the women in India have been socially and economically vulnerable for centuries and, resultantly, they cannot fully participate in the socio-economic activities of the nation on a footing of equality.<sup>11</sup> It allows the state to make special provisions for women and children, thereby allowing affirmative action in the form of reservations for the said class of people.

Art. 15(4)<sup>12</sup> encompasses several kinds of positive action programs in addition to reservations. It provides prerogative action to those who belong to socially and economically backward classes and aims to uplift them.<sup>13</sup> However, it is pertinent to note that according to the judgment in case of Anil Kumar, reservation of posts and appointments must be within reasonable limits, viz., 50% at the maximum.<sup>14</sup>

**(C) Article 16(4) and 16(6)**

Article 16 states that “Nothing in this article shall prevent the State from making any provisions for reservation in the matter of promotion to any class or classes of posts in the services under the State in favor of SCs and STs which in the opinion of the State are not adequately represented under the State.”<sup>15</sup> This provides for the upliftment of the underrepresented sections of the society by empowering the state to provide special quotas for such sections. A similar provision has been laid down under the 6<sup>th</sup> proviso of Article 16, whereby exclusive reservation has been made for the economically weaker section of the society. This aspires to provide equal opportunities to the economically weaker segment of the society.

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<sup>8</sup> INDIA CONST. art. 14.

<sup>9</sup> *Id* at 3

<sup>10</sup> INDIA CONST. art. 15, cl. 3.

<sup>11</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW 1007 (8th ed. 2018)

<sup>12</sup> INDIA CONST. art. 15, cl. 4.

<sup>13</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW 13077 (8th ed. 2018)

<sup>14</sup> *Id* at 4

<sup>15</sup> INDIA CONST. art. 16, *amended by* The Constitution (Seventy Seventh Amendment) Act, 1995

Therefore, the framers of the constitution aimed at achieving a casteless and classless economy and used the above mentioned enabling provisions as the tool to uplift the disadvantaged class of people. They intended to contour a democratic and egalitarian society by treating similarly situated individuals alike and using affirmative and prerogative action for the disadvantaged section.

### III. DISPARITY IN THE STANDPOINTS OF THE JUDICIARY

Article 15(3)<sup>16</sup> recognizes that women in India have been socially and economically vulnerable for centuries and hence, their participation in socio-economic activities were insignificant on national as well as international level.<sup>17</sup> Therefore, reservation has been provided to women in order to eliminate their socio-economic backwardness. However, over the years a catena of cases has come up for deciding the question of mobility on the basis of merit from reserved to open category for the purpose of horizontal reservation. Therefore, it is important to analyze the various stances taken by the judiciary and its impact on the development of women in the nation.

In the landmark Mandal case,<sup>18</sup> The honorable court has held that when members falling under vertical reservation come under the merit list to the open category, their seat must be counted under the open category for the purpose of horizontal reservation as well.<sup>19</sup> It is pertinent to note that this stand was taken to block dilution of merit and prevent any communal reservations. Following this landmark judgment plethora of judgements followed taking a similar view.

In *R.K. Sabharwal v. State of Punjab*<sup>20</sup>, the court held that the general category seats can be occupied by the reserved candidates, however the converse is not possible. It was held that for the purpose of constituting the percentage of reservation one must not count the number of reserved candidates appointed against general seats on their own merit. Meaning thereby, the entire quota remains intact irrespective of the number of appointments against the general candidates. A similar view was taken in *Union of India v. Virpal Singh Chauhan*<sup>21</sup> and *Ritesh R. Sah v. Dr. Y.L. Yamul and Others*<sup>22</sup>. However, none of these pronouncements emphasize on the question of horizontal reservations despite the fact that the two types of reservations widely prevail and are distinct in their nature.

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<sup>16</sup> *Supra note 8*, at 3

<sup>17</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW 1300 (8th ed. 2018)

<sup>18</sup> *Supra 4* at 2

<sup>19</sup> *Indra Sawhney Etc. Etc. v. Union of India and Others*, (1993) AIR 477 (India), at para 811.

<sup>20</sup> *R.K. Sabharwal v. State of Punjab*, (1995) AIR 1371 (India).

<sup>21</sup> *Union of India v. Virpal Singh Chauhan*, (1996) AIR 448 (India).

<sup>22</sup> *Ritesh R. Sah v. Dr. Y.L. Yamul and Others*, (1996) AIR 1378 (India).

At this point there are a few high court cases that addressed this issue. In *Megha Shetty v. State of Rajasthan*<sup>23</sup>, the court held that “ *Once the horizontal reservation in favor of women in general/open category is to be applied, the candidates belonging to all categories, including SC, ST and OBC, are also entitled to be considered against the said posts reserved for General Category (Woman).*”<sup>24</sup> This decision was followed by the court in *Neelam Sharma v. State of Rajasthan and Ors.*<sup>25</sup> Similarly, the decision taken by the court or permitting mobility from reserved category to open category based on merits for the purpose of horizontal reservation. Therefore, keeping in mind the stand taken by the Rajasthan, Bombay and Uttarakhand High Courts the High Court of Gujarat in *Tammanaben Ashokbhai Desai v. Shital Amrutlal*<sup>26</sup> took a similar view and held that the open category is open to all the candidates and not only to non-reserved candidates. Therefore, the interlock in open category will be available to all the women irrespective of their caste, community or tribe, on the basis of merit alone. This view is taken by the said high courts in order to prevent introduction of reservation in favour of those who do not belong to the socially and educationally backward classes, and a disguised attempt at communal reservation.<sup>27</sup>

However, it is pertinent to note that the Mandal case held that the reservations in relation to 16(1) i.e. for physically handicapped persons, will be adjusted against appropriate category.<sup>28</sup> Hence a view contrary to the first view was taken by the full bench of the High Court of Allahabad in *Ajay Kumar vs. State of U.P.*<sup>29</sup> The court held that “*inter-se merit of women has no role to play in the implementation of horizontal reservation as the socially reserved candidate (SC, ST, & OBC) seeking benefit of reservation of special category (women) cannot claim adjustment in open category.*”<sup>30</sup> The High Court of Madhya Pradesh<sup>31</sup> took the same view and did not permit migration from reserved category to the Open Category for the purpose of horizontal reservation for women. A view similar to that of the Allahabad and Madhya Pradesh High Court was taken by the Apex court in *Rajesh Kumar Daria v. Rajasthan Public Service Commission.*<sup>32</sup> The court held:-

“Where a vertical reservation is made in favor of a backward class under Article 16(4), the

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<sup>23</sup> *Megha Shetty v. State of Rajasthan*, (2013) MANU 1063 (India).

<sup>24</sup> *Id* at 5

<sup>25</sup> D.B. Civil Special Appeal (Writ) No. 472/2013 (India).

<sup>26</sup> *Tammanaben Ashokbhai Desai v. Shital Amrutlal Nishar* (2019) 1910 (India).

<sup>27</sup> *Saurav Yadav & Ors. v. State of Uttar Pradesh & Ors.* W.P. (C) NO.237 OF (2020) SCC (India).

<sup>28</sup> *Indra Sawhney Etc. Etc v. Union of India and Others*, (1993) AIR 477 (India), at para 812

<sup>29</sup> *Supra note 5*, at 2.

<sup>30</sup> *Supra note 5*, at 2.

<sup>31</sup> *State of M.P. and Ors. vs. Uday Sisode and Ors.* (2019) MANU 1594 (India).

<sup>32</sup> *Supra note 6*, at 2.

*candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.”<sup>33</sup>*

Therefore, it's evident that there were two views available on the issue, one taken by the Rajasthan, Bombay, Gujarat and Uttarakhand High Court permitting mobility and the other one taken by the M.P. and Allahabad High Court referring the Apex court in Rajesh Daria case<sup>34</sup>, not permitting mobility. Lately, the Supreme Court in Saurav Yadav case<sup>35</sup> reaffirmed the first view permitting the migration and rejected the second view claiming that it dilutes merit and conveys that Open Category seats are for unreserved people only.<sup>36</sup>

At this juncture, it is pertinent to note that first view may prevent dilution of merit and communalism however, it stands in the way of achieving the purpose of providing equal footing to all classes of women. It is well known that the women are considered a disadvantaged group irrespective of their caste, community and tribe. Therefore, these special reservations allow them to have an equal representation. However, it is pertinent to note that if the first view sustains and migration is allowed from reserved to open category based on merit, this would

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<sup>33</sup> *Id* at 6.

<sup>34</sup> *Supra* note 6, at 2.

<sup>35</sup> *Supra* note 24, at 5

<sup>36</sup> *Id* at 7.

technically allow double opportunities for the women of the 'reserved category' since they will be able to secure a seat either through merit in open category or by the benefit in their own reserved category. This leaves the women of the unreserved category at a disadvantaged place since their representation remains compromised as before. It is most humbly submitted that, women remain socio-economically backward irrespective of whether or not they belong to a reserved category or not. Permitting migration to the reserved category women provides a double reservation for them whereas the women of unreserved category who are equally socio-economically backward are devoid of equal benefit of this special reservation. It is most humbly submitted that, it is not only the general category women that suffer from this vice of lack of proper mechanism of horizontal reservations but the general category as a whole. This is because the open category seats are not earmarked only for the unreserved people but are filled by meritocracy. This results in appointments irrespective of the caste and community which is the ultimate desire but allows the members of reserved category to be able to compete against more opportunities than the unreserved candidates.

Therefore, it is observed that both the views have their own pros and cons and the view that prevails should be the one that benefits all the women irrespective of their category equally. It is pertinent to note that the concept of reservation is completely opposed to the concept of merit per se, therefore, permitting migration to prevent meritorious students from being sidelined should not hold valid.

#### **IV. CONCLUSION**

While the constitution provides and guarantees equality, there are provisions inserted in this constitution that allow protective discrimination in order to protect equity and justice. However, the improper implementation and loop holes within these enabling provisions are found to keep the means from meeting the ends. On identifying the objective and need of special provisions for women, and, further comparing various judicial views and contraventions on the discourse makes it apparent that these provisions have been partially achieved. Where these provisions are successful in providing the women of reserved categories with equal opportunities and representation, they fail miserably in case of doing so for the women of unreserved category. Not only does it fail to provide them equal representation overall but also it unintentionally results in promoting inequality between women of reserved and unreserved categories by providing some sort of double reservation for reserved women by allowing migration. It is pertinent to note that, the fact that reserved category women are able to secure place in Open category by merit forms an evidence of the fact that these castes,

communities are tribes are no more socio-economically backward and that the reservations that were temporary in nature have served their purpose and may now be discontinued. Also, it is important to consider developing a mechanism where if a reserved category woman is appointed against the open category seat, she should be counted against the horizontal appointment in her own reserved category while being treated as an open category candidate for purposes other than the horizontal category roster. For eg. 10 seats are reserved for women in the open category and 7 seats in the OBC category, if 3 out of 10 women in open category belong to the OBC category, the number of more women appointments to be mandatory in OBC category should now be 4 considering 3 appointments made in the OC. It is pertinent that a proper mechanism has been laid down for homogeneous reservations in the Mandal case, however, heterogeneous reservations i.e. interlocks, still stand without a justifiable mechanism. In sum, it is suggested that a mechanism shall be devised to have a different approach from the existing one. So that the implementation can not only be clear but also 'equally' advantageous to all the beneficiaries irrespective of the category they belong to.

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