

# EQUALITY AND SOCIAL JUSTICE: IS AFFIRMATIVE ACTION IN INDIA JUSTIFIED?

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**Abstract:** In ancient India, the people were divided into four classes namely; *Brahmins*, *Kshatriyas*, *Vaishyas* and *Shudras*. The Shudras were considered as untouchables, and were excluded all together from the society. After thousands of years, with the help of many social movements, a revolution was brought up. Mahatma Gandhi, B.R Ambedkar, J.L Nehru, and many other freedom fighters confronted the caste system and when our constitution was being framed, a special provision was made under Article 46, Article 15(4), Article 16(4) and few others for the uplifting of these backward classes.

The government under prime minister V P Singh, on the basis of the findings of second backward class commission reserved 27% seats for socially & backward classes on 13<sup>th</sup> August 1990. The decision caused a civil disturbance throughout India, and there was a huge loss of persons and property. Public Interest litigation was filed in the supreme court of India and decided in *Indira Sawhney v/s Union of India* AIR 1993 SC 477 in favor of the union of India, although certain regulations were imposed upon the reservations.

This reservation of seats in educational institutes and government jobs has faced the most opposition in the recent times. The protagonists of the reservation system say that affirmative action compromises for the discrimination of past policies, which have left a legacy of unequal caste representation in the society. Those who opposes the reservations says that it is against their right to equality, and even though there was injustice against the lower caste people in the past, but that does not mean that reverse discrimination is the way to heal it.

The main objective of this research is to discover if the present system of reservations in India is justified. Since, the issue of affirmative action, is directly related to the question as to "What is Equality?" it was considered necessary to answer that question first. The research takes into account mainly three concepts, namely, 'Libertarianism' by Robert Nozick,

'Nicomachean ethics' by Aristotle, and 'A Theory of Justice' by John Rawls along with others, to figure out 'what is equality?'. However, this part of the research has a limitation, since it is an ethical approach, which is relative, and not everyone may agree with the conclusion, however a proper reasoning is provided as a justification for the conclusion reached.

The research paper considers various statistics provided by Census of India, National Sample Survey Organization (NSSO), and other data provided by the union and state ministries, to figure out the present situation of backward classes, and the implementation of reservation policies. The research paper, apart from the theories and statistics, also records and considers the statements of few people who are directly or indirectly affected by the reservation policies (backward people, students and their parents, etc.) in order to really know, how the reservation policies effects the citizen of the country, and how far have they actually succeeded.

In the end, it was established that affirmative action promotes equality in opportunity, but the implementation in India has failed to show any desirable result, it has rather become a tool for political parties to fill their vote banks, the backward class people still suffers, and untouchability still persists.

Although the research is focused on the sociological analysis of affirmative action implemented in India, it has a much generalized approach in reasoning, and even a part of the conclusion states the repercussions of affirmative action in general, apart from being specifically for India.

The research paper suggest some political and social reforms to be implemented in future, so that affirmative action can bring positive result, and helps in establishing an egalitarian society. Even though the title suggests so, the research paper is not aimed at justifying affirmative action, but only makes a persuasive argument for accepting and implementing

affirmative action for the overall benefit of the society.

**Keywords:** Affirmative Action; Equality; Caste System; Positive Discrimination; Reservations in India.

## INTRODUCTION

Man is a rational animal, and out of that sense of rationality, comes a notion of justice. But the idea of justice varies from man to man, due to the non-identical rational capacity of each human being. The difference in the idea of justice has always been a reason for conflict, not only between the philosophers but all humans alike.

In the present day democratic countries, the main objective of the state and law is to do justice. But how do we ever know, what is just and what is unjust? There are numerous theories in Jurisprudence, which attempts to define Justice, but none is free of criticism. In this research paper, I will be reviewing some of those philosophies in order to review the policies of Affirmative Action.

Those who argue in favor of affirmative action give majorly the following three arguments: First, affirmative action is corrective in nature, i.e. it helps in overcoming the economic, political, and social inequalities. For example, affirmative action compromises for difference in educational background. Second affirmative action is compensatory in nature, i.e. it compromises for wrong done to people in past. For example, there has long been racial and ethnic discrimination against people and affirmative action ensures that they are able to come to a level playing field with other people, and are not left behind. Third, affirmative action insures diversity. Policies of affirmative action insure that there is a balance between people from different backgrounds, which will insure a good educational experience for all the members of that institution, and hence will act as a benefit for society as a whole.

In India, affirmative action follows mainly the first and second above mentioned principle, and is mainly based on caste system, since the discrimination in the past has been mainly based on caste. However, there is also a Quota system based on religion, gender, domicile, physically handicapped, Dependents on Armed Forced personnel, etc. In this research paper, we would only be considering the Caste-based reservations. The purpose of giving reservations to lower classes in India at the time when the Indian Constitution was being framed, was to make sure that people belonging to backward classes comes to the same level as the higher classes, and live with the same dignity in the Society. It demands that sometimes a less qualified person belonging to a

lower caste is preferred over a person belonging to forward (/higher) class. The reason for this is to save them from discrimination.

Articles 341 and 342 of the constitution of India provide the process by which a particular caste or tribe can be included in the list of Scheduled Castes or Scheduled Tribes, to receive the benefits given to backward classes, and the duty to do so lies with the government of India. The reservation on the basis of caste is one of the most controversial topics of contemporary India, and has been a subject of many legal cases, debates, electoral promises, etc. And for this purpose, people in India are divided in two fronts; one those who oppose reservation and believe that it violates the right to equality, and other those who supports reservation and believe it to be a positive measure. But the goal for everyone is same, i.e. 'equality of opportunity' and a better society. In this research paper, I will be analyzing both sides.

## History of Caste System in India

India has a very rich heritage; it acquired not only wealth from its ancestors, but also moral values. Having arguably the most diverse culture, all that India has inherited are not virtues. Some vices in the form of biases and prejudice on different levels came along. One such prejudice was based on what caste an individual is born into. There are several theories relating to how caste system in India evolved, and the truth among them is not clear. However, there is no doubt that the caste segregation exists from the ancient times in India, and most probably originated during the Vedic period. Some other scholars also claim that the caste system was very floppy before the British regime, and the present caste system is caused by the British exploitation of the lower castes<sup>1</sup>. One of the most authoritative theories, as given by DN Jha<sup>2</sup>, suggests that the roots of caste system lie with Aryan invasion. The chief source of information on the early history of Aryans in India is the Vedas. Passages in Rigveda show the bitterness of Aryans towards non-Aryan tribes such as *Panis*, *Dasas and Dasyus*, and a possible reason is their declination of patronizing Vedic priests. The caste system is supposed to be originated due to the conquest of Aryans over *Dasas and Dasyus* who were assigned the status of slaves and *Shudras* in the society. The social divisions started to happen since the unequal distribution of wealth led to social inequalities.

By the end of the Rigvedic period, the society was divided into four groups, *Kshatriyas*, *Brahmans*, *Vaishyas*, and the *Shudras*. But this division was not based on the occupation, as there are some accounts in *Rigveda* where people belonging to the same family had different occupation. This segregation of the society was mainly due to unequal distribution of

the spoils of war, and assimilation of the aboriginal non-Aryan people, who were reduced to lowest position in society. The increase in social distance between them, which later led to untouchability, might have born out of the need to retain the purity of their blood.

In order to acquire higher status in the society, the people belonging to lower castes tried to imitate the practices and rituals of higher castes, especially Brahmins<sup>3</sup>. The lifestyle of lower caste people was considered atrocious by the higher caste people, such as eating meat, drinking alcohol, etc. So, they started changing their habits, and many lower castes people followed vegetarianism, and started maintaining proper hygiene, etc. In today's civilized society, especially in the city, the lifestyle of different castes has intermixed, and is no more distinct to a particular caste, although, in rural areas there is still a caste-wise segregation.

The untouchability continued persisting, and remains a bitter truth for India even today, though it is mitigated by various movements led by various great leaders from time to time such as Raja Ram Mohan Roy, Jyotibha Phule, Ramakrishna Paramhansa, Dr. BR Ambedkar, Mahatma Gandhi, India's first Prime Minister Jawaharlal Nehru, etc. When the Indian constitution was being framed, special provisions were made for the under repressed backward classes in India. The lower caste people have long tried to cut themselves off their identities, and even though the reservations have been provided by the government, but still prejudice against lower classes persists in India, and no one is willing to be identified as belonging to lower caste, and people generally try to hide their identities to maintain a status in the society, as law fails to change the mentality of the society.

### **Equality and Social Justice**

Even though the goals for those who support reservation and those who oppose it are same, their views on Affirmative Action differ. This difference in opinion comes from a difference in reasoning about the relation between equality and justice.

“A contract that generates principles of right is merely an idea of reason, but it has undoubted practical reality, because it can oblige every legislator to frame his laws in such a way that they would have been produced by the united will of the whole nation”  
– Immanuel Kant

Immanuel Kant mentioned an imaginary contract by which the legislators can make the policies that the whole nation would agree to, and this concept of imaginary contract was further elaborated by John Rawls in his book '*A theory of Justice*'.

As per Rawls, while deciding the right thing to do, certain facts shall be hidden from us. He gave the concept of veil of ignorance, under which while taking decision we are to forget our social, economic, political background, our state of body and mind, etc. Only then would we come to a certain framework of basic rights and duties which we must respect, and only they should govern us in all we do. This hypothetical social contract is different from actual social contract, because actual social contract never justify that the outcome will be good, and just because a contract is being made does not mean that the contract is fair.

As per Rawls, every person should be free to apply for any job/position in the society, and if everyone is given equal opportunity to work as hard as they can, then the outcome is just. But, is giving the 'same' opportunity to everyone equality? Rawls says, no. As per him there are various morally arbitrary factors that improperly influence the distribution of goods/rights, and those factors are social and natural lotteries, such as whether you were able to get quality education or not, whether you belonged to a place with many opportunities, or to a remote village, whether your family supported you or not, whether you were born physically disabled, etc. So we need a better and a more fair system of equal opportunity, one such system most followed is the system of meritocracy. Aristotle in his famous work on politics argued for merit, and suggested that since justice can never be done to everyone, it is better to discriminate people on the basis of merit rather than on the basis of other factors such as wealth, or caste.

Rawls rejected that too. As per Rawls, merit too is a repercussion of natural lotteries, since some people are just born with higher IQ while some others are born with lower IQ; some people are born with a capability to run fast, while some others are not. So, if there is a competition, who will win? The fastest runner or the higher IQ person will win in their respective fields. So, it is not their doing that they happened to be blessed with a higher IQ or an athletic power to run fast. This is why Rawls rejected the system of meritocracy as a fair system for equality. For him, meritocracy is also a natural lottery, where some people are blessed with more intelligence than others, and we have to overcome such lotteries. As per Rawls, equality is achieved when these social and natural lotteries are eliminated. For example, in the case of runner, natural ability can be overcome by giving, say a meter head start in the race to the less privileged person.

As per Rawls, Affirmative Action is justified. And since, in India the lower caste people are still being discriminated against, and are under repressed in the

society, policies are required to ensure that they are able to develop along with the society.

Libertarianism, another philosophy, gives more importance to 'right' than 'good'. As per the libertarians, right to liberty is the fundamental right of any individual. We're born as individuals, and have our own separate identities, and that is why we are not available for the use of society. We have a right to liberty, and right to be treated as equal individuals, and no government can debar us from this fundamental right, which is given to us by natural law.

As per libertarian view of law and governance, the state has no right to make paternalist or moral legislation, nor do they have any right to redistribute the wealth of Income from rich to poor. And the general perception is that as per libertarianism affirmative action is not justified since it violates the rights of individuals, and involves more than the minimal state interference, but it is not correct, and this can be proved by analyzing Robert Nozick's theory of entitlements.

Robert Nozick, one of the most prominent philosophers of Libertarianism argued against John Rawls's theory of justice. His entitlement theory consists of three principles, justice in acquisition which deals with how a person acquired the goods; justice in transfer which deals with voluntary exchange or giving of goods/rights; rectification principle of injustice which deals with how to correct injustice happened in past, either as wrongful acquisition, or wrongful transfer.

As per Robert Nozick, the distribution of goods is justified only when there is justice in both acquisition and transfer, i.e. there is a free market system, and if there is injustice in acquisition or transfer then it needs to be rectified.

The third principle of this theory, i.e. principle of rectification of injustice actually favors affirmative action. As shown in the historical analysis, the ill-treatment of lower caste people in the hands of higher caste people, left them behind in the overall growth of the society, they were not allowed to be educated, or indulge in any productive occupation. This is the root cause of their lower status in the society today. So, they have suffered an injustice in the acquisition of their right to equal opportunity, and this injustice needs to be rectified, and Affirmative Action provides a way of rectification of this injustice.

Another argument against Libertarianism is that, free market system does not always mean equality, or maybe it can be called formal equality, but it does not

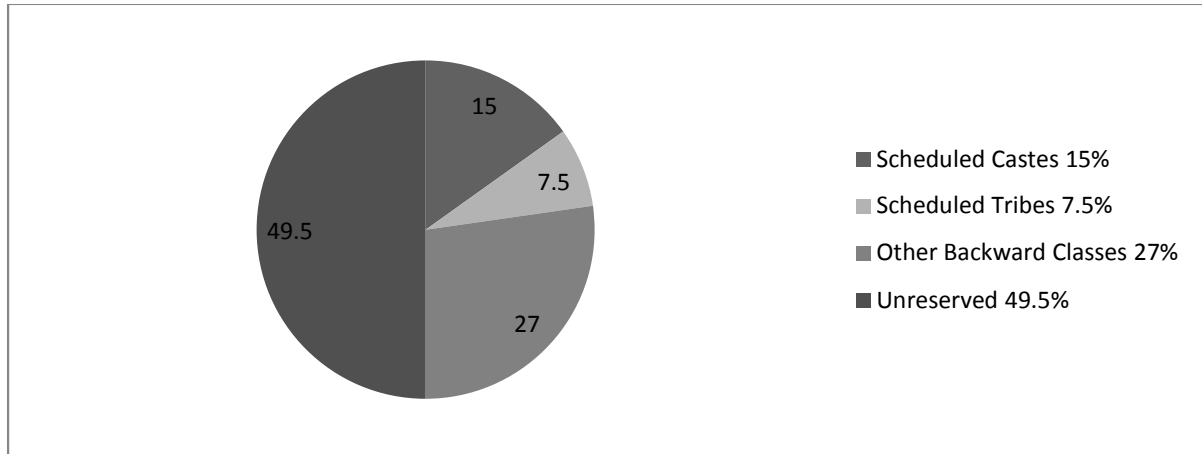
actually lead to equality. For example, when France banned wearing *burqa* (a Muslim veil) in public; its decision was criticized by many as against the individual liberty of a Muslim woman. But French government said that wearing a veil shows the oppression of women in society and cannot be tolerated. In this case, what may be called as more than minimal interference by the state was done by the French, but did it really violate anyone's equality? No it didn't. Because it would have provided the Islamic women in France with formal equality, had the ban not been imposed, but now it leads to real equality, since there is a violation in the acquisition of the women's right to equality in the society.

In the similar manner, in the case reservation in India, not providing the same may help count everyone formally as equal, but the country would never be able to gain equality for its entire citizens, which includes compromising for the injustice that happened in the acquisition of rights.

#### **Indian Reservation System**

There are many provisions in the constitution of India that aims at securing the minority rights, welfare of the under repressed, and prevention of discrimination against them. Article 14 of the Constitution of India guarantees equality before law, Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, Article 16 provides equality of opportunity in matters of public employment, Article 17 abolished untouchability, and Article 46 upheld promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. Several other articles in the constitution also advance the cause of under repressed minorities, such as Article 332 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

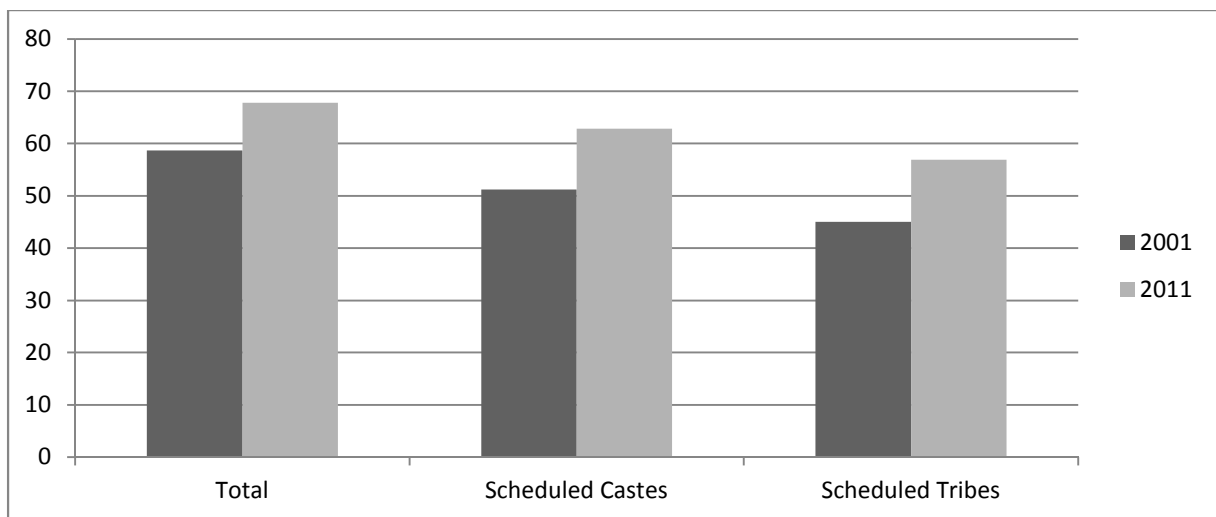
A certain amount of seats in government jobs and educational institutes are kept aside for less privileged people. In the present caste based reservation system (Figure 1) of union government of India, a total of 15% seats are reserved for schedule castes (SC), 7.5% are reserved for Schedule tribes (ST) and 27% are reserved for other backward classes. Initially the seats were reserved only for SCs and STs and later, UPA government introduced reservation for Other Backward Classes in 1990 by implementing the suggestions of the Mandal Commission, which was opposed strongly by the student community.



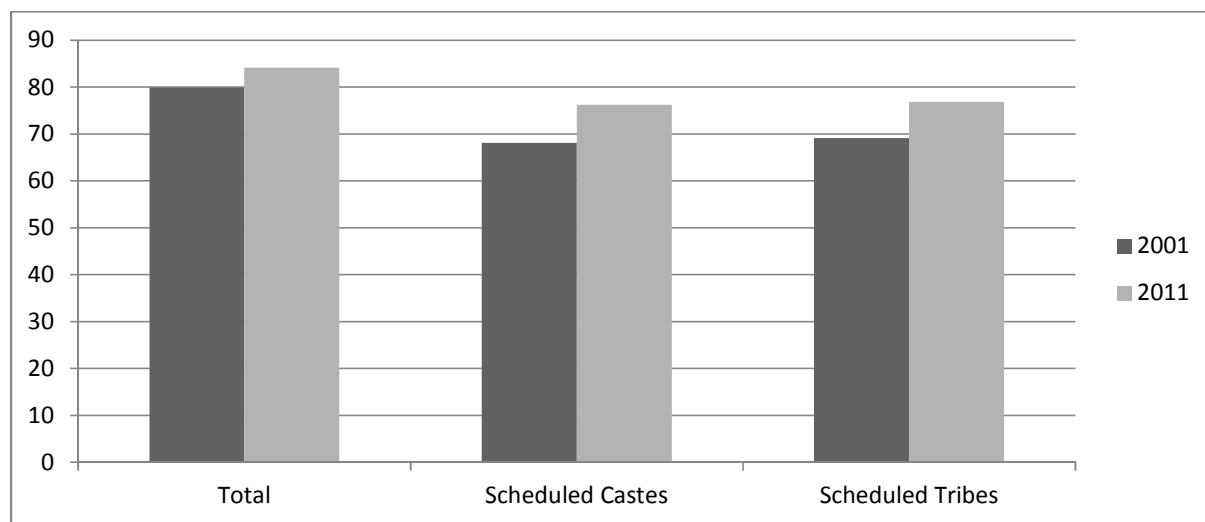
**Figure 1<sup>6</sup>:** Present Caste Based Reservation System of Government of India

**Table 1<sup>15</sup>:** Caste Wise Literates and Literacy Rate

	Persons	Scheduled Castes	Scheduled Tribes
<b>Total Population</b>	1210569573	201378086	104281034
<b>Male</b>	623121843	103535165	52409823
<b>Female</b>	587447730	97842921	51871211
<b>Total Literate</b>	763498517	113759907	113759907
<b>Male Literate</b>	434683779	66476908	30066912
<b>Female Literate</b>	328814738	47282999	21568511



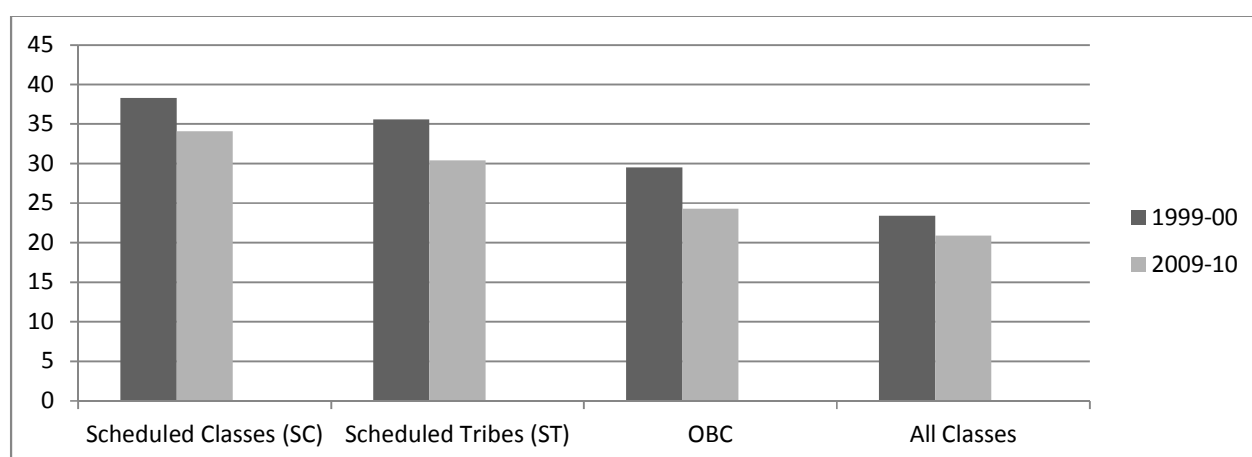
**Figure 2<sup>15</sup>:** Caste Wise Literacy Rate Comparison 2001 and 2011: Rural Areas



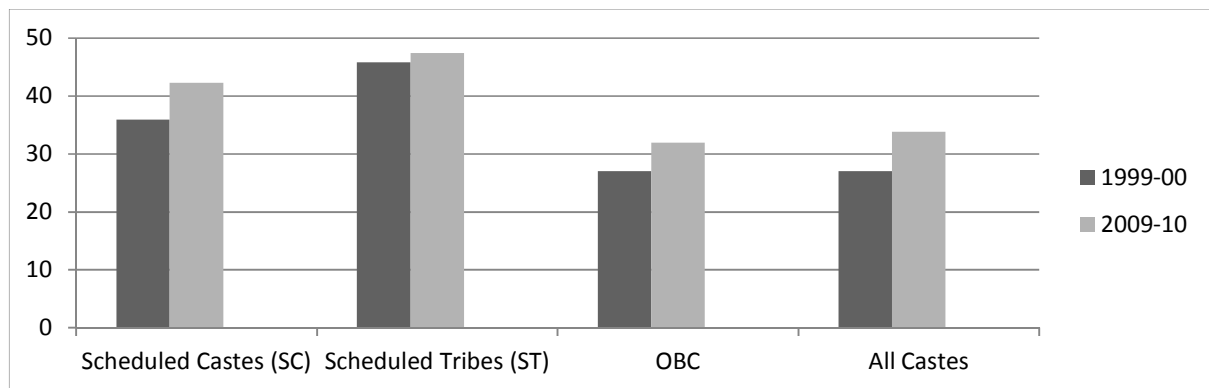
**Figure 3<sup>15</sup>:** Caste Wise Literacy Rate Comparison 2001 and 2011: Urban Areas

**Table 2<sup>16</sup>:** Graduates as Proportion of Population by Age Groups - All India, 2004-05

Age Groups	Hindus			Muslims	Other Minorities
	Gen	OBCs	SCs/STs		
20-30 years	18.6	6.5	3.3	4.5	11.6
30-40 years	16.8	4.6	2.3	3.3	9.2
40-50 years	14.6	3.2	1.5	2.8	8.1
51 years and above	9.8	1.9	0.9	2.1	5.7
Total	15.3	4.4	2.2	3.4	8.9



**Figure 3<sup>17</sup>:** Below Poverty Line HCR for Urban Areas



**Figure 4<sup>17</sup>:** Below Poverty Line HCR for Rural Areas

However this reservation was not implemented in the prestigious Indian Institutes of Technology. due to the existing legislation at that time. The UPA government in 2005 however amended the constitution<sup>4</sup> to allow reservation for OBCs not only in government institutions but also in private unaided educational institutes. These reservation policies had been opposed very strongly by the general candidates, but nonetheless the government successfully implemented them, as Supreme Court held the amendment constitutional, on the grounds that it is for the welfare of the backward people as provided by the constitution<sup>5</sup>.

The 9 judges Constitution Bench in the landmark case of *Indira Sawhney v/s Union of India*<sup>7</sup>, observed that the creamy layer (i.e. relatively wealthier people) must be excluded from receiving any benefit assigned otherwise for backward classes, the reservation shall not exceed the limit<sup>8</sup> of 50%, and that article 16(4) of the constitution of India does not allow reservation in promotion. This landmark judgment of India sorted out many issues which the higher class people had with reservation, but the political parties had still tried again and again to mitigate this judgment for the mere purpose of political gain. The reservation system exceeds more than 50% in the state of Tamil Nadu, but when Andhra Pradesh tried to increase reserved seats beyond 50%, it was struck down by the high court.

Reservation in promotion for backward classes had existed in India since 1955, when it was discontinued by the Supreme Court in the case of *Indira Sawhney v/s Union of India* in 1992. The apex court held that the reservation in promotion was beyond the mandate of Article 16(4), and violates the right to equality of opportunity. Now in order to continue the reservation in promotions, the Parliament amended<sup>9</sup> the article 16(4) of the Constitution of India and added a new

clause 4(A) stating that the required representation of SCs and STs has not been met. The clause 16 (4) (A) was further amended<sup>10</sup> by the Parliament to provide consequential seniority to backward class candidates promoted by giving reservation. When the validity of these two amendments was challenged in the Supreme Court of India, the Court observed that “the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.”<sup>11</sup> After this judgment, the provisions for reservation in promotion were struck down by various high courts, and their decision was upheld by the Supreme Court. The Parliament of India is again trying to amend the constitution, and the 117<sup>th</sup> amendment<sup>12</sup> bill to secure reservation in promotion for SCs and STs was passed on 17<sup>th</sup> December 2012 in Rajya Sabha, and is still pending in Lok Sabha<sup>13</sup>.

## RESULTS AND DISCUSSION

The total Scheduled Castes Population in India is roughly around 16.6% of the total population (Table 1), and the total Scheduled Tribes Population is roughly around 8.6% of the total population (Table 1). 15% seats are reserved (Figure 1) for the 16.6% of the SCs and 7.5% of the seats are reserved (Figure 1) for 8.6% population of STs. The 27% seats are reserved for the Other Backward Class candidates, whose population is uncertain<sup>14</sup>. These statistics suggests that the percentage of seats reserved is legitimate, and in proportion to the total population.

The total literate population of India is approximately 73%, of Scheduled Castes is approximately 66.1%, and of Scheduled Tribes in India is approximately 59%. The literacy rate has improved over the 10 years for both rural and urban areas, as in 2001 the literate population was 64.8, 54.7, and 47.1

respectively (Table 1, Figure 2 and Figure 3). Though the increase in literacy rate is uniform, but the overall literacy for SCs and STs is very low. The situation is even far worse when it comes to graduating population (Table 2). Only 2.2% of the SCs/STs (Hindu) possess a bachelors' degree, compared to 15.3% of the general category (Hindus). Even after more than 60 years of reservation, the number of graduates from backward classes is in very small proportion. Figure 4 and Figure 5 shows the head count ratio for below poverty line, caste wise. The Scheduled Castes and Scheduled Tribes suffer the highest from poverty, and STs suffers the most in rural areas.

Dr. Subramanian Swami in an interview said that, "the caste system is melting, yes. The only two places where people feel very strongly about caste system is, one when it comes to marriage, and second when it comes to election"<sup>18</sup> The inter-caste marriages are now common, and are continuously increasing with modernization. But caste is used as a big tool in elections. The politicians have constantly made this issue a part of their election campaigns, promising the welfare of the backward classes by providing them with reservation. The true purpose of implementing affirmative action died long ago in the hands of political parties, to whom it is a way to retain their rule. In fact, caste based politics has led to a further segregation in the society.

While deciding over the cut-off for OBC candidates, a two-judge bench of Supreme Court asked the students to accept reservations as a harsh reality, since un-equals cannot be treated as equals<sup>19</sup>.

Initially when the constitution was being made, the provisions of reservation were given only for a period of 10 years, a time judged enough for the development of backward classes in the society. Before this period expires, each time it is extended to 10 more years by the Indian government. And as shown in the statistical analysis, various commissions constituted to find out the status of backward classes have only suggested an increase in the backward classes. In 1953, the Kaka Kalekar committee found 2399<sup>20</sup> castes and committees to be backward. In 1989, the Mandal commission found that the number had been increased to 3743<sup>20</sup>. In 2005, the number was found to be 4418<sup>21</sup>. The number of backward classes has only increased, and no class has grown out of backwardness in the 64 years since the constitution of India came into effect.

Many people claim that the reservations should be based on economic factors rather than caste. But that would not fulfill the purpose of having reservations at first place, which is to save people from being discriminated against, even though most people in the urban centers of India are unaware of the

untouchability that still persists in the 21<sup>st</sup> century India, but in rural centers, and remote areas of cities and towns, untouchability still persists to the same extent as it might have existed during British Raj.

Educating people is the best way to remove this evil practice from the roots of Indian Culture, and providing reservations to certain extent is justified for the welfare of the overall society. But in India, the reservation policies had failed to fulfill their ends. As clear from the statistics and an Indian resident will not even need statistics, to realize that reservation policies have bought out nothing in the name of development of the lower castes, people belonging to lower castes still suffers, and along with them suffers the meritorious students belonging to general category who cannot cope up with the fact that a less deserving student than them got selected in an institute or for a job, which they couldn't. But what need to be understood is that, merit is not the only factor one need to consider while deciding who deserves what. As shown by Rawls, merit comes as random as any other factor, such as race, caste, height, etc. Since we live in a society, we owe a duty to safeguard the rights of everyone living in the society, and the social and natural lotteries should be overcome as much as possible.

But should there not be any extent on the reservations policies? Yes, there should be, so that they don't lead to reverse discrimination against the forward classes. People from lower caste should not be appointed without a check on their quality and eligibility for the job.

#### **CONCLUSION: JUSTICE AND A GOOD LIFE**

Providing reservations in educational sector is justified for the purpose of coping up for past injustice, but reservation in government jobs is not justified, as it risks deteriorating the efficiency of the functioning of the society, and leads to a greater injustice, and disharmony in the society. The only fault in the reservation system is the exploitation in the hand of law makers; it is a shame that those who are charged with the duty to do justice, to maintain harmony, are the ones who destroy it. The political parties have long taken advantage of the social backwardness to win elections, and the recent efforts to amend the article 16(4) of the Constitution of India to reserve seats in promotion in government jobs are totally unjustified on moral grounds, and in a long run, might prove havoc to the administration of the country. Affirmative Action policies if implemented with goodwill will yield successful results that will benefit the whole society. The present percentage of reservation in educational institutes seems reasonably justified, and as mentioned in *PA Inamdar v State of Maharashtra*, education is not business, and hence



private institutes should have to follow the reservation policy too.

It is a misconception that affirmative action violates individual rights to liberty, when affirmative action only secures each and everyone's right. Even though Affirmative Action policies were supposed to be implemented only for 10 years, but even after more than 60 years of the implementation, those 10 years still seems to be a necessity, why? Because law alone, is not enough to bring about a change in the society. Indian society has failed to overcome the biases it has, not only on the basis of caste but on every other basis possible as well. One of the reasons for this failure may be the religious and cultural values, which are so hard to overcome that no argument is good enough to persuade them.

The situation has not improved much since the inception of reservations, as was dreamt by the framers of the constitution, and if the present circumstances continue, it will not improve much in future either. What is required, is self-realization of the purpose why affirmative action or for that matter any policy or the state or law exist. It is a long process, and in that process, India stands at the first step, where people are not yet aware of their own rights and duties.

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- [3] This is termed as 'Sanskritization' and is a well-known form of social change in India.
- [4] The Constitution 93<sup>rd</sup> Amendment Act 2005. Amended Article 15 of the Constitution and added a new clause 15(5): Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."
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- [7] Indira Sawhney & Ors v. Union of India & Ors [1992 Indlaw SC 735].
- [8] This ratio decidendi was obiter dicta in MR Balaji v/s Mysore AIR 1963 SC 649.
- [9] The Constitution 77<sup>th</sup> Amendment Act 1995. Amended article 16 of the Constitution, and changed the clause 16(4): "Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the Sate, are not adequately represented in the services under the state".
- [10] The Constitution 85<sup>th</sup> Amendment Act 2001. Amendment of article 16.-In article 16 of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted.
- [11] M. Nagraj v/s Union of India
- [12] The Constitution 117<sup>th</sup> Amendment Bill 2012. Aims at amending article 16 of the Constitution of India, and change the 4A clause "(4A) Notwithstanding anything contained elsewhere in

the Constitution, the Scheduled Castes and the Scheduled Tribes notified under article 341 and article 342, respectively, shall be deemed to be backward and nothing in this article or in article 335 shall prevent the State from making any provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes to the extent of the percentage of reservation provided to the Scheduled Castes and the Scheduled Tribes in the services of the State.”.

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- [21] Based on the findings of an independent panel constituted by the UPA Government in 2005.

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