

These Seats are Reserved: Caste, Quotas and the Constitution of India – Book Review

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Abstract

These Seats are Reserved by Dr Abhinav Chandrachud explains the legal history of the Indian Constitution's affirmative action and demystifies the intricate system of regulations and processes that these policies rely upon for being implemented. The first half of the book chronicles the process of constitutionalizing reservation, starting with Jyotiba Phule's campaigning and ending with the 103rd Constitutional Amendment's enactment, which grants 10% quota to the economically weaker sections. The analysis of judicial rulings and constitutional amendments in the second part provides important clarification on the bewildering complexity of the legislation regulating reservations.

It is interesting to note that not many issues in India spark as much passion as those pertaining to reservations. The most frequent points of contention between lawmakers and judges have been around reservation policy, along with judicial independence and land reforms. It is important to remember that there could be two extremes in these arguments. Either they focus on the details without taking the larger context of the constitution into consideration, or they use impersonal ideals to conceal the fact that reservations are specific policies that have altered public life. As a result, a critical study upon this issue becomes important.

INTRODUCTION

India has a complex social structure wherein eradicating inequities in any form and wherever they may occur is important to achieving substantive equality. Hence it is necessary that the state takes measures to uplift the impoverished and marginalized sections. Furthermore, with the primary goal of minimizing prejudice and the ultimate goal of eradicating it in order to achieve true and meaningful equality, positive discrimination in form of affirmative action is the need of the hour. Nonetheless, there have been countless debates about the government's reservation policy in India for years. The critics of the Affirmative action contend that these measures violate Article 14 of the Constitution which guarantees equality before the law. Whereas, the proponents argue that these measures are within the frames of Articles 14, 15, and 16, which were crafted with the intention of establishing an egalitarian society in India. Furthermore, the Indian Constitution also provides

for equal protection under the law. Hence the policy of reservations is constitutionally protected. It is interesting to note that in the past seven decades there have been innumerable affirmative action-related constitutional bench judgments and constitutional amendments. Additionally, there are a number of factors that must be considered when analysing reservation policies.¹

Encapsulation of The Book

In Chapter One of the book the author points out that for a long time, the subject of who constitutes the underprivileged classes have plagued the politicians, judges, and scholars alike. The author in his book puts out an interesting aspect in this context, namely that the terms depressed classes and backward classes are of European Origin and were introduced in India during the Colonial Rule. It is interesting to note that the British coined the phrase depressed classes to refer to a group of backward Indian castes or tribes who were impoverished, illiterate, or untouchable. Apart from that the author in this chapter also highlights the initiatives taken by both British Government and the Princely States to uplift the marginalized section.²

In the Second Chapter of the book, Dr Chandrachud argues that the original intention of the members of the Constituent Assembly was to allow reservations just in government employment and legislative bodies, and not in other places such as the Rajya Sabha or the Cabinet. Apart from that it is pertinent to note that Dr Ambedkar repeatedly emphasized upon the fact that reservation is an exception to the principle of equality and hence should not be excessive. He argued that reservation can be provided only upon a minority of seats or else it will be in violation of the Equality Clause. Furthermore, there were also suggestions that there should be a sunset clause in regard to the reservation policies.³

The book's next several chapters provide a very objective description of India's post-independence reservation policy. The author then analyses cases, legislations and amendments introduced by the State and Central Governments to deal with the caste-related concerns. Furthermore, the author also provides a thorough analysis of how the Supreme Court rulings have influenced India's reservation policy.

The question of whether caste is the only element in establishing backwardness remained unanswered, and another challenge that was quickly encountered was identifying the Other Backward Class. It is pertinent to note that the challenge of identifying OBCs resulted in the establishment of the Kaka Kalelkar Commission in 1955, which established four standards for classifying individuals as backward. According to the Commission, a class that is considered backward is defined as having a poor social status within the traditional caste system, lacking access to education, having insufficient representation in administration, or having insufficient representation in the field of trade, commerce, and industry. Despite the Supreme Court's view that caste should not be the only factor contributing to backwardness, it was eventually accepted in the Indra Sawhney case that caste is essential in determining the backwardness of a community.⁴

In a sense, Dr Chandrachud follows the development of reservations for Other Backward Classes through various cases and reservation policies, but he doesn't discuss whether social justice through affirmative action succeeded or not. In addition, he points out that vote bank tactics and its abuse has diluted Dr Ambedkar's original intentions for reservations. Given that vote bank politics are still a hotly contested issue in India, the author also seems to believe that they are detrimental to democracy. He makes note of how the 77th Amendment was proposed by the legislature in order to overturn the Indira Sawhney ruling. He discusses horizontal reservation and makes the case that it must be established by

1 Janhit Abhiyan v Union of India, WP (C) 55/2019.

2 Harad, Tejas. (2023). Book Review: All the Answers to Your Questions on India's Reservation Policy. *The Quint*. <https://www.thequint.com/lifestyle/books/book-review-these-seats-are-reserved-abhinav-chandrachud-accessible-primer-on-indias-reservation-policy#read-more>

3 Chandrachud, Dr. Abhinav. (2023). *These seats are reserved*:

Caste, Quotas and the Constitution of India. 1st edition. Penguin Random House.

4 *Indira Sawhney & Ors. v. Union of India*, AIR 1993 SC 477

quantitative data, citing the instance of M. Nagaraj as evidence. Despite not being involved in the OBC dispute, the Mandal ruling unilaterally eliminated reservations for SCs and STs in promotions that were open to them. The 77th amendment, passed by Parliament in 1995, rendered the Mandal ruling null and void. A movement against five OM (Office Memorandums) was sparked by the subsequent lawsuit, which produced a number of verdicts against the 77th amendment in the 1990s. To offset the negative rulings, Parliament responded in 2000–2001 by passing the 81st, 82nd, and 85th amendments. However, legal disputes persisted in undermining promotions.⁵

The final chapter highlights the complexities around the existing reservation system in India, For Example- Is caste lost after marriage or conversion and gained again if a divorce or reconversion takes place? Furthermore, is caste background and status uniform across the nation or else it changes from place to place? The author also raises a question that while the members of the Scheduled Castes and Scheduled Tribes community are classified as a homogeneous group, but the same is not there in the case of Other Backward Caste (OBCs). Apart from that the author also points out that reservations made for women, people with disabilities, members of the military services, or athletes are exempted from the 50% reservation cap and the creamy layer rule. Though the same is not there in other categories. Dr Chandrachud notes that the responses to them are frequently unjust and problematic.⁶

CONCLUSION

By the means of historical legal study, Dr Chandrachud has tried to build a connection between the reserved and depressed groups of the past and today. However, there are certain

drawbacks as well. It is pertinent to note that the book explores the history of caste-based discrimination, but it doesn't seem to comprehend the relative group disadvantages that form the basis of these affirmative actions. One needs to remember that when a society is creating an inequitable system for centuries on the basis of caste and creed then that will never go away because it has been divided and stratified both horizontally and vertically. As a result, laws pertaining to affirmative action has to be introduced so that the most disadvantaged people benefit in a true sense. It is interesting to note that throughout its brief existence, the Indian affirmative action policy has demonstrated a number of beneficial outcomes. By providing marginalized and depressed classes opportunities, especially in jobs and education, it has helped in addressing historical and systematic injustices. Furthermore, it has encouraged inclusivity and diversity, bringing a wider range of viewpoints and experiences to educational institutions and government services. The Affirmative Action has indeed fostered a more equal society by empowering the marginalized population.⁷

Hence it can be said that while the book serves as a beginner's guide on the topic of affirmative action and reservations, but it is by no means an authoritative text on the subject. The biggest flaw of the book is that the author has tried to take a neutral stand upon a significant and burning issue like caste and reservation. Furthermore, the author has also failed to provide any solution to the questions and issues he has raised in his book. However, reading this book do serve as an encouragement to reflect more thoroughly upon a sensitive issue like affirmative action, underlying the arguments for and against reservations, as well as what more steps are required to fulfil our constitutional obligations.

5 Chandra, Rudra (2023). *Book Review: 'These Seats are Reserved: Caste, Quotas and Constitution of India'* by Abhinav Chandrachud. 7(2) *COMP. CONST. L. & ADMIN L. J.* 96 (2023).

6 vi. De, Rohit. (2023). *Books: Deciphering Quota. India Today*. <https://www.indiatoday.in/magazine/up-front/story/20230501-books-deciphering-quotas-2362623-2023-04-20>

7 vii. Shrivastava, Himanshu. (2023). *Two 'Unequal' Policies on 'Equality' of Opportunity: Comparing USA's Affirmative Action Policy with the Indian Reservation System. Oxford Political Review*. <https://oxfordpoliticalreview.com/2023/10/22/two-unequal-policies-on-equality-of-opportunity-comparing-usas-affirmative-action-policy-with-the-indian-reservation-system/>

