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## THE NEED FOR RESERVATION IN INDIA: AN ANALYSIS

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### ABSTRACT

*The need for reservation has always been questioned by the people of India but mostly it has been raised based on the fact that the previously socially backward classes are now economically affluent and now, they take the policy of reservation for granted and hence, the general category faces troubles with that. However, the issue of reservation has never been regarding the economic condition of the people but the equal representation of the socially backward class.*

*This policy was very much emphasized by the great Dr. B.R. Ambedkar for equal representation of socially backward students in the educational institutes and government jobs. In the Constitutional Assembly Debates, with respect to the discussion under Article 16(4), few members suggested the SC, ST and Harijans to be backward classes while others argued for economic and religious backwardness. However, it is very much clear that the economic backwardness was not given much importance. The same was held in the Indra Sawhney's judgment where the nine-judge bench held that the enactment of Art 16(4) was specifically set for the socially backwardness which leads to the deprivation of education and hence causes one to be economically backward. Further, the enactment of OBCs to be another socially backward class was a long and debated topic because there was very less to no data when it came to the OBCs to be considered under reservation. The Mandal commission had to base its data based on outdated information, but it was important to include OBCs under reservation.*

*Moreover, in modern times, people believe that the socially backward classes no longer need the aid of the government because they are well off in terms of economic conditions and hence, can manage to get admission in higher education institutes on their own caliber. And also, due to the reservation policy, the general category is facing tremendous discrimination in the name of reservation because a poor ranked reservation student outranks a good ranked general quota student. However, this is not the case in most parts of India especially the rural areas where people are still living in the medieval age and still have the caste system in place where the 'Dalits' are mistreated till the extent of torture. With the recent cases on the rise,*

*such as rape cases on Dalit girls and murder of Dalit people, it is important to understand the need for reservation amongst these socially backward people and why not make the quota system based on economically backward class of people.*

*Hence, this paper shall focus on the issue of reservation and the need for it in lieu of judgement relevant to this paper. Also, it will further digress into the issue about the social backwardness versus economic backwardness.*

## **PART 1: INTRODUCTION**

The need for reservation was brought in with a very good intent that is to raise the bar for all the backward class people who were suffering from discrimination and violation of their basic human rights which are right to freedom, right to adequate standards of living, right to equality, right to education, right to profess their own religion, etc. The main aim to introduce such a policy in India was to bring in social justice and the much-needed reform in the policy of equality. Dr. Ambedkar once said during the Constitutional Assembly Debates:

*“[W]e must begin by acknowledging first that there is complete absence of two things in Indian Society. One of these is" 'equality'. On the social plane, we have in India a society based on privilege of graded inequality, which means elevation for some and degradation of others. On the economic plane, we have a society in which there are some with immense wealth as against many who are living in utter poverty ..... in politics, we have equality and in social and economic life, we have inequality. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of the political democracy which this Assembly has so laboriously built up.”<sup>1</sup>*

However, it seems that in modern times, the very pure natured law has been tainted by the very those who were entitled to this right in the first place. The issue of reservation has always been under debate because the reservation policy brought in the socially backward classes such as the Scheduled Castes (SCs), the Scheduled Tribes (STs) and the Other Backward Classes (OBCs) which were fine at that time during independence, but with

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<sup>1</sup> II Babasaheb Ambedkar 's Writings and Speeches, 184-87 (1891).

economic development, these classes have also developed economically. However, there is a notion now that being a general class is the worst class in the country because the seats are becoming less and they have to work hard immensely for their seats; whereas, the backward classes are having increased number of seats but they don't have to work hard because they take these seats for granted.

In the recent survey by All India Survey on Higher Education in 2018-19, it was estimated that in total of 37.4 million students enrolled in higher education institutes, SCs are 14.9%, STs are 5.53% and OBCs are 36.34% which is in total 56.7% students who belong to the minority. Even the general category students are in a lesser percentage, in theory, making them the minority.<sup>2</sup> These numbers have significantly increased in comparison to the AISHE report of 2016-17 where it was held that the backward classes alone took 52.56% over the 47.44%. The number of seats enrolled has significantly increased by a whopping 4%.<sup>3</sup>

However, even after looking at these shocking figures, it is still pertinent to mention herein that although the general category students do suffer heavily, but the need for upliftment of socially backward classes are still important because of the fact that in rural areas or the outskirts villages of the mainstream cities, there still exists the issue of social backwardness. This shall be further dealt below in the next part.

## **PART 2: NEED FOR RESERVATION POLICY**

The need is felt because of the fact that in many backward rural areas, Dalit people are still treated with social degradation. They are still facing gross behaviors from people of the so-called upper caste who take bath whenever the shadow of these people touches their body, they are not allowed to collect water from the same community well, they are not allowed to visit temples, they are occasionally beaten for any of the things they do that make these upper caste people "impure". This is one example in the village of Mahad in Raigarh district where the whole satyagraha movement was started by Dr. B.R. Ambedkar.<sup>4</sup> Another example would be the very recent Hathras gangrape case where a Dalit girl was raped and tortured brutally

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<sup>2</sup> MINISTRY OF HUMAN RESOURCE DEVELOPMENT, ALL INDIA SURVEY ON HIGHER EDUCATION 2018-19 (2019).

<sup>3</sup> MINISTRY OF HUMAN RESOURCE DEVELOPMENT, ALL INDIA SURVEY ON HIGHER EDUCATION 2016-17 (2017).

<sup>4</sup> Pankaj Upadhyay, *Dalits still face discrimination in village where Ambedkar started satyagraha*, INDIA TODAY (April 15, 2019), <https://www.indiatoday.in/india/story/dalits-still-face-discrimination-in-village-where-ambedkar-started-satyagraha-1502469-2019-04-15>.

by some young boys and left to die.<sup>5</sup> These examples clearly state that in remote and backward villages, the concept of equality is far-fetched and hence, the state has the responsibility to provide them equal representation in all fields including education and jobs which they are deprived off in their lives.

Also, the Constitution makers felt the need to bring in the concept of equality but it did agree with the fact that bringing in the concept with respect to individual perspective would be futile in a caste ridden society like India, and where through group identification, the mark of discrimination and preferential treatment began. Hence, they felt the need to bring in 'preferential treatment' for the advancement of these backward classes and diminish the injustice existing amongst the unequal classes of people.<sup>6</sup>

Moreover, under the Constitution, special provisions have been made which are Article 15, under which no one shall be discriminated on the basis of religion, race, caste, sex, or place of birth. Also, they shall not be denied accessing to any public space or usage of public wells, roads, etc. under Article 15(2).<sup>7</sup> In 1951, by way of first amendment, Article 15(4) was introduced which makes it possible for the State to make special provisions for enhancement of socially backward classes in educational institutions. That is how reservation in educational institutions came into picture including private institutions.<sup>8</sup> Further under Article 16, there shall be equality of opportunities in public employment and no discrimination on the basis of any grounds of religion, caste, etc. shall be done. The state shall also ensure that there is reservation for appointment or posts for backward class citizens under Article 16(4).<sup>9</sup> When it comes to education, then the provisions under Article 21A and 45 are of utmost importance but they only talk about right to education between the ages of 6-14 years.<sup>10</sup> This was established to be a fundamental right under the case of *Mohini Jain v State of Karnataka (1992)*.<sup>11</sup> However, with respect to higher education, for the reservation of minority groups, it has been provided under Article 29(2) and Article 30. Article 29(2) states that citizens shall

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<sup>5</sup> *Hathras case: A woman repeatedly reported rape. Why are police denying it?*, BBC NEWS (Oct 10, 2020), <https://www.bbc.com/news/world-asia-india-54444939>.

<sup>6</sup> C. Basavaraju, *Reservation under the Constitution of India: Issues and Perspectives*, 51 JOUR. IND. LAW. INST. 267, 267-274 (2009).

<sup>7</sup> Art 15

<sup>8</sup> Nilesh Mulatkar, *Reservation in Education System in India*, LEGAL SERVICE INDIA, <http://www.legalserviceindia.com/legal/article-2326-reservation-in-education-system-in-india.html>.

<sup>9</sup> IND. CONST., Art 16.

<sup>10</sup> IND. CONST., Art 21A, IND. CONST. Art 45.

<sup>11</sup> *Mohini Jain v State of Karnataka*, 1992 AIR 1858 (1992).



not be denied to any educational institute which is maintained and funded by the State on the grounds of religion, race, caste, language or any of them.<sup>12</sup> Also, Article 30(1), all minority groups have the right establish and administer their own educational institution.<sup>13</sup>

Further, the enactment of OBCs to be another socially backward class was a long and debated topic because there was very less to no data when it came to the OBCs to be considered under reservation. The Mandal commission had to base its data based on outdated information, but it was important to include OBCs under reservation.<sup>14</sup>

The need for reservation was felt during 1951 in the case of *State of Madras v Champakaran Dorairajan*, where the Madras government appointed seats in medical and engineering colleges based on various caste reservations. At that time the Tamilians were in a very poor condition over the Brahmin and Non- Brahmin castes. Hence, the court had struck down the order and held it to be in violation of Article 15(1).<sup>15</sup>

Then in *Balaji v State of Mysore*, the government had fixed ceiling on reservation to be 68%. The court found it to be ultra vires and unconstitutional to the equality provision in the Constitution for the seats to be reserved in medical and technical colleges. However, the court fixed the ceiling of reservation to 50%.<sup>16</sup>

However, in some other judgements, this ceiling was multiple times challenged. In the case of *Akhil Bharatiya Soshit Karamchari Sangh v Union of India*, the carry forward rule was challenged which provided extension to reservation for the SC/STs. The court upheld the rule and he carry forward rule and observed that 'mathematical precision could not be applied in dealing with human problems'. It also opined that 'some excess will not affect the reservation, but substantial excess will make the selection void'.<sup>17</sup>

Furthermore, in the *Indra Sawhney v Union of India*, which is also known as the Mandal case, the Supreme Court upheld the 50% rule of reservation and stated that the reservation shall exceed 50% rule at no point in time as laid down in *Balaji's* case. The court also

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<sup>12</sup> IND. CONST., Art 29(2).

<sup>13</sup> IND. CONST., Art 30(1).

<sup>14</sup> Manjur Ali, *Indian Muslim OBCs: Backwardness and Demand for Reservation*, 47 ECO & POL. WEEK 75, 74-79 (2012).

<sup>15</sup> *State of Madras v Champakaran Dorairajan*, AIR 1951 SC 226 (1951).

<sup>16</sup> *M.R. Balaji v State of Mysore*, 1963 AIR 649 (1963).

<sup>17</sup> *Akhil Bharatiya Soshit Karamchari Sangh v Union of India*, 1981 AIR 298 (1981).

observed and stated that if the reservation shall exceed 50% through the carry forward rule, the rule would be invalid and hence, violative of article 16 (4) of the Constitution. Therefore, for the purpose of protecting the interests of SC / ST and to extend the reservation, Constitution was amended and clause 4A was introduced under article 16 empowering the state to make provision for reservation in matter of promotion to any class or classes of posts in the services under the state in favor of SC / ST' s where they are not adequately represented.<sup>18</sup> This case also introduced the creamy layer for the reservation in the backward classes.

Until this point in time till 2003, the reservation system was applicable on private educational institutions as well but in the *T.M.A Pai Foundation v Union of India*, the apex court held that the state shall not make any reservation policy in the private run educational institutions.<sup>19</sup> This was seconded in the *P.A. Inamdar v State of Maharashtra* where the court held that neither the approach of reservation can be upheld by the State nor any quota or level of admission can be cut out to be appropriated by the State in a minority or non-minority run independent educational organization.<sup>20</sup> From the above two judgements, it was clearly held that there shall be no interference in private unaided educational institutions with regard to reservation policy for backward classes or any other because it seemed that states were trying to shift the burden of creating such a welfare policy on the private unaided institutes.

However, the 93<sup>rd</sup> Amendment was introduced, and Art 15(5) was added. This enabled the State to make provisions for socially backward classes in relation to admission in educational institutes including all private educational institutes whether aided or unaided except those under Article 30(1). This was upheld in the case of *Ashok Kumar Thakur v Union of India*.<sup>21</sup>

From these above cases, it is clear that the reservation policy has not been made to uphold any caste but for the eradication of the backwardness amongst the minorities and provide them with the equal representation at government level. But there is another debate that arises where one side argues that reservation should be only for the socially backward whereas the other school of thought argue that reservation should be on the basis of economic capacity of the individual applying for admission because in contemporary times, social backward people

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<sup>18</sup> *Indra Sawhney v Union of India*, (1992) Supp. (3) SCC 217 [2] (1992).

<sup>19</sup> *T.M.A. Pai Foundation v. Union of India*, (2002) 8 SCC 481.

<sup>20</sup> *P.A. Inamdar v State of Maharashtra*, 2005 (5) BomCR 52 (2005).

<sup>21</sup> *Ashok Kumar Thakur v Union of India*, Writ Petition (Civil) No. 265 Of 2006 (2006).

are increasing in numbers and are also economy wise. This shall be dealt in the next section below.

### **PART 3: WHY NOT ECONOMICALLY BACKWARD AND ONLY SOCIALLY BACKWARD**

In recent times, the argument has evolved that reservation should be on the economic basis and not on caste basis. This is because, as mentioned above, new castes are adding up to the reservation list and the general quota is becoming minority in this sense. This has impacted the positive aim of the reservation policy.<sup>22</sup> Moreover, in 2019, the 124<sup>th</sup> Amendment Bill, 2019 was passed which amended Article 15 and 16 of the Constitution. A new clause has been added where the government has added reservation for Economically Weaker Sections (EWS) citizens up to 10% of the total seats. This means that those who are economically backward shall have a 10% quota in higher educational institutions which shall include both private aided and unaided institutions other than those in minority institutes.<sup>23</sup> Now, the economically weaker sections also have fair representation in educational institutions irrespective of their caste, with family income to be less than Rs. 8 lakhs annually and if they possess housing below 1000 sq. feet and agricultural land below 5 acres. In urban areas, their housing is below 100 yards in a municipal area and 200 yards in a non-municipal area.<sup>24</sup> This will, however, affect the private sector institutes and apply to 70 colleges and universities in private sector and hence, will bring in uproar in the private funded institutes.<sup>25</sup>

However, the issue still pertains. Predominant areas and exclusive class carry on with an extravagant life, yet Dalits and different minorities proceed with their battle in degraded destitution. Social abuse and atrocities on Dalits stay same with increase in number of occurrences in various corners of the nation. Even, the act of casteist victimization Dalits negates the very idea of the ideal nation. The issue of helpless execution of Dalit standard needs to be featured in the print and electronic media and government's consideration must be

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<sup>22</sup> Chandra Pal Singh Chauhan, *Education and caste in India*, 28 ASIA PACIFIC JOUR EDU, 217, 217-234 (2008).

<sup>23</sup> THE CONSTITUTION (ONE HUNDRED AND TWENTY-FOURTH AMENDMENT) BILL, No. 3 of 2019 (2019).

<sup>24</sup> Arjun Ranjan, *Facts you need to know before you plunge into the reservation debate*, CITIZEN MATTERS (Jan 18, 2019), <https://citizenmatters.in/facts-reservations-ews-sc-st-obc-government-court-9719>.

<sup>25</sup> Shuriah Niazi, *Extension of caste quotas to shake up higher education*, UNIVERSITY WORLD NEWS (Jan 17, 2019), <https://www.universityworldnews.com/post.php?story=20190117124356721>.

looked for on this significant subject.<sup>26</sup> The media at present is ignorant to the issue, country's political chiefs enjoy party legislative issues seeing the issue of Dalits as an aid to their vote bank. Reservation for Dalits shows up in their political decision statements just during the races. There is an absence of political will and nobody dares to remain contrary to the prevailing rank's line of thought.

Reservation dependent on monetary status can never be an option in contrast to caste-based reservation, in light of the fact that the poverty prevailing among the Scheduled Castes has its beginning in the social-strict hardships of the caste system. Nor can the 'creamy layer' among SC/ST/OBC people group be barred from reservation approaches, since they are protected against discrimination.<sup>27</sup>

Henceforth, prevailing positions individuals or likeminded individuals need to nullify or kill reservation. Yet, this is to be recalled that if reservations are canceled, the predicament of Dalits would turn awful. The rule segments legitimate in the economic domain with all advantages, though techniques are developed and actualized to keep Dalits under enslavement. Moreover, hatred for Dalits is still the standard in India after more than sixty years of independence.<sup>28</sup>

Further, as a consequence, financial rule basically permits upper caste gatherings to consume state power, which is something that the reservation plot was intended to counter. Also, in *Indra Sawhney case*, the court stated that “...the accent was upon social backwardness. It goes without saying that in the Indian context, social backwardness leads to educational backwardness and both of them together lead to poverty—which in turn breeds and perpetuates the social and educational backwardness.”

The bench further held that: “...by the speeches of Dr. Ambedkar and Shri K. M. Munshi, it was made clear that the “class of citizens...not adequately represented in the services under

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<sup>26</sup> *The Status of Reservation in Education*, COLLABORATION OF PROGRESSIVE ORGANISATIONS STRUGGLING FOR RESERVATION, DELHI UNIVERSITY, [https://idsn.org/wp-content/uploads/user\\_folder/pdf/New\\_files/India/The\\_status\\_of\\_reservation\\_in\\_education.pdf](https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/The_status_of_reservation_in_education.pdf).

<sup>27</sup> Vivashwan Singh, *The Problem with Reservation for Economically Backward Upper Castes*, THE CITIZEN (Jan 15, 2019), <https://www.thecitizen.in/index.php/en/NewsDetail/index/4/16030/The-Problem-with-Reservation-for-Economically-Backward-Upper-Castes>.

<sup>28</sup> *Supra* note 26.



*the State” meant only those classes of citizens who were not so represented on account of their social backwardness.”<sup>29</sup>*

The contention that SC/ST individuals use reservation shares even in the wake of getting top situations in the public eye is famous promulgation, coursed to make caste-various leveled society accept that individuals from the lower castes are wasteful and don't buckle down, since they overcome utilizing the amount framework.<sup>30</sup>

Also, the Sachar Committee report stated that the OBCs and Dalit Muslims are the major group which face double discrimination. Hence, it stated that poverty eradication won't solve the problem because it is the result of the discrimination rather caste-based system along with apathy needs to be eradicated by state machinery.<sup>31</sup>

Hence, monetizing reservation seems like a bad idea to some because of the very nature that those who have the power, they monopolize state power. Also, it is important to note the difference between equality and equity where equality means bringing people on the same pedestal and equity means promoting those who cannot do it for themselves and putting them on the same pedestal after providing the minimum capabilities to be equal.

However, the another, argument of making reservation from economic point of view is important because the impact it has on the general quota students. This shall be dealt as below.

#### **PART 4: IMPACT OF RESERVATION ON GENERAL QUOTA STUDENTS:**

The purpose to give equitable justice to the deprived sections of the society and to bring them at par has been utterly exploited and has led to several disastrous consequences on the people belonging to the General Category, hence making them as a minority, technically.

One of the major impacts of the reservation system has been on the higher education system. The struggle of general category students has led to many nation-wide protests and many suicides by children belonging to the general category, but no result has been achieved yet. With the advent of 93<sup>rd</sup> constitutional amendment, it became easier for states to reserve seats

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<sup>29</sup> *Supra* note 18.

<sup>30</sup> *Supra* note 27.

<sup>31</sup> Manjur Ali, *Indian Muslim OBCs: Backwardness and Demand for Reservation*, 47 ECO & POL WEEKLY 78, 74-79 (2012).

for socially and educationally backward classes and hence keeping reservations in higher education system.<sup>32</sup> It has been contested that Reservation violates right to freedom of choice which has been enshrined under the Constitution as many deserving candidates lose their dream universities due to the reservation system.<sup>33</sup> Also, as earlier mentioned, the AISHE report of 2018-19 show that in total 56.7% students who belong to the minority. Then in that sense, general students are only 43.3% students, or they can be termed as minority in the new sense.<sup>34</sup> Hence, it can be deduced that the purpose of reservation of weaker section has been defeated by depriving the general category students from their entitled colleges due to ages old reservation system.

Another impact of reservation policy, which has been criticized a lot is reservations in public offices and several professional jobs. It goes beyond saying although students belonging to reserved category are able to secure admissions in great colleges, but the same does not stand true in the case of their knowledge and skills. Hence, appointment of unskilled professionals due to reservation system is a great impediment in the growth of several professional sectors and gives rise to increasing cases of misconduct and negligence.<sup>35</sup>

In the present time, it has become impossible for a person with ordinary skills and general category to secure a decent job. Amidst the unemployment and reservation, it is not wrong to suggest that the general category person suffers the most.

Further, politicizing reservation for personal gains of the politicians seem to be the reality where the politicians are keen on using reservation as their political agenda to maintain their vote bank without any consequences as to how it affects the student community creating disparity amongst each other and hence breaking the unity of the students.<sup>36</sup>

## PART 5: CONCLUSION

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<sup>32</sup> J. Venkatesan, *SC upholds constitutional validity of RTE Act*, THE HINDU (May 6, 2014 12:32 p.m. IST), <https://www.thehindu.com/news/national/sc-upholds-constitutional-validity-of-rte-act/article5981497.ece>.

<sup>33</sup> Utkalika Mishra, *Impact of Reservation on Education System*, WRYTIN (May 27, 2019), <https://wrytin.com/utkalikamishra/impact-of-reservation-on-education-system-jw612sas>.

<sup>34</sup> *Supra* note 2.

<sup>35</sup> Youth ki Awaaz, *Reservation: Understanding The Past, Present And Solutions [RESEARCH]*, YOUTH KI AWAAZ (Feb 15, 2011), <https://www.youthkiawaaz.com/2011/02/educational-reservations-india-solutions/>

<sup>36</sup> *Impact of reservation on the quality of education*, TARGETSTUDY, <https://targetstudy.com/articles/impact-of-reservation-on-the-quality-of-education.html>.

Therefore, from the above discussion it can be seen that the need for reservation was felt because of the fact that the SC/ST/OBCs were under-represented in the society even if rights were given to them for their upliftment. Also, in the *Indra Sawhney* case, the court held that the main aim for the formation of the reservation policy was to eradicate caste system and uplift all those who are still socially backward. However, in reality, it is very much known that we are still in a situation where caste system prevails, and lower caste people are treated less than humans and pass derogatory behavior towards them. For instance, the Hathras gang rape case as mentioned above. Further, when reservation is based on economic terms, then those who are socially and economically poor, they will suffer heavily. According to me, the government did the right thing of introducing the 10% reservation to the EWS community which includes upper caste as well so that the economically poor can also have a fair chance for admissions. Still, the situation remains the same because social backwardness is rooted in the minds of those backward upper-class people and hence, equal representation is a must in the modern times. Moreover, the politicians find a way of politicizing the reservation issue and we never can find a solution until the dirty politics is stopped. For instance, the Jat reservation protests in 2016; so many people protested violently, damaging public properties, shops, raping women, but nothing substantial came and the Punjab and Haryana High Court ruled against the bill proposing such a reservation.<sup>37</sup>

Hence, according to me, reservation is both a boon and bane because it is providing upliftment as a boon for the socially backward but simultaneously, it is denigrating the general quota students. Further, dirty politics and corruption is also not helping the situation. Therefore, according to me, there shall be combined efforts between states and the central government to identify the minorities based on caste and issue such certificates without the possibility of taking bribes. Because those, who can pay bribes, they are then not economically weak and cannot claim reservation. Also, there shall be stringent laws against such practices with strong implementation. Then only this problem can be curbed, and no group shall then feel inferior or have their basic rights of equal representation be infringed.

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<sup>37</sup> Jainder Kharb, *Reservation in education- a tool of social transformation?*, 9 INT. JOUR. SCI. & ENGI. RES, (2018).