

# Reservations: Half Pregnant Constitution, Half Pregnant State

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Presented at

Liberalism in India: Past, Present and Future – A Tribute to S V Raju

New Delhi,

November 20, 2015

# Introduction

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- This paper examines the legality and practice of education and job reservations for the backward castes *and classes*.
- In Indian discourse, the joint caste-class classification in the Constitution is often ignored.
- Part of the blame for this confusion lies in the Constitution itself, which often is not clear about its stand on reservations (and much else for that matter e.g. cow slaughter).
- There is one community that has paid a heavy price for this Constitutional “distortion” – the Muslims.

# Constitutional Provisions: A Half-Pregnant Constitution!

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**The Constitution has a number of provisions, which are in direct contradiction with each other:**

1. Article 15, Constitution of India 1949: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth  
Clause 1: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them  
**BUT** Clause 4: Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes
2. Article 16, Constitution of India 1949: Equality of opportunity in matters of public employment  
Clause 1: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State  
**BUT** Clause 4: Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
3. Article 334, Constitution of India 1949: Reservation of seats and special representation to cease after ten years  
**BUT** 95<sup>th</sup> Amendment extended Article 334 up to January 2020 i.e. seventy years.

# Mandal Commission – The advent of OBCs

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- Mandal Commission was set up in 1979 and submitted its report in 1980; however, the recommendations were accepted only in 1990 by the V P Singh government.
- Main recommendation: 27 percent reservation for OBCs
- Basis of recommendation:
  1. On the basis of 11 indicators, the Mandal Commission calculated the population of OBCs to be 52 percent.
  2. Suggested that ideally 52 percent of the posts under Central Government should be reserved for them.
  3. However, as the Constitution states (on the basis of several Supreme Court judgements) that the quantum of reservation cannot go beyond 50 percent and 22.25 had already been allocated to the SC and STs, 27 percent reservation for OBCs was recommended.
- Criticism:
  1. Caste and class has been used interchangeably. The Constitution states reservations for “socially and educationally backward classes”.
  2. The indicators are designed with a backward mindset. For example, a class will be considered to be OBC if *participation of females in work is at least 25 per cent above the state average*
  3. Incorrect estimation of number of OBCs

## Explosion of OBCs

- While the Mandal Commission estimated the OBCs at 52 percent in 1980, the 1999/00 survey estimated them at a much lower 36 percent.
- Over the period, OBCs appeared to have had an explosive birth and population growth rate; possibly higher than the biological maximum of 10.5 children per woman.

Group	Quotas	1980 - Mandal	NSS			Annual Change 1999 - 2004/05
			1999/00	2004/05	2011/12	
SC	15.0	22.5	19.9	20.0	18.5	0.1
ST	7.5		9.2	8.6	8.5	-1.3
OBC	27.0	52.0	35.8	41.1	43.4	3.0
Others		25.5	35.1	30.3	29.6	-2.7
Total	49.5	100.0	100.0	100.0	100.0	

# Half Pregnant Laws

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- A system of affirmative action, as practiced in the US is much superior to the present quota system.
- Affirmative action is *not* the same as reservations, contrary to popular knowledge. Affirmative action implies any positive steps taken to increase the representation of the historically excluded classes.
- The main issue with the Indian quota system is that although the Constitution focused on “socially and educationally backward classes”, we as a society have confused caste with class.
- How backward are the OBCs? Are they *relatively worse-off* than the average Indian? Two indicators are used to analyze this – education and income.
- Recent comments by Mohan Bhagwat, RSS leader, are surprisingly sensible. He states, “If we would have implemented this policy as envisaged by the Constitution makers instead of doing politics over it, then present situation would not have arrived. Since inception it has been politicised. We believe, **form a committee of people genuinely concerned for the interest of the whole nation and committed for social equality, including some representatives from the society, they should decide which categories require reservation and for how long.** The non-political committee, like autonomous commissions, should be the implementation authority; political authorities should supervise them for honesty and integrity.” (emphasis added).

## Are the OBCs Really Backward?

- Reservations or quotas are for those whose social indicators, standard of living is *below the average* prevailing in the society. So, do OBCs adhere to this politically correct assumption?
- According to educational attainment, although OBCs started off marginally lower than the average in 1999, they are almost at par to the average Indian. The Muslims, on the other hand, have consistently lagged behind OBCs.

### Index of Educational Attainment for All-India, 1983-2011

Group	Index of Educational Attainment					
	1983	1993	1999	2004	2009	2011
SC	2.9	3.8	5.3	6.4	7.6	8.4
ST	2.3	3.2	4.6	5.1	6.9	7.4
SCST	2.7	3.6	5.1	6.1	7.4	8.1
OBC			7.1	8.3	9.9	10.7
Muslim	4.4	5.2	6.4	7.2	8.2	8.6
Others	7.0	7.6	12.4	13.8	14.9	15.3
<b>All</b>	<b>5.7</b>	<b>6.3</b>	<b>7.9</b>	<b>8.9</b>	<b>10.2</b>	<b>10.8</b>

Source: NSS Employment-Unemployment Surveys, various years

Note: 1. This is calculated by dividing the population into six categories and calculating the percent of each group in each category - illiterates, primary education, secondary education, higher secondary education, graduates and post-graduates. These are then weighted by the years of education to arrive at the final index.

2. It is calculated for the ages 15 to 59.

## Are the OBCs Really Backward?

- While OBCs are clearly comparable to the average Indian on the basis of educational attainment, the division within OBCs makes it more stark.
- OBC Muslims are lagging far behind the average OBC and behind all other OBC sub-categories.

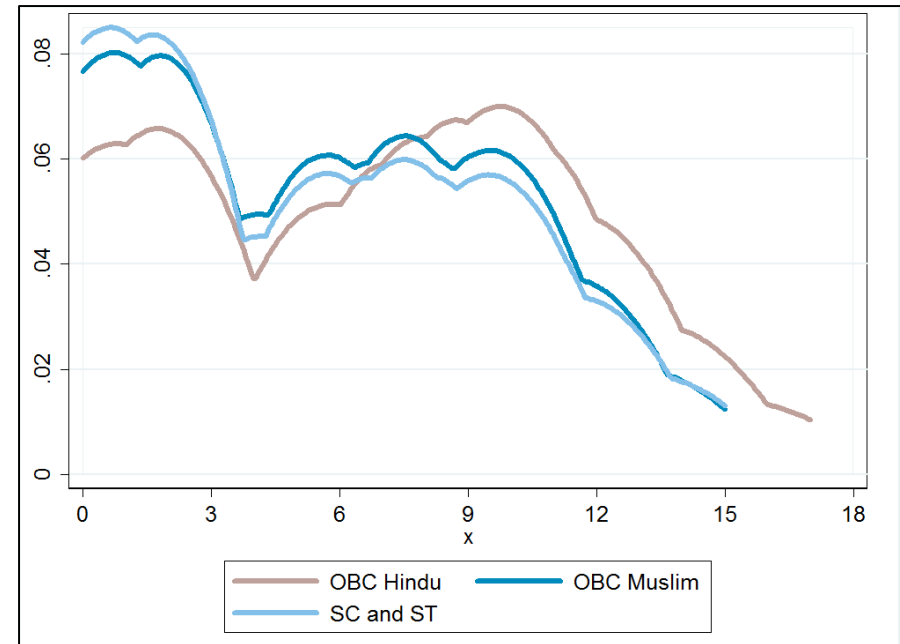
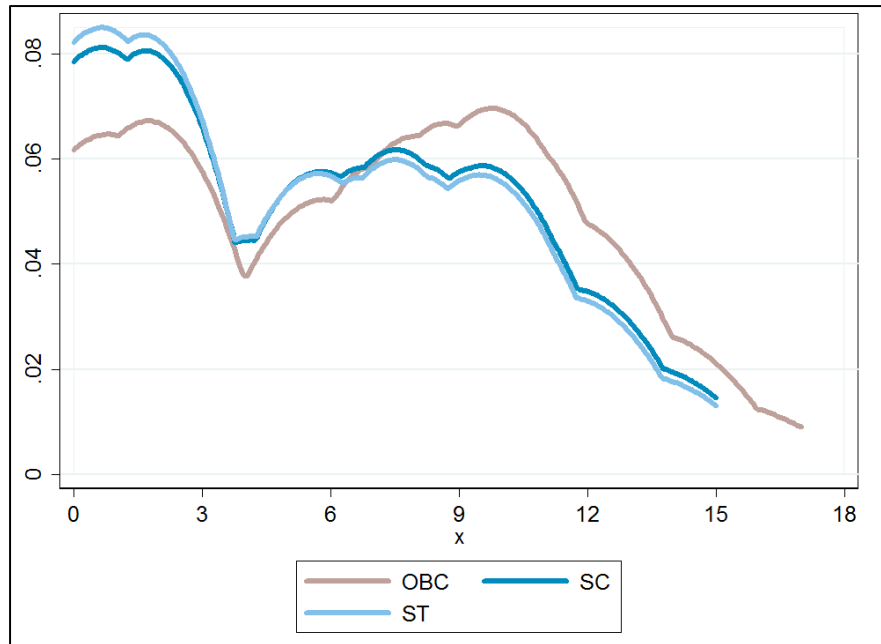
Index of Educational Attainment for OBCs, 1999-2011

Group	Index of Educational Attainment			
	1999	2004	2009	2011
OBC Christian	12.1	12.7	14.3	14.5
OBC Hindu	7.0	8.2	9.8	10.6
OBC Muslim	6.3	6.8	8.1	8.4
OBC Sikh	10.7	9.6	10.1	13.4
OBC	7.1	8.3	9.9	10.7



# Are the OBCs Really Backward?

- The education distributions of OBC vs SC and ST shows that OBCs are far ahead of SC and ST.
- The comparison of OBC Muslim and Hindu with SC and ST shows that OBC Muslims are at par with SC and ST i.e. far behind Hindu OBCs.



## Are the OBCs Really Backward?

- Comparing per capita incomes, Muslims and OBCs were even in 1999 but the gap has widened considerably by 2011. Even within OBCs, the OBC Muslims are the worst-off in 2011. So if class is a factor why aren't Muslims benefitting? Is the Indian constitution a Hindu constitution?

### Per Capita Incomes, 1999-2011

Group	Per Capita Income		% Change in Per Capita Income 1999-2011
	1999	2011	
SC	524.1	730.8	39.4
ST	483.4	629.7	30.2
SCST	511.3	698.8	36.7
Muslims	610.2	787.9	29.1
OBC	620.3	872.6	40.7
OBC Muslims	656.2	777.5	18.5
OBC Hindu	610.3	880.8	44.3
All	663.4	930.2	40.2

Source: NSS Consumption Survey

## Is the Quota System Even Working?

- It can be clearly seen that the OBCs are not backward and there were many backward groups such as Muslims that deserved reservations. According to the Constitution, they are economically backward – so why the discrimination?
- However, what is the current status of the quota system? As the quota system is primarily for jobs, let us analyze the proportion of different classes in government sector jobs.
- More Half-Pregnancy?

### Distribution of Government Jobs by Reservations 2011/12 – Not for Muslims

Caste	Percent in Population	Of Salaried Population, Percent of Caste with	
		Govt Jobs and at least 10th Standard Education	Govt Jobs and at least 12th Standard Education
SC	18.5	20.5	14.7
ST	8.5	37.5	30.2
SC and ST	27.0	24.5	18.4
OBC	43.4	21.0	17.5
OBC Hindu	35.9	22.8	19.0
OBC Muslim	6.5	10.6	8.6
Others	29.6	26.9	22.9
All	100.0	24.1	19.8

\*For ages 16-59