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**BOOK REVIEW: 'THESE SEATS ARE RESERVED: CASTE,
QUOTAS AND THE CONSTITUTION OF INDIA' BY
ABHINAV CHANDRACHUD**

RUDRA CHANDRAN¹

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“But how can we even start to be strong when there is a disease in our midst? This disease, my brothers and sisters, is the notion of untouchability ravaging us for centuries, denying dignity to our fellow beings. This disease must be purged from our society, from our hearts and our minds”²

INTRODUCTION

Keeping the above words in mind, Abhinav Chandrachud’s Book ‘These Seats are Reserved: Caste, Quotas and the Constitution of India’ seems like a stoic account of the Reservation Policy in India analysing the same even before India got her independence. It traces the measures taken by the British in India to that of Dr. B.R. Ambedkar and how the reservation policy was shaped in India.

The issue of caste and reservation is still plaguing the country, and the same is being affirmed by news of instances such as the one where a young Dalit student in IIT Bombay took his life allegedly due to being a victim of harassment due to his caste. Unfortunately, such instances are recurring, especially amongst the youth. On January 17, 2016, Rohit Vemule, a Dalit student and Ph.D candidate at the University of Hyderabad committed

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² ROHINTON MISTRY, A FINE BALANCE 107 (1st ed. 1996).

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suicide as he was not able to get grants for his study, and because of the prejudices he had faced in the University. His suicide note was a scalding reminder of the social situation and how he felt his “*birth was his fatal accident*”.³ Therefore, it is imperative that as conscious citizens of this country, we read the book to understand the reservation and caste dynamics.⁴

Chandrachud addresses that the reservation policy in India remains incomplete without addressing case laws and through it, the role played by the Hon'ble Supreme Court of India.

In India, the traditional caste system divides the society into the following four Varnas, the Brahmins, the Kshatriyas, the Vaishyas, and the Shudras (who are generally referred to as untouchables).⁵ Shudras were restricted in their access to temples, wells, schools, and shops. There were strict rules of segregation amongst the castes which were rigidly enforced by the higher castes through strict rules of endogamy and coercion.⁶

Countries like the United States of America (“**U.S.**”) and South Africa have a comparable history of discrimination in matters of their treatment of Blacks. Slavery, like untouchability in India, was deeply rooted in both the countries' history. In both these countries, since discrimination is based on the racial origin of people, compensatory discrimination forms the basis of such action.⁷ In the U.S., it can be read into the Fourth Amendment.⁸ In

³ The Wire, *My Birth is My Fatal Accident: Rohith Vemula's Searing Letter is an Indictment of Social Prejudices*, THE WIRE (Jan. 17, 2019), <https://thewire.in/caste/rohith-vemula-letter-a-powerful-indictment-of-social-prejudices>.

⁴ S. Shantha, *IIT Bombay Suicide: Did Authorities Fail to Act Even After Surveys Pointed to Rampant Casteism?*, THE WIRE (Mar. 11, 2023), <https://thewire.in/caste/iit-bombay-suicide-did-authorities-fail-to-act-even-after-surveys-pointed-to-rampant-casteism>.

⁵ *Id.*

⁶ Edward B. Harper, *Ritual Pollution as an Integrator of Caste and Religion*, 23 J. ASIAN STUD., 151-197 (1964).

⁷ P. Anthony Raj & Nagaraju Gundemedu, *The Idea of Social Justice: A Sociological Analysis of the University Students' Reflections on the Reservation Policy in India*, 6 J. SOC. & SOC. ANTHROPOLOGY, 125-135 (2015).

⁸ M. Varn Chandola, *Affirmative Action in India and the United States: the Untouchable and Black Experience*, 3 IND. INT'L & COMP. L. REV., 101-134 (1992).

India, the State strives to achieve social justice by distributing opportunities to the deprived class through the reservation policy.

OVERVIEW OF THE BOOK

The Book is a historical account of the reservation policies adopted right from the Montague Chelmsford Constitutional Reforms in 1918 to the latest EWS judgement.⁹ The author describes in detail the political situation which existed from the coining of the term ‘depressed classes’ to its evolution as ‘socially and educationally backward classes.’ Throughout the book, he addresses that the objective of the policy is to ensure formal equality by correcting historical wrongs which led to inequalities in the society.¹⁰

The book is divided into seven major chapters. Chandrachud, through the first three chapters, provides a detailed account of the pre-independence reservation policy. He delves in detail regarding the ‘depressed classes’ where the British identified their degradation due to the false religious systems in the country. It was through the Montague Chelmsford reforms that they first got nominated to legislatures, starting the discourse for separate electorates.

Dr. Ambedkar participated in deliberations with the Simon Commission where he asked for separate electorates for the ‘depressed classes’ (who were later on divided into Scheduled Castes and Scheduled Tribes) which could be abolished after ten years. It is important to note that Dr. Ambedkar asked for adequate representation and not proportional representation, wherein proportional number of seats in the Parliament and assemblies shall be reserved based on their population across India. While addressing the Constituent Assembly, he stated that for the purpose of reservation, there must be a reconciliation of three separate points of view; *first*, there should be equality of opportunity for all citizens, *second*, as a general principle, there should be no reservation for any class or community, and *third*, “*there shall be reservations in favour of certain communities*

⁹ Janhit Abhiyan v. Union Of India, (2022) SCC OnLine SC 1540.

¹⁰ P. ISHWARA BHATT, FUNDAMENTAL RIGHTS: A STUDY OF THEIR INTERRELATIONSHIP 217 (1st ed. 2004).

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which have not, so far, had a 'proper look-in,' so to say, into the administration".¹¹ Moreover, Dr. Ambedkar wanted to have a sunset clause for the purpose of reservation. So, his major contention for 'adequate representation' was that reservation must be confined to the minority of seats, otherwise, the very first principle, i.e., equality of opportunity will be violated. At the same time, there was a historical development of the reservation of other Backward Classes.¹²

It is interesting to note that the seeds which were sown by Shahu Chatrapati Maharaj by funding the communal hostels for Marathas in Maharashtra were re-applied by the Maharashtra government in 2014 to give reservation to Marathas. Shahu funded communal hostels on the grounds of encouraging merit wherever it was found, and called for a non-Brahmin movement. Most importantly, he passed a resolution in 1902 where he said that fifty per cent of all vacancies in his administration had to be filled with recruits from backward classes. This resolution was relied on, when the Maharashtra government wanted to grant reservation to Marathas which was declared unconstitutional by the Hon'ble Supreme Court in the case of *Jaishri Laxmanrao Patil v. Union of India*.¹³ It is also very interesting to note that Chandrachud is indirectly addressing vote bank politics, where political appeals are made on the basis of caste, language, religion, and sect already existing in India which was not the intention of Dr. Ambedkar.

Chandrachud, in the second Chapter of his book, points out that the original intent of the Constituent Assembly was to allow reservations only in legislative bodies and government jobs, and not in other areas, including the Rajya Sabha and the Cabinet. The members of the Constituent Assembly felt that there is no requirement for reservation of seats in the Cabinet as it would be 'constitutionally improper'. It can also be connected to Dr. Ambedkar's three-point formula, as he had repeatedly made it clear that reservation is an exception to equality of opportunity and that it should not be excessive. He, for this purpose, said that there should be a sunset

¹¹ 7 CONST. ASSEMB. DEB. (Dec 30, 1948),

https://eparlib.nic.in/bitstream/123456789/762989/1/cad_30-11-1948.pdf.

¹² *Id.*

¹³ *Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 8 SCC 330.

clause of ten years for it. The reservation policy which was the original intent of Dr. Ambedkar had long walked into the pyre, but the social purpose of the same is still burning in the strata of society.

The next few chapters of the book are a very objective account of the reservation policy adopted in India after independence, where the author goes on to analyse the case laws and amendments brought by the Centre to address the issues relating to caste. He analyses in detail the role played by various judgements in shaping the reservation policy in India. The first major case of *State of Madras v. Champakam Dorairajan*¹⁴ was decided in 1951, where the Hon'ble Supreme Court held that the Communal G.O. of 1927 (which stated that seats in Engineering & Medical Colleges should be filled on the following basis: six seats for Non-Brahmin Hindus, two seats for Backward Hindus, two seats for Brahmins, two seats for Harijans, one seat for Anglo Indians & Indian Christians, and one seat for Muslims), was in violation of the fundamental rights guaranteed to the citizens of India under Article 15(1) and Article 29(2) of the Indian Constitution. This led to the first amendment to the Indian Constitution, where they added Clause (4) to Article 15¹⁵ which furthered reservation for socially and educationally backward classes or for the Scheduled Castes and the Scheduled Tribes.

Another difficulty that was soon faced was the identity of the 'Other Backward Class' and the question that whether caste is the sole factor in determining backwardness was still not figured out. This led to the formation of the Kaka Kalelkar Commission, 1955, which put out four criteria into determining who is a backward class. The Committee said that a backward class is based on a low social position in the traditional caste hierarchy, with no means of education, no adequate representation, or being inadequately represented in trade, commerce and industry policy. Even though the Supreme Court took the stance that caste should be a factor of backwardness and not the sole factor¹⁶ got watered down. The

¹⁴ *State of Madras v. Champakam Dorairajan*, (1951) SCC 351.

¹⁵ Clause (4) to Article 15 allows the State to make special provisions for the advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes and Scheduled Tribes.

¹⁶ *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649.

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adoption of the creamy layer was a welcome change.¹⁷ But the Mandal Commission, 1979, was set up which said fifty-two percent of the population are SEBC and made recommendations for twenty-seven percent of reservations for SEBC and twenty-two point five percent for SC/STs, as it was categorically mentioned in the case of *Indira Sawhney*¹⁸ that the reservation should not exceed fifty percent. The judgement recognised that reservation could not be restricted to a minority of seats but at the same time, it could not be extended to seventy percent.

Chandrachud, in a way, traces the evolution of reservation for Other Backward Classes through different cases and the possibilities of reservation, but he does not address whether social justice through distribution was achieved. Furthermore, he addresses the question that Dr Ambedkar's vision of reservation got watered down due to the issue of vote bank politics and its misuse. Chandrachud also seems to assume that vote bank politics is bad for democracy as it is still a much-debated topic in India. He points out how the legislature brought up the 77th Amendment to overcome the Indira Sawhney judgement. He touches upon horizontal reservation where he also argues that the same has to be determined by quantifiable data as was specifically mentioned in the case of *M. Nagaraj*.¹⁹

Chapter seven of the book focuses on issues relating to marriage, conversion, and migration, where Chandrachud raises important questions on whether a woman loses her caste when she converts to another religion. This Chapter is extremely important in matters relating to migration, as reservation is usually provided by the State in matters of education and employment, hence migration results in the loss of such status. This is something which happens in the everyday life of a common man. He might not have knowledge that if he settles in another state, he can lose his stature relating to reservation and thus, the 'no migration rule' assumes that social disabilities are not the same everywhere. But, sometimes, it may yield an unfair result which defeats the whole purpose of justice. This Chapter

¹⁷ *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.

¹⁸ *Indira Sawhney & Ors. v. Union of India*, AIR 1993 SC 477.

¹⁹ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

seemed very interesting, especially with the latest judgement of *D Kumar v. A Raja*.²⁰ The case pertained to the constituency of Devikulam which was reserved for the Scheduled Caste among Hindus, within the State of Kerala. The question before the Court was whether a Christian in Kerala could claim reservation for being a Hindu Parayan under Section 5 of the Representation of the People Act, 1951. It was found that his grandparents migrated to Kerala from Tamil Nadu in 1951, and hence he cannot claim to be a member of the Hindu Parayan under Part 8 of the Constitution (Schedule Castes) Order, 1950. Even if Hindu Parayan is a Scheduled Caste in Tamil Nadu, the Court pointed out that since his grandparents only had temporary arrangements in Kundala Estate and later they converted to Christianity, the protection granted to the Hindu Parayan community with respect to election to Devikulam constituency cannot be claimed.²¹ This conundrum related to the no migration rule and further, on matters of conversion, marriage was what the author was trying to provide in this chapter. The sheer fact that every citizen has a fundamental freedom to travel across all parts of India and reside freely in any part of India, coupled with no migration rule with respect to reservation, acts detrimental to the rights of such people.

While concluding, Chandrachud is treading carefully. Mostly, he sums up what he was trying to say in the previous chapters and calls for quantifiable data, as the last Census happened in India in 2011. As part of the conclusion, he gives arguments for and against reservations.

CRITICISM OF THE BOOK

The constitutional provisions to enable reservations shows the constitutional commitment to enforce distributive justice. Distributive justice assumes that different groups or communities in a society are not equal in terms of the resources possessed by them and their capacity to improve their own economic standards and in turn, their social status.²² The fundamental objective of distributive justice is equality, and the Constitution of India embodies principles of distributive justice in both Part III of the Constitution, as well as in the Directive Principles of State

²⁰ D. Kumar v. A. Raja, 2023 SCC OnLine Ker 1643.

²¹ *Id.*

²² Raj & Gundemedu, *supra* note 7.

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Policy. The reservation policy in India acknowledges various deprivations that are a result of historical wrongs and through that, it strives to achieve social justice by distributing opportunities to such deprived classes. But Chandrachud, through the book, failed to bring out this aspect of the constitutional spirit of this country.

Even though the author traces the history of quotas in this country, the book seems incomplete without addressing how the inequalities can be rectified through the methods adopted or whether it is even possible. The caste system in the society cannot be rectified just by giving the quotas, it is something which requires more equitable representation in the hopes of achieving social, economic, political and cultural justice. The problems relating to the caste system are obviously deeply ingrained into the societal scheme of India and identifying the backwardness of communities has to take into consideration their castes as well. In the case of Scheduled Castes (SC) and Scheduled Tribes (ST), the Presidential List is the determinant, however, who has to be identified as an SC/ST, has also been motivated by political reasons in the past. The major kind of dichotomy between higher and lower caste communities is not based on economic disparities alone, but also social stigma and untouchability.

Hence, there is a need to address the alternative requirements of quota-based reservations. The Anti-Discrimination and Equality Bill, 2016 was a comprehensive and universal legislation that could address all forms of discrimination. This particular legislation is a good example because it is universal, as it acts on it in a manner that would result in the protection and welfare of the backward classes. The above Bill had, in fact, recommended the setting up of Central and State level Equality Commissions to issue guidelines regarding discriminatory collection of data and formulation of a diversity index, etc. The enactment of such universal laws shall be beneficial to address problems that cannot be addressed through quota-based reservations.

Moreover, the book does not address the issues related to economically weaker sections. The issue is completely avoided. In relation to access to public goods, the book does not talk about how the 103rd Amendment is

utterly arbitrary. The whole purpose of the concept of reservations is to ensure that the substantive equality provided by the Constitution can only be achieved through some special provision, ensuring representation of the most backward class of citizens on account of caste practices, that at the same time will be controlled by the adequacy of representation. In simple words, reservations arise from the prevention of discrimination, which forms the central theme of the Constitution to produce a just social order.²³ The EWS reservation provides reservation benefits to a section of the population that is not socially backward, and whose communities are already represented in public employment, violates the very purpose of reservations and the essence of equality of opportunity, as mentioned under Article 16 of the Indian Constitution.

The important question of the Caste Census, of whether there should be one, was not even addressed by the author. He clearly points out the lacunae present in the reservation policy in India, majorly in matters relating to horizontal discrimination in favour of groups like women, differently abled, etc. Perhaps, the most important matter is that, if reservations are inherent in the principle of equality of opportunity and not an exception, it is also required that reservations be made a fundamental right, which the courts have continuously negated by saying that it is not one, rather affirming that it is an enabling provision.

CONCLUDING REMARKS

The book is accessible to the general public. Through historical legal research, the author establishes a link between the past and the present, between the depressed and reserved classes, and between Phule and Vemule. Therefore, it serves as a prologue to the much debated topic of reservations. But having said that, Chandrachud's book has its own drawbacks as well.

Although the book traces quota-based discrimination, it does not seem to understand the very precondition to such laws, which are relative group disadvantages. When a society has been horizontally and vertically split and stratified on the basis of caste and creed for ages and is breeding a system

²³ *Abhiram Singh and Ors. v. C.D. Commachen*, (2017) 2 SCC 629.

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of inequality which keeps on perpetuating. Discriminatory laws are to be designed in such a way that the tangible benefits reach the most deprived.

In conclusion, it must be noted that the book acts as a beginner's guide on the matter of reservations, but it's not the chef-d'oeuvre. The basic problem lies in the fact that the book gives a very neutral position on the subject of reservations, unfortunately, which is where lies its biggest weakness too. When it comes to issues relating to 'Caste, Quotas and the Constitution of India', one can no longer take a neutral stand.