

Ryan International School, India

INDIAN MODEL UNITED NATIONS 2019



Background Guide – AIPPM

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Letter from the Executive Board

On behalf of the entire team here at the INMUN 2019 and the moderation panel of All India Political Parties Meet, being simulated at the conference, I extend a very warm welcome to all of you to INMUN 2019.

This letter will provide you with a brief of our outlook for the committee. The committee shall focus on political intellect and analytical application of research in resolving politically sensitive issues. This common goal of the committee is to organise a deep discussion on some important issues that have affected the status quo. As the executive board, we expect you to have a thorough understanding of India's socio-political environment. At the same time, you are expected to apply your skills and arrive at solutions/modifications to the issues at hand.

Given the volatile nature of the committee, this guide shall only give you a basic insight into the background of the agenda and be an impression of the flow of debate we intend to see.

That being said, kindly do not limit your research to the contents of this guide and ensure that you logically push your research to areas associated with the issues mentioned. Kindly note that nothing mentioned hereinafter shall be considered as a substantive proof in the assembly.

If you have any questions that you come across while researching, do not hesitate to email me. Wishing you the best of luck and looking forward to see you at the conference.

PROPOSED PATTERN FOR RESEARCHING

- Research on the allotted portfolio, understand your portfolio's stance on the agenda, issues that were important to them and the sort of ideas they represent
- Comprehend the party policy of the allotted personality, understand the ideology and principles adopted by the party on the agenda.
- Study the past actions taken by the party/personality on the agenda and other related issues and evaluate their causes and consequences.
- Research further upon the agenda using the links given

in the guide and from other sources such as academic papers, institutional reports, national reports, news articles, blogs etc.

- Where the exact position of your portfolio cannot be found, use logical analysis and reasoning to form a position that is consistent with their views on other issues, statements made by them, party affiliations, etc. This does not mean that all these parameters should be complied with, but a major resonance should be seen. For instance, if Pandit Nehru's views on say reservation were not directly available, his membership of the Congress party, belief in socialism and a welfare state, and support for the alleviation of the downtrodden alongside Mahatma Gandhi, would suggest that he would favour reservation.
- Divide the agenda into sub-topics and prepare speeches and statements on them, in accordance with your portfolio's position, or its logical extrapolations.
- Compose solutions and actions that can be adopted on the issue as per your party's ideology.
- Participants can also alter and divert from positions taken by their portfolio in the past, provided they can produce arguments explaining why their personality could make the departure.

RULES OF PROCEDURE

Procedure is a vital aspect of Model UN. In committee, there are very specific guidelines that must be adhered to when one wants to make an action. While rules of procedure vary from conference to conference, the following document explains the parliamentary procedure in Indian Committees. Parliamentary procedure is the language through which you will communicate during the conference. The following guide is a "translation," and explains each rule in a few different ways. First, the "context" describes what the function of the rule is. Second, the "when" explains the time that the rule is used. Third, a "comment" is provided if there is another part of the rule. And lastly, the "best used for" explains the best time for a rule to be used.

Motions

A motion is used in committee when a delegate wants to have an action passed that affects the entire committee.

Like the name suggests, “motion,” as in “moving,” means that you are “moving” towards an action (this may help you remember).

MOTION TO OPEN THE OPENING STATEMENTS

- **Context:** This motion is issued when a delegate wants to start a new OPENING STATEMENT; the chair will then call on delegates who want to be added to the list.
- **When:** This is used at the beginning of the conference when an opinion statement has to be opened to set the agenda; it is also used to create a new opening statement after the agenda has been set (and for every new topic up for discussion thereafter).

MOTION TO SET THE AGENDA

- **Context:** This is used to set the order in which the topics will be debated; there will be two speakers for and two speakers against the motion.
- **When:** The motion is used after there has been sufficient debate upon which of the topics on the agenda is more important and will be entertained at the discretion of the chair.

MOTION FOR A PUBLIC SESSION

- **Context:** This motion is employed when one wants to start a public session.
- **When:** A public session can be called for anytime during organized debate (when the chair asks if there are any points or motions on the floor), or after a previous caucus is finished.
- **Comment:** When a delegate calls for a public session, they also must specify the length of the caucus, the length of each speaking time, and the purpose of the caucus; for example “motion for a ten minute public session with a thirty second speaking time for the purpose of discussing education within the field of child labor.”
- **Best used for:** A public session is best used for relatively fast paced discussions about a specific sub-topic. It is sometimes used to hear the opinions of many nations in order to focus what the committee will talk about.

MOTION FOR A PRIVATE SESSION

- **Context:** This motion is utilized when one wants to start an unmoderated caucus.
- **When:** An unmoderated caucus can be called for anytime during organized debate (when the chair asks if there are any points or motions on the floor), or after a previous caucus is finished.
- **Comment:** When a delegate calls for an unmoderated caucus, they also must specify the length of the caucus.
- **Best used for:** An unmoderated caucus is best used for informal debate. If a delegate wishes to have a discussion with another delegate, or if a delegate wishes to collaborate with others in writing a resolution, then a private session would be appropriate.

MOTION FOR A RIGHT OF REPLY

- **Context:** If a member of the committee makes a personal attack on another delegate, then the offended delegate is permitted to reply to the delegate.
- **When:** A right of reply is requested directly after the personal attack is made
- **Comment:** The chair makes the ultimate ruling as to whether or not the delegate in question deserves a right of reply.
- **Comment:** At INMUN, all rights of reply must be submitted to the chair in writing.

MOTION TO INTRODUCE PRESS RELEASE

- **Context:** This motion is used when a delegate wants to introduce (meaning read it to the committee and make it an official document) a press release.
- **When:** This motion is used after the dais staff has handed out the working paper/resolution/amendment to the committee.
- **Comment:** When you move to introduce the document, you also must specify the number (ex: motion to introduce resolution 2.3).

MOTION FOR A ROLL CALL VOTE

- Context: During voting procedure, as oppose to raising one's placard to vote, a delegate can motion for a roll call vote, which means that each country will be called on individually to cast its vote.
- When: The motion is used during voting procedure and automatically adopted, with the chair's approval.
- Comment: The ways one can vote during a roll call vote are yes, no, yes with rights, no with rights, abstain, and pass. If a delegate votes yes, it means he/she is in favour of the resolution. If a delegate votes no, it means the delegate is against the resolution. If a delegate abstains, it means he/she does not wish to cast a vote on the resolution. If a delegate votes yes/no with rights, it means the delegate wishes to explain his/her vote. The delegate, upon completion of the roll call vote, will receive a thirty-second speech. If a delegate votes yes/no with rights it usually means that the delegate would like to explain why he/she is voting against their country's position or against what the country was arguing for during debate. If a delegate passes, it means that the delegate is unsure of how to vote, and will be called upon at the end of the roll call vote. Please note that if a delegate passes, he/she cannot vote with rights.

Yields and Comments

YIELD TO THE CHAIR

- Context: After the completion of a speakers list speech, a delegate may yield to the chair. This means that the chair will absorb the time remaining in the speech (meaning nothing will happen with any time remaining).
- When: After a speech on the speakers list.

YIELD TO QUESTIONS

- Context: After the completion of a speakers list speech, a delegate may yield to questions. This means that with the remaining time, the chair will call upon other delegates to ask the delegate giving the speech questions that must pertain to the speech that was just given.
- When: After a speech on the speakers list.
- Comment: The time taken for a delegate to ask the question will not be counted towards the time remaining in the speech.

YIELD TO ANOTHER DELEGATE

- Context: After the completion of a speakers list speech, a delegate may yield to another delegate. This means that with the time remaining in the speech, another delegate will be able to elaborate on the ideas that the first delegate presented; the second speaker may not talk about a topic the first speaker did not mention. Please note that only one yield may be made per speaker on the speakers list.
- When: A delegate yields to another delegate after a speech on the speakers list.
- Comment: If the speaker intends on yielding to another delegate, he/she should be sure that the delegate yielded to will support his/her ideas.

YIELD TO COMMENTS

- Context: After the completion of a speakers list speech, a delegate may yield to comments. This means that 2 thirty-second speeches can be made by any delegate (the chair will call on two delegates who wish to make comments). Note that the comment must pertain to the original speech.
- When: A delegate yields to comments after a speech on the speakers list.

COMMENTS (NO YIELD REQUIRED)

- Context: If a delegate fails to yield after a speakers list speech, then 2 thirty-second comments are in order. If a speaker fails to yield, a delegate can motion to comment. These comments can be made by any delegate in the committee (the chair will choose 2 delegates who wish to speak). Please note that the comment must pertain to the original speech.
- When: Comments are warranted after a speech on the speakers list.

Points

In general, points are a way to ask a question in committee, or bring something of nonsubstantive importance to the committee's attention.

POINT OF PARLIAMENTARY INQUIRY

- Context: This point is used when a delegate is unsure of or wants a clarification of a rule or committee procedure; it can also be used if a delegate has a non-substantive question (such as "point of parliamentary inquiry, would it be in order to start handing in working papers at this time?").
- When: This point can be used any time when the chair is

taking points from the floor.

POINT OF PERSONAL PRIVILEGE

- Context: This point is used when a delegate's ability to participate in committee is impaired. For example, one could use this point if it is difficult to hear the speaker or it is very cold in the room.

- When: This point can be used anytime, even during another delegates' speech.

- Comment: Using too many points of personal privilege can be unproductive to the committee, so use them very sparingly and only if the issue is truly impairing your ability to delegate, not just if it is a touch hot.

POINT OF INFORMATION

- Context: This is used when a delegate has a substantive question for a speaker during formal debate.
- When: This point can be used any time the chair says that questions are in order.

POINT OF ORDER

- Context: A delegate can raise a point of order when there is a violation of the rules of procedure. The chair will decide whether there is a violation immediately, and if there is, then the violation is corrected or stopped.

- When: This point can be used anytime, including during another delegates' speech

- Comment: A point of order is a very serious procedural matter, especially since it has the power to interrupt other committee proceedings. Therefore, it should be used in a responsible manner; it should only be used if a delegate is sure a rule is broken. If a delegate is not sure if a rule is broken, or if the possibly broken rule does not affect the committee proceedings, it could be prudent for the delegate to rephrase the question at a more appropriate moment in the form of a point of parliamentary inquiry. Also note that while all ILMUNC chairs are well versed in the official rules and procedures, they have the ability to adopt rules of debate at their own discretion. All modifications will be announced at the beginning of the conference and delegates are encouraged to use Points of Parliamentary Inquiry if anything is unclear.

AGENDA 1: DISCUSSION ON ISSUE OF RESERVATION OF INDIA.

Reservation in Indian law is a form of affirmative action whereby a percentage of seats are reserved in the public sector units, union and state civil services, union and state government departments and in all public and private educational institutions, except in the religious/ linguistic minority educational institutions, for the socially and educationally backward communities and the Scheduled Castes and Tribes who are inadequately represented in these services and institutions.

The reservation policy is also extended for the Scheduled Castes and Scheduled Tribes for representation in the Parliament of India.

Reservation in India & its Constitutional Provisions

The exact necessities for the reservation in services in favor of the members of the SC/STs have been made in the Constitution of India. They are as follows:

- Article 15(4) and 16(4) of the Constitution enabled both the state and Central Governments to reserve seats in public services for the members of the SC and ST, thereby, enshrining impartiality of opportunity in matters of civic service.

- Article 16(4 A): it makes provisions for reservation in the matter of promotion to any class or classes of posts in the services under the State in favor of SCs and STs (Constitutional 77th Amendment, – Act, 1995).

- Article 16 (4 B): It enables the state to fill the unfilled vacancies of a year which are reserved for SCs/STs in the succeeding year, thereby nullifying the ceiling of fifty percent reservation on total number of vacancies of that year (Constitutional 81st Amendment, – Act, 2000).

- Article 330 and 332: It provides for specific representation through reservation of seats for the SCs and the STs in the Parliament (Article 330) and in the State Legislative Assemblies (Article 332), as well as, in Government and public sector jobs, in both the federal and state Governments (Articles 16(4), 330(4) and 335).

Rationale behind giving reservation

The underlying theory for the provision of reservation by the state is the under- representation of the identifiable groups as a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST).

The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities.

Present Status of reservation policy in India and facts about reservation system in India

After introducing the provision for reservation once, it got related to vote bank politics and the following governments and the Indian Parliament routinely extended this period, without any free and fair revisions. Later, reservations were introduced for other sections as well.

- The Supreme Court ruling that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. The central government of India reserves 27% of higher education for Other Backward Castes, and individual states may legislate further reservations.
- Reservation in most states is at 50%, but certain Indian states like Rajasthan have proposed a 68% reservation that includes a 14% reservation for forward castes in services and education.
- However, there are states laws that exceed this 50% limit, and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69% and is applicable to about 87% of the population in the state of Tamil Nadu.

Impact of Reservation policy in reducing caste inequality

Various cases of violence have been reported against Dalits in recent years. They are subject to exploitation since earlier times. A famous incident was of Phoolan Devi's exploitation by the upper caste people. Phoolan Devi was born in a small town of Uttar Pradesh where girls were like burden. Like every low caste girl who are to work for the upper caste families, she was married at an age of eleven years to a heartless man in his thirties in return for a bovine. In the wake of being assaulted by her husband for many years, she some way or another figured out how to escape from her spouse and joined a gang of bandits. Later, after a battle she was assaulted by upper caste bandits. She was secured up in Behmai, a village of Thakurs. For about fourteen days, a gathering of Thakur assaulted Phoolan, on numerous occasions until the point

that she lost her consciousness. Later she herself became the gangleader and took the revenge. This shows her story of courage by not getting suppressed by upper caste people. Another case like this was reported on February 29, 2016. Raju Bairwa, a schedule caste was called to help in marriage arrangements at his village in Rajasthan. His spouse discovered him by the riverside extremely injured. The culprits had placed sand in his mouth, so he wouldn't have the capacity to scream. Later he died. The family had been hassled and debilitated for a long time over a land dispute in spite of the fact that they legally possessed the land which was in question with upper caste villagers.

So, the crime against Dalits have not yet stopped but reservation system has contributed to a large extent in reducing caste inequality and changing the mentality of the society. Reservation is considered a Positive discrimination. As in the olden days, lower castes were badly harassed and discriminated. To uplift the lower castes and give them equal opportunities reservations are must. When there are two parties which are not equal then it is not fair to treat them equally. The existing situation of inequality has to be removed first. How to do it? The most disadvantaged among the two has to be provided with a positively discriminated treatment so that they can make use of the opportunity to become equals. Hence, Reservations in case of Sc/St are inevitable for a rapidly developing nation like ours. Reservations reflect the principle of "EQUALITY" enshrined in the Constitution. People do rise from worst circumstances in life to reach respectable position due to reservations. Not all people who take reservations lack merit/talent, but they didn't have resources to work hard. When they were studying in candlelight nobody came with a bulb. Reservation compensate them for inequality in their resources to achieve their aim. It gives voice to the oppressed classes and show them a path to progress. Thus, it helps in removing the inequality among different castes by bringing them at same level with other upper castes. So, Seats are reserved in Lok Sabha for SC&ST so that they get a chance of decision making and present their views and ideas on different aspects of society. Because they had been deprived of these right for centuries.

Poor people cannot afford to send their children to school because the opportunity cost of sending the children to school is very high as they make valuable contributions to the household economy. These children since their birth have seen financial problems in their families and they also want to provide a good standard of living to their family. They can't even afford coaching's or give fees of big institutions. So, the reservation policy has given

a hope to such category to pursue good education by getting seats reserved for them at various job and college entrances thereby they can improve the economic status of their families. It has been effective also as there are many citizens who are Dalits or OBCs and are excelling in various fields like Kalpana Saroj, Ilaiyaraaja.

This policy is framed for the betterment of backward classes, but no one can ignore its disadvantage because it defeats meritocracy that is accessibility of options to the most capable and deserving candidate. So, reservation system is an affirmative action but only to the extent, it is not exploited.

But with the passage of time, we have deviated from our initial goal of introducing the reservation policy.

- Division of the society-It leads to the division of the society into various castes. Today we stand partitioned generally into Hindu, Muslim, SC, ST and OBCs with more current reservations coming up for other distinctive sections. We are a secular nation and uniformity is must for secularism to endure. Partitioning the populace based on castes and religions has never given any benefit to the country.

- Caste based not economic based-Reservation on an economic basis is a much more pragmatic outlook in a nation like India as it was introduced with the motive of uplifting the weaker sections of the society. In light of the fact that if there should be an occurrence of economic based reservation framework, all individuals who are poor will get reservation regardless of their castes as neediness does not choose individuals based on their caste and henceforth if country's needs to bring correspondence between citizens then it ought to select economic based reservation as opposed to caste-based reservation. In the case of Balaji v. State of Mysore, it was held that 'caste of a person cannot be the sole criteria for ascertaining whether a particular caste is backward or not. Determinants such as poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. The court further held that it does not mean that if once a caste is considered to be backward it will continue to be backward for all other times. The government should review the test and if a class reaches the state of progress where reservation is not necessary it should delete that class from the list of backward classes.

- Discourages the other category people-The biggest disadvantage of reservation system is that it gives reservation to people in competitive exams or government

job entrances on the basis of caste and not on merit. This disheartens the people from general category as they could not get the seats in their dream colleges or Jobs in spite of hard work. What hurts them more is that a person from reserved category securing less marks gets the seat in same college. When poor people from general category who worked really hard for a Job entrance cannot clear a paper in spite of getting good marks, they become depressed or sometimes they even commit suicide. For instance, Tina Dabi who belonged to a middle-class SC family topped UPSC's civil services examination in 2015. Her mother Himani Dabi is an engineer while her father, Jaswanth Dabi is working with the Department of Telecom, also as an engineer. No doubt that she has inspired a million of civil services aspirant but regardless that we respect her and yet we feel frustrated about the general population like Ankit Srivastav who scored 230.76 in Civil Services (Preliminary Examination) and still they were not ready to show up in mains examination. A basic inquiry which emerges is if Tina Dabi can top in the wake of getting 195.29 in pre-then for what reason Ankit Srivastav can't top after getting 230.76. So, reservation policy sometimes benefits those who don't even need it and at same time it takes the opportunities from people belonging to general category.

- Used for benefits- Individuals don't wish to work and take advantages of their caste hard because they know that they will get a job anyway. This is degrading the quality of workforce and hampering the growth of India. People likewise get phony certificates to take the advantage of reservation. Indeed, even lawmakers utilize it as a powerful instrument to win more votes. They divide the general public to their benefit into vote banks. Due to reservation, government officials get opportunity to play with feelings of individuals by utilizing it as tool for winning elections and not utilizing it for the advancement of the general population of the nation. Reservation policy was initiated for the upliftment of lower caste people and so it is a positive discrimination. It has been effective to a great extent but with the passage of time, this policy has been exploited by the politicians, creamy layer among lower caste people. So, this policy to be an affirmative action needs to be reviewed. By giving reservations, the members of the constituent assembly wanted to bring changes in the way lower caste people are treated in the society so that they can avail equal opportunities like upper caste people. So, it was adopted as an affirmative action. But now, the scenario has changed, and amendment are needed in this policy for the betterment of the society as a whole. Discrimination on the basis of residence Article 16(3) says

that only the parliament can make any law prescribing employment or appointment for a government job on the basis of residence. This means that if parliament finds it suitable, it can discriminate on the ground of residence. Here, you should note that parliament is empowered to make a recruitment within a state or union territory in which person may get preference. But at the same time, the State Governments are NOT allowed to make such a recruitment in which residence of a person gets preference in state government jobs. For example, in October 2011, the Bengal Police had given a recruitment notification in which provides for jobs for not only specific districts but even particular areas. This was against the article 16(3) of the constitution. In Kailash Chandra Sharma versus the State of Rajasthan and others the Supreme Court observed that residence within a district or rural areas of that district should not be a valid basis for classification for the purpose of public employment. Residence be it within a state, region, district, or lesser area within a district cannot be a ground to accord preferential treatment or reservation, as provided under Article 16(3). Reservation in appointments then, in Article 16(4) the State is empowered to make any provisions 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. Via various amendments, the article 16 has been further tweaked and it is now a law that: State can make any provision for reservation in matters of promotion Filling backlog vacancies via reservation. The above two have been enabled by the constitution only on satisfying two conditions. One of them is that State should have an opinion that that particular class is backward. Second is that the State is of the opinion that the said class is NOT adequately represented in the Government job. The Government had always an opinion that the SCs and STs have not been adequately represented in the Government Jobs so used these provisions to enable reservations in the Government Jobs.

Can reservation be at the cost of efficiency? Please note that Article 335 of the constitution says that the claims of STs and SCs shall be taken into consideration constitutently with the maintenance of efficacy of the administration. This means that in the light of Article 335, the constitution forbade the Government to make unreasonable reservation at the cost of efficiency in the administration.

• Reservation for OBC: Mandal Commission On 20 December 1978 India's prime minister, Morarji Desai of the Janata Party, announced the formation of a second

Backward Classes Commission whose chairman was B. P. Mandal, a former member of Parliament. The commissions assignments were to determine criteria for defining India's socially and educationally backward classes to recommend steps to be taken for the advancement of those classes to examine the desirability of reserving state- and central-government jobs for those classes and to present a report to the president of India. On 31 December 1980 the Mandal Commission submitted its report to President N. S. Reddy, recommending ways to advance India socially and educationally backward classes. The Mandal Commission concluded that India's population consisted of approximately 16 percent non-Hindus, 17.5 percent Brahmins and forward castes, 44 percent other backward classes and 22.5 percent scheduled castes and tribes. However, since the 16 percent non-Hindus presumably included approximately the same proportion of other backward classes as did the Hindus (i.e., another 8%), the total proportion of other backward classes (Hindu and non-Hindu) came to 52 percent (44% + 8%) of India population, therefore 27% government jobs should be reserved for them. The Mandal Commission developed eleven indicators of social, educational, and economic backwardness. One indicator was being considered backward by other castes or classes. Other indicators included depending mainly on manual labour for livelihood and having an average value of family assets at least 25 percent below the state average. In addition to identifying backward classes among Hindus, the Mandal Commission identified backward classes among non-Hindus (e.g., Muslims, Sikhs, Christians, and Buddhists) if they had belonged to untouchable castes before they converted to a non-Hindu religion, or if Hindu castes with the same occupational names, such as dhobi (laundrer), lobar (iron worker), nai (barber), or teli (oil presser), were considered backward. In February 1980 the Mandal Commission conducted a nationwide socioeconomic field survey in which it gathered interview data from two villages and one urban block in 405 of the nation 406 districts. The field survey data, combined with information from the 1961 census, various states lists of their backward classes, and personal knowledge of Commission members and others, enabled the Mandal Commission to generate an all-India other backward classes (OBC) list of 3,743 castes and a more underprivileged depressed backward classes list of 2,108 castes. On 7 August 1990 Prime Minister V. P. Singh announced in the Parliament that his government would implement the Mandal Commission recommendations. This was followed by the violent objections in northern part of India.

The Constitution 117th amendment Bill

The current controversy started from a judgment delivered by a two-judge bench of the Supreme Court in U.P Power Corporation Ltd. v. Rajesh Kumar in April 2012. In the M. Nagaraj Case of 2006, it was already held by the Supreme Court that the state must demonstrate backwardness, inadequacy of representation and maintenance of efficiency before providing reservation in promotions. What the U.P Power Corporation did for the first time was to strike down reservation in promotions for not meeting these criteria. The UP- Power corporation did this because the question of inadequacy of representation, the text of Article 16 is clear that it is a matter for the state to determine. The response of the government has now come in the form of 117th Constitution Amendment Bill introduced in the Rajya Sabha. The article 16 4 A as per this new amendment bill speaks as follows: 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 favor 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. We see that the proposed Article 16 (4A), which seeks to substitute the existing Article 16 (4A), has done away with concerns of efficiency by stating that nothing in Article 335 can be an impediment, and the reference to adequacy of representation has been deleted. Government says that the reservation in promotions at the entry level does not ensure that the project of equality of opportunity is complete. It says that the reservation in promotions would take that project further, and it would not let Article 335 to become a roadblock in this project.

Instead of addressing inequality, the 10% quota for economically weaker sections creates huge anxieties. If the number of demands for implementing reforms is any guide, India's reservation system is clearly in disarray. However, it is unlikely that the recently passed Constitution (124th Amendment) Bill, 2019, creating a 10% quota for the economically weaker sections (EWS), will serve as anything more than a band-aid.

Given the deep inequalities prevalent in access to education and jobs based on caste and socio-economic status, affirmative action (or positive discrimination) makes

a lot of sense. However, the system that was put in place during the early years of the Republic deserves serious re-evaluation in an era when technology has paved the way for deploying a better equipped arsenal. Here I present an evaluation of the potential implications of the EWS quota Bill, followed by some alternatives.

Excluding no one

The Bill promises 10% reservation to individuals classified as economically backward. However, while a number of criteria were discussed in the parliamentary debate, the Bill is quite silent on this. Assuming that among the criteria discussed in Parliament, those that are currently applied to the definition of the Other Backward Classes (OBC) creamy layer are the ones to be used, it is not clear how useful they would be. While the OBC creamy layer has been created to exclude people, who are clearly well off, the EWS quota, in contrast, is expected to focus on the poor. One of the criteria — the income threshold of ₹8 lakh per annum — has been mentioned. The National Sample Survey (NSS) of 2011-12 shows that the annual per capita expenditure for 99% of households falls under this threshold, even when we take inflation into account. Similarly, as per the India Human Development Survey (IHDS), the annual household incomes of 98% of households are less than ₹8 lakh. Even if we apply all the other criteria for exclusion (e.g. amount of land owned and size of home), the Bill would still cover over 95% of the households. So, who are we excluding? Almost no one.

While the benefits of the EWS quota are likely to be minimal, the cost may be higher than one anticipates. First, it is important to remember that general category jobs are open to everyone, including Scheduled Caste (SC), Scheduled Tribe (ST) and OBC individuals. Thus, by removing 10% jobs from the "open" category, it reduces the opportunities for currently reserved groups. Hence, this is by no means a win-win situation. This may be particularly problematic for OBCs since OBC reservation is limited to 27% of the seats whereas the OBC population is at least 40% of the population, possibly more. Thus, this move is almost certain to result in calls for greater OBC reservation, particularly if a constitutional amendment to increase the proportion of reserved seats from 50% to 60% is already being adopted.

Getting caste certificates

Second, actual implementation of the EWS quota could be challenging. Few non- SC/ST/OBC individuals have a caste certificate. A large number of SC/ST/OBC households

report difficulties in obtaining these certificates. How would an individual practically lay claim to this status?

Third, in an era when skill demands are rapidly outpacing supply of candidates in specialized fields, the EWS quota increases the constraints. If a university advertises for an associate professor for quantum physics under the EWS quota and the only suitable candidate happens to be from an OBC category, she could not be hired. These challenges occur for all positions under specifically reserved categories and we have chosen to live with these difficulties in the interest of the greater good of equity. However, there is little benefit to be derived from the EWS quota.

Redesigning reservations

Arguably, the greatest cost of this amendment lies in the foregone opportunity to develop an enhanced and more effective reservation policy so that we can genuinely see an end to the entrenched inequalities in Indian society in the medium term. We have gotten so used to business as usual that we make no effort to sharpen our focus and look for more effective solutions, solutions that would make reservations redundant in 50 years.

If we were to redesign from scratch, what would an effective affirmative action policy look like? If the goal is to help as many people as possible, we are facing a serious challenge. On the one hand, 50% reservation looks very large; in the grand scheme of India's population it is a blunt and at times ineffective instrument.

The following statistics from the Union Public Service Commission provide a sobering view of ground realities. In 2014, only 0.14% applicants to the UPSC were selected. Moreover, the general category and OBCs have the highest success rate, about 0.17%, and SCs have the lowest, about 0.08%. This may be because of the perception that it is easier for SCs to be recruited via the reserved quota and this may have led to a large number of SCs taking the civil services examination. One might say that many of these candidates are not qualified for these jobs. However, if we look at the candidates who made it past the preliminary examination (providing preliminary quality assurance), the picture is equally grim. Only about 8% of the candidates who took the main examination succeeded. Here the success rate is 8.2-8.3% for SC and ST candidates, 9.9% for OBCs and 7.8% for the general category. This suggests that in spite of the grievances of upper castes, reserved category applicants are not hugely advantaged.

The above statistics tell us that in spite of reservations, a vast proportion of reserved category applicants do not find a place via the UPSC examination. I suspect statistics from other fields may tell a similar story. This implies that if we expect reservations to cure the ills of Indian society, we may have a long wait.

Spread the benefits

Hence, we must think about alternative strategies. One strategy may be to try and spread the benefits of reservations as widely as possible within the existing framework and ensure that individuals use their reserved category status only once in their lifetime. This would require that anyone using reservations to obtain a benefit such as college admission must register his/her Aadhaar number and she would be ineligible to use reservations for another benefit (e.g. a job) in the future. This would require no changes to the basic framework but spread the benefits more broadly within the reserved category allowing a larger number of families to seek upward mobility.

A second strategy might be to recognize that future economic growth in India is going to come from the private sector and entrepreneurship. In order to ensure that all Indians, regardless of caste, class and religion, are able to partake in economic growth, we must focus on basic skills. We have focused on admission to prestigious colleges and government jobs, but little attention is directed to social inequality in the quality of elementary schooling. The IHDS shows that among children aged 8-11, 68% of the forward caste children can read at Class 1 level while the proportion is far lower for OBCs (56%), SCs (45%) and STs (40%). This suggests that we need to focus on reducing inequalities where they first emerge, within primary schools.

The challenge we face is that our mindset is so driven by the reservation system that was developed in a different era that we have not had the time or the inclination to think about its success or to examine possible modifications.

A way forward

- **De-reservation Policy:** While caste may continue to be the mainstay of reservation policies, the benefits should flow to the vast majority of underprivileged children from deprived castes; not to a few privileged children with a caste tag. Families of public officials of a certain rank certain high-income professionals and others above a certain income should be de-reserved. In other words, once they have received a significant advantage of reservations, they

should be able to ensure opportunities for their children and vacate the space for the truly disadvantaged children in their own caste groups.

• **Affirmative steps:** We have to address the anger and aspirations of poor families among unreserved communities. With the Supreme Court ruling of 50 per cent ceiling on reservation quotas, no further reservation is possible. But intelligent, creative, fair and practical ways of giving the poorer children among OBCs a helping hand are possible and necessary. For instance, parental education and the school the child attended, are two sure indicators of poverty and the backwardness of a family. If parents have not had education beyond school, and if the child goes to a government school or a low-end, ramshackle private school, it is a sure sign of a lack of adequate opportunity.

AGENDA 2: DISCUSSING THE IMPLICATIONS OF ARTICLE 370 AND ARTICLE 35 (A) OF THE INDIA CONSTITUTION.

ARTICLE 370

HISTORY

In October 1947, the then Maharaja of Kashmir, Hari Singh, signed an Instrument of Accession that specified three subjects on which Jammu & Kashmir would transfer its power to the government of India:

1. Foreign affairs
2. Defence
3. Communications

In March 1948, the Maharaja appointed an interim government in the state, with Sheikh Abdullah as prime minister. In July 1949, Sheikh Abdullah and three other colleagues joined the Indian Constituent Assembly and negotiated the special status of J&K, leading to the adoption of Article 370. The controversial provision was drafted by Sheikh Abdullah.

WHAT ARE THE PROVISIONS OF ARTICLE 370?

Parliament needs the Jammu & Kashmir government's approval for applying laws in the state — except in cases of defence, foreign affairs, finance, and communications.

The law of citizenship, ownership of property, and

fundamental rights of the residents of Jammu & Kashmir is different from the residents living in rest of India. Under Article 370, citizens from other states cannot buy property in Jammu & Kashmir. Under Article 370, the Centre has no power to declare a financial emergency in the state.

It is important to note that Article 370(1)(c) explicitly mentions that Article 1 of the Indian Constitution applies to Kashmir through Article 370. Article 1 lists the states of the Union. This means that it is Article 370 that binds the state of J&K to the Indian Union. Removing Article 370, which can be done by a Presidential Order, would render the state independent of India, unless new overriding laws are made.

KEY FACTS ABOUT ARTICLE 370

1. Dr BR Ambedkar, the principal drafter of the Indian Constitution, had refused to draft Article 370.
2. In 1949, the then Prime Minister Jawaharlal Nehru had directed Kashmiri leader Sheikh Abdullah to consult Ambedkar (then law minister) to prepare the draft of a suitable article to be included in the Constitution.
3. Article 370 was eventually drafted by Gopalaswami Ayyangar
4. Ayyangar was a minister without portfolio in the first Union Cabinet of India. He was also a former Diwan to Maharajah Hari Singh of Jammu and Kashmir
5. Article 370 is drafted in Amendment of the Constitution section, in Part XXI, under Temporary and Transitional Provisions.
6. The original draft explained “the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja’s Proclamation dated the fifth day of March, 1948.”
7. On November 15, 1952, it was changed to “the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadr-i-Riyasat (now Governor) of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office.”

8. Under Article 370 the Indian Parliament cannot increase or reduce the borders of the state.

KEY FACTS BEFORE REMOVAL OF ARTICLE 370

THE SUPREME COURT OF INDIA HAD COMMENTED ON ARTICLE 370 AS A PERMANENT ARTICLE HOWEVER THIS COMMENT HAD NO LEGAL DICTUM. A SEPARATE CONSTITUTION OF JAMMU KASHMIR WAS RECOGNISED BY THE INDIAN STATE , WHICH AUTHORISED ITS INTERNAL AUTONOMY.

HOW IT WAS REMOVED.

On 5 August 2019, Home Minister Amit Shah announced in the Rajya Sabha (upper house of the Indian Parliament) that the President of India had issued The Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) under Article 370, superseding the The Constitution (Application to Jammu and Kashmir) Order, 1954. The order stated that all the provisions of the Indian Constitution applied to Jammu and Kashmir. Whereas the 1954 order specified that only some articles of the Indian constitution to apply to the state, the new order removed all such restrictions. This in effect meant that the separate Constitution of Jammu and Kashmir stood abrogated. The President issued the order with the “concurrence of the Government of State of Jammu and Kashmir”.

The Presidential Order 2019 also added clause (4) with four sub-clauses to Article 367 under “interpretations”. The phrase “Sadar-i-Riyasat acting on the aid and advice of the Council of Ministers” shall be construed as the “Governor of Jammu and Kashmir”. The phrase “State government” shall include the Governor. In proviso to clause (3) of article 370 of the Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”. According to Jill Cottrell, some of the Presidential orders under Article 370 have been issued since 1954 in similar circumstances when the state was under President’s rule. The Union governments interpreted the “concurrence of the state government” under these circumstances to mean the Governor.

Immediately after placing the Presidential Order 2019 before the Rajya Sabha, Home Minister Amit Shah moved a resolution recommending that the president issue an order under article 370(3) rendering all clauses of Article 370 inoperative. After the resolution was adopted by both houses of the parliament, the president issued Constitutional Order 273 on 6 August 2019 replacing the

extant text of Article 370 with the following text:

370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.

CHANGE OF STATUS OF JAMMU & KASHMIR

On 5 August 2019, the Home Minister Amit Shah introduced the Jammu and Kashmir Reorganisation Bill, 2019 in the Rajya Sabha to convert Jammu and Kashmir’s status of a state to two separate union territories, namely Union Territory of Jammu and Kashmir and Union Territory of Ladakh. The union territory of Jammu and Kashmir is proposed to have a legislature under the bill whereas the union territory of Ladakh is proposed to not have one. By the end of the day, the bill was passed by Rajya Sabha with 125 votes in its favour and 61 against (67%). The next day, the bill was passed by the Lok Sabha with 370 votes in its favour and 70 against it (84%). The bill became an Act after it was signed by the president.

The two union territories will come into existence on 31 October 2019, which is birthday of Sardar Patel, who unified all the princely states except Jammu and Kashmir (princely state) in independent India.

PRINCIPLE OF KASHMIRIYAT

Kashmiriyat is the ethno-national and social consciousness and cultural values of the Kashmiri people. The term Kashmiriat has come to signify a centuries-old indigenous secularism of Kashmir.[1] Emerging around the 16th century, it is characterised by religious and cultural harmony, patriotism and pride for their mountainous homeland of Kashmir. In recent 2007 poll conducted by the Centre for the Study of Developing Societies in New Delhi, 84 percent of people in Srinagar want to see the return of Kashmiri Pandits

Kashmir’s existence is characterised by its insular Himalayan geography, harsh winter climate and isolation in economic and political terms. The region has also seen political turmoil and foreign invasions. Kashmiriat

is believed to be an expression of solidarity, resilience and patriotism regardless of religious differences.[6] It is believed to embody an ethos of harmony and a determination of survival of the people and their heritage. To many Kashmiris, Kashmiriat demanded religious and social harmony and brotherhood. It has been strongly influenced by Kashmir Shaivism, Buddhism and Sufism, carrying a long-standing conviction that any and every religion will lead to the same divine goal.

Kashmir was also influenced by the Mughal emperor Akbar's genesis of a syncretic philosophy of Din-i-Ilahi, which emphasized the blending of Hindu and Muslim ideals and values. Works in the Kashmiri language, art, culture and literature strongly expound and emphasize Kashmiriat as a way of life.[7] However, the impact and importance of Kashmiriat has been concentrated in the Kashmir Valley only, which is the real historical Kashmir. The farther regions of Gilgit, Baltistan, Jammu and Ladakh have not been influenced by this philosophy, as these regions are not Kashmiri in terms of culture, language or ethnicity.

Since after abrogation of article 370 most of the issues and problems are and will happen in Kashmir this principles is about Kashmiri identity as both Kashmiri's and Indian's. The question is whether article 370 fortified and gave hope to this Kashmiri identity.

It should also be noted that Kashmiri insurgency is always at play and this move may not change the way Kashmiri pundits are treated.

ARTICLE 35(A)

Article 35A, which provided special rights and privileges to the citizens of Jammu & Kashmir, was incorporated in the Constitution of India in 1954 by an order of then President Rajendra Prasad, on the advice of the Jawaharlal Nehru Cabinet. It gives the J&K legislature full discretionary powers to decide who 'permanent residents' of the state are. It also gave them special rights and privileges in employment with the state government, acquisition of property in the state, settling in the state, and the right to scholarships and other forms of aid that the state government provides. It also allowed the state legislature to impose any restrictions upon persons other than the permanent residents regarding the above.

To guarantee these special rights and privileges, the Article said that no act of the state legislature that comes under it can be challenged for violating the Constitution or any other laws.

TEXT OF ARTICLE 35(A)

"Saving of laws with respect to permanent residents and their rights." — Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law thereafter enacted by the Legislature of the State:

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects —

(i) employment under the State Government;

(ii) acquisition of immovable property in the State;

(iii) settlement in the State; or

(iv) right to scholarships and such other forms of aid as the state Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this part.



WHO DOES IT COVER?

All those who were living in the state as of 14 May 1954, when the law came into effect; and those who have lived in the state for 10 years anytime since, are counted as permanent residents.

The state legislature can also alter the definition of a permanent resident or other aspects of the law by a two-thirds majority.

HOW DID IT CAME ABOUT?

The Maharaja of Kashmir, Hari Singh, first passed the law in 1927 to stop the influx of people from the northern state of Punjab into the state. Reports say he did this on the urging of powerful Kashmiri Hindus. The law still exists in parts of Pakistan-administered Kashmir.

1. Is India losing Kashmir?
2. The election where no one came to vote
3. The “studious” 12-year-old victim of India’s Kashmir problem
4. Kashmir profile

In India, the law in its current form was introduced in 1954. It’s part of Article 370, the constitutional provision that grants Kashmir special status within India.

Article 35A was incorporated into the Constitution by a presidential order in 1954, and states that all those living in Jammu and Kashmir at that time and also those who lived in the state for 10 years anytime since, would be considered as its permanent residents.

These residents have been issued a certificate, which entitles them to special benefits in employment etc. The biggest advantage being that only permanent residents have the right to own and buy property in the state.

WHY IS THERE A CONTROVERSY OVER IT

A non-governmental organisation, We The Citizens, filed a petition in the apex court in 2014 to abolish the law on the grounds that it was “unconstitutional”.

The NGO, in its petition, argued that Article 35A goes against the “very spirit of oneness of India” as it creates a “class within a class of Indian citizens”.

Two Kashmiri women have also challenged Article 35A contending that the provision is discriminatory as it disenfranchises their children. Under the original provisions of Article 35A, Kashmiri women marrying an ‘outsider’ loses all her rights and privileges.

WHY ARE KASHMIRIS AGAINST IT?

People in Kashmir don’t want Article 35A to be scrapped because of the immunity it provides. Without Article 35A, people from outside the state can settle in the Valley, buy up land and dilute the identity of the local people, they fear.

The state’s two main political parties, Peoples Democratic Party and National Conference, contend that there would be no J-K left if this provision is tampered with, and have vowed to fight the battle together.

“Today people cutting across party lines and other affiliations are united in their fight against dilution of Article 35A. As I have already stated before, fiddling with J-K’s special status will have catastrophic ramifications for the entire country. My father (former chief minister Mufti Mohammad Sayeed) took great pride in the special status that J-K enjoys under Article 370. He would often mention that while people of the state have made great sacrifices for larger goals, we need to safeguard what we already have,” the PDP president wrote on Twitter.

WHAT WAS ITS SIGNIFICANCE?

It protects the state’s distinct demographic character. Since Indian-administered Kashmir is the only Muslim-majority state in India, many Kashmiris suspect Hindu nationalist groups of encouraging Hindus to migrate to the state. This doesn’t sit well with Kashmiris given their tumultuous relationship with India - there has been an armed revolt in the region against Indian rule since 1989.

India blames Pakistan for fuelling the unrest, a charge Islamabad denies.

Both countries claim Kashmir in its entirety but only control parts of it. Since India’s partition and the creation of Pakistan in 1947, the nuclear-armed neighbours have fought two wars and a limited conflict over the territory.

WHAT DO THOSE WHO LAW DEFEND SAY?

They say abolishing the law would dishonour the Indian government’s promise to protect Kashmir’s special status.

They also fear that it would open up the state for outsiders to settle, eventually changing its demographics.

Former chief minister Omar Abdullah tweeted that removing the law would have “grave consequences” for Jammu and Ladakh.

Chief Minister Mehbooba Mufti had warned that it would destroy India's fragile relationship with the state.

With article 35(A) gone with article 370 people of Kashmir no longer have such rights. Which they were enjoying since ages.

QUESTIONS TO CONSIDER

Q1. How kashmiri muslims who are a majority in j and k look at this move?

Q2. Will kashmiri insurgency increase and how will the government tackle it?

Q3. What is the current claims and situation of pok?

Q4. Can pakistan and china use this move as a positive for their national interest , if so how?

Q5. Legal issues involved in the abrogation and whether or not it was democratic?

Q6. How will the kashmir valley be handled now?

Q7. Was article 35(a) actually unconstitutional?

Q8. With article 35(a) gone how will the people of kashmir , enjoying these special rights react?