
RESERVATION POLICY IN INDIA: A CRITIQUE

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ABSTRACT

India is a country with various castes, religion, and languages. People from different religion follow different language in our country. For this the term “unity” is given. But the ground reality is way different. The Constitution established this reservation for ten years following independence in order to cease discriminatory practices against the underprivileged classes and allow them to elevated. However, things are completely different now because the reservation procedure is not being followed as it was initially. Politicians now merely utilize this policy as a voting machine. The people who get benefit from the reservation policy in today's society aren't even aware of their rights.

The present research study has been modulated by making a general study on the research problem, “Examining the Applicability of the Concept “Creamy Layer” in Reservations to SC & ST”. The researcher has made an intensive study on the research problem and tried to establish the synergy between the Concept of “Creamy Layer” and Reservations to Scheduled Castes and Scheduled Tribes.

INTRODUCTION

One of the cardinal principles of our constitutional polity is equality. Our constitution includes substantive equality in addition to formal equality by classifying privileged and disadvantaged individuals and giving them the same legal protections as specified in Article 14. Democratic nations have always planned to take specific actions to end irrational social injustices and ensure the oppressed classes' dignity. These measures are addressed as Affirmative Actions, Reservations, Protective Discrimination, Compensatory Discrimination, etc. No Country other than India has a unique and rich diversity in terms of culture, languages, and religion as our country.

This diversity is a boon as well as a bane. It is a curse, especially when politicians apply that diversity to divide society solely for the purpose of gathering votes and winning elections especially due to the fact that in a developing country like India, the dream of an average citizen would be to secure a government job and sustain his family.

Every national, from pariahs to princes, enjoys full personhood in our socialist democratic republic, which includes opportunities and status in the political, economic, and social spheres. As a result, compensatory discrimination programs were incorporated into the Indian

Constitution by its authors. "We, the people of India," according to the Indian Constitution's Preamble, have resolved to secure, among other things, "Justice: social, political, and economic" to "all its citizens." The Indian State run administrations' arrangement of compensatory separation involves of different particular plans. Reservations are the policy of initiatives that India employs to combat social inequality.

To develop an equitable and fair society has been a fantasy of humankind starting from the start of human progress. It is impossible to be just and fair in a society based on inequality. Because it is the key to justice, equality as a value is especially favoured. Justice V.R. Krishna Iyer stated as much:

"Equality and quality are incongruous quantities, viewed from an elitist perspective, but must be so harmonized by social technology as to live in functional friendliness, not snarling fretfulness, if democracy in a developing country, is to be not 'a teasing illusion' but humanism

in action."¹

The term "reservation" encompasses a broad scope. The importance of the term reservation is unique for various individuals. One perspective on the reservation is that it is an anti-poverty measure as a general idea. Another point of view maintains that a reservation only grants a right of access, not a right to redress. Affirmative action, on the other hand, has a different connotation as a general idea. Some individuals assert that reservation is not a component of affirmative action, while others assert that it is. "Reservation" isn't consolidated in Article 15[4] however it is given under Article 16[4]. The meaning of the word "reservation" in the context of the Article differs from that of the same word as a general concept³. However, rather than focusing solely on the general concept or principles, it is essential to consider the original intent and desires of the Constitution's framers in order to comprehend its true meaning. Thus, the schematic understanding of the Constitution is to be applied. It is necessary to conduct research into the relevant historical context in order to comprehend the current reservation policy.

In India, reservation is a form of affirmative action that aims to provide under-represented communities with a predetermined number of seats in educational and social institutions. It is stated as a response to upper caste discrimination in India. As a result, when India gained its independence, the constitution made special provisions to ensure that particular communities would have a minimal amount of representation in a variety of fields. In order to provide access to the social and economic backward classes, the constitutional provisions of reservation for social and economic backward classes are intended.

After India gained independence, it implemented a reservation policy to protect the rights of Scheduled Castes, ex-untouchables, Harijans, and Avamas through constitutional means.

Positive discrimination, protective discrimination, and affirmative discrimination are all names for this policy. The various castes protested this, as it has recently come under heavy criticism. The criticism stems from the policy's failure to improve Scheduled Castes' social and economic status. This led to elitist groups within the castes, which in turn increased inter-caste conflicts in various parts of the country. This analysis was because of the assorted economic and political interest. The continuation of this policy was not at all supported by some critics. They requested

¹ Iyer V.R. Krishna, "Forward" to Singh P., Equality, Reservation and Discrimination in India: A Constitutional Study of Scheduled Castes, Scheduled Tribes and Other Backward Classes, Deep and Deep Publications, New Delhi, [1985], at p. 5

the total evacuation of this arrangement, while other weight on changing the standard of reservation from caste to economic backwardness with the goal that it doesn't impact the productivity of work and doesn't make social pressure.

For a number of years, the drafters of the Constitution imagined that scheduled castes and scheduled tribes should receive social justice. At the same time, efforts are being made to elevate these classes so that they can compete with other groups on an equal footing. Yet, in spite of our earnest attempts. We have neglected to accomplish our objective. We have not a great explanation of discretionary politics. However, we ought to make every effort to extend reservations and make them a permanent feature. The simply electing intentions of the public authority is demonstrated by the way that the reports which frames the premise of their choices were lying among the dead documents and were re-declared a couple of powerless before either broad political decision. Major by-elections or elections for the assembly. Due to the Scheduled Castes' historical deprivations, which were at the bottom of the social hierarchy, policymakers had supported the caste-based reservations. They were portrayed by the combination of different marginalities and aggregate disparities by the upper positions.

SCOPE OF THE RESEARCH PAPER

On the foundation of the conclusions drawn from the study, an attempt has been made to eliminate the loopholes in the existing laws, rules and regulations as well as its implementation for making the policy of reservation more effectual and result-oriented and to bring this policy onto the lines of the aspirations of the Constitution makers. Requisite and appropriate amendments have been proposed in the existing laws so that it could not only prove valuable for the actual beneficiaries but also not to be prejudiced towards the other classes *i.e.*, general category people, thereby carrying proper equilibrium among different caste segments, upper and lower. Suggestions have been given for making this policy more adaptable, effective and useful.

However, in spite of different judgments of the Supreme Court and amendments to the Constitution by the Parliament, the policy of reservation has not succeeded to achieve its objectives. The present policy of reservation is in-adequate as it has failed to uplift the weaker sections of society. This policy also has not achieved the success to make a casteless society. An attempt has been made through this study to spot the serious flaws in the present policy of reservation and to suggest the remedial measures to plug those loopholes. An attempt has also

been made to find the impact of globalization, liberalization and privatization on the policy of reservation.

REVIEW OF LITERATURES

This literature review will provide a summary and critical evaluation of previous research done on the topic of “reservation policy in India”.

Shyamanand Singh (1996) in his book “Reservation Policy for Backward Classes” defines the term OBC on the basis of their traditional occupations. To deal with the problems of reservation policy he says; different states have their own classification of backward class categories. He explained the broader idea of backwardness.

Paramjit Singh and Gurpreet Bal (1996) in their book entitled “Strategies of social change in India” writes that how reservation provides the better chances to improve the social status and how the reputed government jobs provide a source of rapid social mobility and status enhancement.

Ashwini Deshpande’s book ‘Affirmative Action in India’, “focuses that the division of caste is neither spontaneous nor based on natural aptitude but based on the attempt to assign tasks to individuals in advance, selected not on the basis of trained original capacities, but on that of the social status of the parents.”

OBJECTIVES

To understand the historical aspect, problems and possible suggestions.

HISTORICAL ASPECT OF RESERVATION POLICY IN INDIA

There are some historically important events regarding the reservation policy in India-

- Reservations were in place during the British Empire's rule over India
- In 1882 Hunter Commission was appointed in which Mahatma Jyotirao Phule demanded a free and compulsory education and government job for the people.

- In 1902 a notification made 50% reservation in services for backward people in the state of Kolhapur. This was the first announcement in India allowing for reservations for the wellbeing of the country's backward citizens.
- In 1908 the castes and the communities which had some part in the administration in the British rule, reservation was introduced in that favour.
- In 1909 provisions were made in the Government of India Act known as Morley Minto Reforms.
- In 1919 the provisions for the reservation were made in the Government of India Act, 1919.
- In 1921 Madras Presidency, 44% reservation to non-Brahmins, 16% reservation for Muslims, 16% reservation for Anglo Indian Christians and 8% reservation for the Scheduled Castes.
- 1935 provisions for the reservation in the Government of India Act, 1935.
- On 26th Jan, 1950 our Constitution of India came into force.
- In 1951 In the case of State of Madras v. Smt. Champcam Dorairajan² the court held that caste based reservation violates Article 15 (1) of the constitution of India.
- The 1st Constitutional Amendment was made to invalidate the above judgment and clause (4) was added in Article 15.
- In 1953 Kalelkar Commission was established to see the situation of the socially and educationally backward classes.
- In 1963 the SC put 50% cap on reservation in the case of Balaji v. Mysore³.
- The Rajasthan exceeds its limit giving 68% reservation while Tamil Nadu 69%(under 9th Schedule)
- In 1979 the Mandal Commission was established to see the situation of socially and educationally backward classes. Submitting its report in 1980, the Commission recommended the changes in the existing quota system.
- In 1990 the recommendation of Mandal Commission was implemented by the Vishwanath Pratap Singh in Government jobs.
- In 1991 Narsimha Rao Government introduced 10% special reservation for the poor ▪ By 77th Constitutional Amendment added clause (4) (A) In Article 16 providing reservation in promotions to SCs and STs in 1995.

² AIR, 1951,SC

³ AIR, 1963,SC, p 649

- In 2005 the SC in *P. A. Inamdar & Ors. v. State of Maharashtra & Ors* case held that the State cannot make reservation on minority and unaided private colleges including private professional colleges.
- In 2005 the 93rd Constitution Amendment passed to ensure the reservation policy.

SPECIAL PROVISION FOR THE ADVANCEMENT OF BACKWARD CLASSES

Article 15 (4) of the constitution of India provides for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and scheduled Tribes and the same has been brought by the 1st Constitutional Amendment Act, 1951 after the case of *State of Madras v. Champakam Dorairajan*. In this case the seats were reserved in State medical and engineering colleges in different communities on the basis of religion, race and castes. This was challenged before court as it is against Article 15 (1) of the Constitution. State defended the law on the ground that it was enacted with a view to promote the social justice for all sections of the community as required by Article 46 of the DPSP. The SC observed that the law reserving the seats on the ground of religion, race and castes is void because it classifies the student on the ground of castes, religion etc. and not on the merit basis. As a result of the case Article 15 was amended and clause (4) was added in it. By this clause the STATE is empowered to make special provision for advancement of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. Article 15 (4) is only an enabling provision and does not impose any obligation on the state to take any special action under it. State has discretion to make reservation if necessary.

Two conditions must be fulfilled while providing reservation under clause (4) of article 15-

- 1) Who are socially and educationally backward classes?
- 2) What is the limit of reservation?

The term 'backward classes' is nowhere defined in Indian constitution. Article 46 uses another expression 'the weaker sections of the people' which has been interpreted by the SC to include all sections of the people rendered weaker due to reasons, including poverty and physical and natural handicaps⁹. Further Article 16 (4) uses 'backward class of citizen'

First backward classes commission

Article 340, however, empower the President to appoint a Commission to investigate conditions of socially and educationally backward classes. In pursuance of Article 340 of the constitution, the President of India appointed the 1st Backward Classes Commission in 1953 under the chairmanship of Kaka Kalelkar. The commission may recommend the steps that should be taken by the central and the state governments to remove the difficulties of the socially and educationally backward classes people. It was created for the following purposes-

- For determining the criteria which shall be adopted in considering whether any section of the people in India in addition to SC and ST as socially and educationally backward classes.
- For investigating the conditions of such classes and the differences under which they work.
- For making recommendations to the Union or any state to take steps to remove the difficulties and to improve their economic conditions

The Commission adopted following criteria for identifying socially and educationally backward classes:

1. The lower general educational advancement among the major section of a caste or community.
2. Inadequacy of representation in government services.
3. Inadequacy of representation in the field of trade, commerce and industry.

The report had been submitted by the Kaka Kalelkar Commission on March 30, 1955. It had made a list of some of the recommendations of the commission were as follows:

- Undertaking caste-wise record of population in the census of 1961.
- Treating all women as a class as 'backward'.
- Reserving seats for backward classes @ 70% in all professional institutions.
- Reservation of vacancies in all government services and local bodies for OBC.

Mr. Kaka Kalelkar, himself was not satisfied. By writing a letter to the President he opposed the recommendation of the commission. But the report of the commission was not accepted by

the Central government on the ground that it had not applied any objective tests for identifying the Backward Class.

In *Balaji v. State of Mysore*, In M.R.Balaji and Others Versus State of Mysore⁶ (K.L. Bhatia):

The Court was attempting to strike a balance between the competing interests of those who would like to have as much reservation as possible and those who might lose their chance, even if they are the ones who are deserving. The admission to the Medical Course is the subject of this case. The petitioners claim that they would have been eligible for admission to the colleges for which they had applied but for the reservations made by the challenged order. The contested order, which was issued on July 31, 1962, reserved seats for candidates from backward classes whose average student population was the same as or slightly lower than the state average. As a result, backward classes, the majority of backward classes, scheduled castes, and scheduled tribes hold 68% of the seats in Engineering and Medical Colleges and other technical institutions.

The State's classification of citizens into socially backward classes is based solely on their castes without considering other, unquestionably relevant factors. It was argued that this could result in a virtual reservation for nearly ninety percent of the population, which could fall under a variety of backwardness categories. This would be at the cost of those classes of individuals whose individuals might perform well however may not get an opportunity. The Court came to the conclusion that caste alone could not be the criterion for backwardness after examining the facts and examining the legal nuances. Additionally, the Court stated that reservations should not exceed fifty percent.

Second Backward Classes Commission

In 1979, the Janata Party Government (Morarji Desai, PM) decided to set up a second backward classes commission. The commission was popularly known as Mandal Commission as its chairman being Mr. B.P. Mandal.

The Commission adopted the following criteria for identifying the socially and educationally backward classes:

- Social criteria,
- Educational criteria, and

- Economic criteria.

The commission submitted its report in December, 1980. It stated that the OBC population was around 52% of total population of India including Hindus and non- Hindus. 27% reservation for the OBC was recommended by the commission. Nothing was done on the basis of mandal report for long after it was submitted. The commission by and large identified castes with backward classes and more or less entirely ignored the economic test⁴. After the report of backward class commission, the question of characterizing backward classes again came before the SC in case of *Vasant Kumar*⁵. All the judges of the SC agreed on the point that ‘caste’ shall not be the sole determinant of backwardness.

Indira Sawhney v. UOI popularly known as Mandal Commission case, is the significant pronouncement of the SC on the question of reservation of posts for the backward classes. In 1990 the V.P. Singh government at centre issued an official memorandum accepting the mandal commission recommendation and announcing 27% reservation for the socially and educationally backward classes in vacancies in civil posts and the services under the government of India. The memorandum was challenged before the SC and it was considered by the 9-judge bench. The main positive aspect of the SC can be highlighted here-

- Over all reservation is limited to a maximum of 50% in a year.
- Creamy layer should be excluded from the backward class.

What are the Scheduled Castes and Scheduled Tribes?

The Scheduled Castes and Scheduled Tribes have been the considered the most underprivileged class of the Indian society. The constitution of India, for compensating them, provided special provision in their favour. There are special provisions for SC/ST in services, legislative bodies and special favour is given to them for preferential entry into the educational institution. Now the question is that who comes under the SC/ST category. The constitution of India does not define the persons who belong to SC and ST. Article 341 and 342, however empowers the President to draw up a list of these castes and tribes.

⁴ Report of the Backward Classes Commission, Chapters IV, V and VII (1980).

⁵ K. C. Vasant Kumar v. State of Karnataka, AIR 1985 SC 1495

Under Article 341 the President after consultation with the Governor with respect to the State, specify the castes, races or tribes or of groups within castes, races or tribes for the purpose of their constitution. Any inclusion or exclusion from the presidential notification of any caste, race or tribes can be done by Parliament by law.

RESERVATION IN ADMISSIONS

Under Article 15, reservation in educational institution can be made for 'Women' under article 15 (3), 'Socially and educationally backward classes and the Scheduled castes and the Scheduled Tribes' under Article 15 (4), and Other grounds not falling under Articles 15 (3) and 15 (4). As a result of the decision in *State of Madras v. Champakam Dorairajan*, the 1st Constitutional Amendment Act, 1951 was made by the Parliament to remove the difficulties in the above case and clause (4) has been added in Article 15. In the above case the State of Madras reserved the seats in the educational institution on the basis of castes, religion race etc. which was declared unconstitutional as it violated Article 15 (1). Now the new clause (4) empowers the state to make special provisions for the socially and educationally backward classes of people. Now the State is free to reserve the seats in the educational institutes.

Whether State can reserve seats in privately run educational institutions

In T. M. Pai Foundation case, Islamic Academy case, P. A. Inamdar case the SC held that the State cannot make reservation of seats in admissions in privately run educational institutions. To nullify the effect of all the above cases the Parliament added a new clause (5) in Article 15 and thereby empowered the State to fix the reservation in privately run educational institutions also. But this clause does not touch the institutions run by minority under Article 30 (1) of the constitution of India. Now it has been clear that the State is free to make reservation in private educational institutions also. Now the question is that what would be limitation for the reservation, it has been cleared by the SC in Balaji case. In this case the SC held that the state can make reservation up to 50% seats only.

RESERVATION IN SERVICES

Article 16 (4) of the constitution of India makes provision for the reservation of appointments or posts in favour of any 'backward classes' of citizens which, in the opinion of the State, is not adequately represented in the public services under the State. Here the term 'State' includes

Central as well as State Government and their instrumentalities. Article 16 (4) is applied only if two conditions are fulfilled:

1. The class of citizens is backward, and
2. The said class is not adequately represented in the services of the state.

Explaining the nature of Article 16 (4) the SC held that it is an enabling provision conferring a discretionary power on the state for making any reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in the services of the state. Article 16 (4) neither impose any constitutional duty nor confers any fundamental rights on any one for claiming reservation.

The scope of Article 16 (4) was well-thought-out by the SC in *Devadasan v. UOI*. In this case the constitutional validity of the ‘**carry forward rule**’ framed by the government dealing with the appointment of persons of backward classes in government services was involved. This rule provided that if sufficient number of candidates belonging to SC/ST were not available for the appointment of reserved quota, the vacancies that remained unfilled would be treated as unreserved and filled by the fresh available candidates, but a corresponding number of posts would be reserved in the next year for SC/ST in addition to their reserved quota of the next year.

The court upheld the ‘carry forward rule’ as unconstitutional. But it reversed its position in

Mandal Commission case and held that the ‘carry forward rule’ is valid so long as it does not in a particular year exceeds 50% of vacancies. In this case the SC gave the following judgments

Creamy layer must be excluded from the backward classes,

- b) Unlike in *Balaji* case Classification of backward classes into backward and more backward is permissible,
- c) Reservation shall not exceed 50%
- d) No reservation in promotion to nullify the point ‘no reservation in promotion’ the government enacted the Constitution 77th Amendment Act, 1995 and thereby new clause (4A) has been added in Article 16.

PROBLEMS

- 1) The reservation policy in India shall never go.
- 2) The reservation in India is generally bases on caste and religion.
- 3) There is no data available to identify who are getting the advantages of reservation.
- 4) Already benefitted families getting the reservation benefits.
- 5) Th deprived people are unaware of their right to get reservation benefit.
- 6) The society has been divided on the basis of caste, religion and gender.
- 7) There is a lot of corruption in the name of reservation policy.
- 8) Reservation benefits are reached to the proper beneficiaries through the mediator; the mediators are misusing the scheme of Government very easily, it is not a best way.
- 10) There is no proper observation on the reservation policy.
- 11) Reservation is given from the seats of general one and not a new creation of seats for socially and educationally backward classes of people.

SOLUTIONS

- 1) First of all a database must be maintained by the government that who are the persons actually getting the benefits from reservation. Such database should be accessible to the public generally.
- 2) Backlog provision must be removed and the vacancies left must be fulfilled by the qualified candidates in the same year.
- 3) it shall not be based on castes basis. It must be on the economic, social and physically handicap basis.
- 4) Yearly observation on the reservation policy must be done.

- 5) Reservation should be based on the collective salary of the family, i.e. salary of the husband and wife and the income coming from all other sources.
- 6) The reservation benefits to be given only a limited children in a family
- 7) The reservation should not be in the matter of promotion, it should be one time aid.
- 8) The creamy layer concept should be applied to SC/ST categories also.
- 9) Some economic aid must be given first before giving the reservation to the weaker section of the society.

CONCLUSION

The writer now concludes his work by saying that the backward classes cannot be allowed to remain backward forever. The Constitution of India does not permit it. The reservation policy is the first aid and not the permanent cure to the problem of backwardness. For the proper implementation of reservation policy, the government should take steps to see that whether needy people are getting the benefits. The concept of creamy layer should be applied in case of SC/ST also. The weaker sections should be given special economic aid first to survive in the society and then to reserve their seats. It must be kept in mind here that the reservation can be given only if the government has efficiency in the administration as Article 335 states that the claim of SC/ST shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to the services and posts in connection with the affairs of the Union and the States. There are Article 16 (4A): nothing in this Article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in services of the state in favour of the SC/ST which in the opinion of the state, are not adequately represented in the services under the state.

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