

Evolution of Reservation in India

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Abstract: Reservation is a tool of increasing social diversity in organizations. It is one of the measures taken by the government to establish social justice. Reservation as a tool for socio-economic upliftment was adopted as a short-term measure for specific categories of people who for various reasons were discriminated against and deprived. This policy was adopted as the means to provide opportunities in employment. While the weaker sections should be given due opportunity, it is necessary to break the vicious circle of limited sections cornering the opportunities.

1. Introduction

Constitutional Framework:

The Government has spent a lot of funds on various schemes of SC, ST development during last six decades. This massive fund flow has helped in building up infrastructure of the depressed class of society. The preamble of the constitution places enormous emphasis on justice liberty and equality all of which resonate positively regime which emphasis the wellbeing of the disadvantage group. The constitution set out the provide justice, social, economic, and political liberty of the thought, expression believe faith and worship. Fraternity assuring the dignity of the individual and unity and integrity of the nation.

Article 15 & 16

These Articles basically prohibits discrimination. It is obvious that any provision for affirmative action will violate this provision, so 16 (4) depicted in the constitution nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favor of any backward class of citizen which in the opinion of the state¹¹. ARTICLE 19(5) – It allows the state to impose reasonable restriction in the interest of public or for the protection of the interest of any schedule trib.

Article 38 & 46

These Articles are DPSP as distinguished from Fundamental Rights are justifiable. Article 38 run as follows: The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice, social, economic, and political shall inform all the institutions of national life. It enjoins the state to promote with special care and education and economic interest of the weaker section of the people as particular of the SC, ST and to protect them from all form of exploitation.

Article 164

It says that there shall be minister in charge of tribal welfare in the state of Chhattisgarh, Jharkhand, MP, and Orissa who may in addition be in charge of the welfare of schedule caste or backward classes.

Article 335

It says that the claim\’s of the members of the SC & ST shall be considered consistently with the maintenance of efficiency of administration, in the making of appointment to the services and post in conviction with the affairs of the union or of a state.

Article 340

This Article is related to the appointment of commission to report on the socio economy aspect of the life of SC, ST and other backward classes. Two commission have so far been appointed, the first backward class under Kelkar in 1953 and the second backward classes commission under B.P Mandal in 1978.

Criteria of Reservation?

The basic criteria for reservation should be socio economic backwardness with a foolproof arrangement for issue of certificates. In fact, religion or caste should not be the basis of reservation. Also, Article 16(4) should be the basis for providing reservation benefits to minority groups who are a socio-economically backward class of citizens. As far as the criteria regarding OBC’S are concerned; Mandal Commission adopted 11 criteria which could be grouped under three major headings: social, educational, and economic to identify Other Backward **Classes**.

Effect of Reservation on the Indian Society?

(a) Positive

Reservations are intended to increase the social diversity in campuses and workplaces by lowering the entry criteria for certain identifiable groups that are grossly under-represented in proportion to their numbers in the general population.

(b) Negative

The main argument against the concept of reservation is that it goes against the idea of merit. Allocating quotas is a form of discrimination which is contrary to the right to equality.

Purpose of the Reservation?

The basic motive was to give the students belonging to the SC/ST/OBC equal opportunities because of their social disadvantages and lack of resources & exposure.

Policy and purpose

The aim of any civilized society should be to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities in any walk of social life is denial of equal status and equal participation in the affairs of the society and, therefore, of its equal membership. The dignity of the individual is denied and direct proportion to his deprivation of the equal access to social means. The democratic foundations are missing when equal opportunity to grow, govern, and give one's best to the society is denied to a sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithal's to avail of them are denied. Nevertheless, the consequences are as potent.

The purpose of reservation may be spelt out variously. As the U.S Supreme Court has stated in different celebrated cases¹ viz., the reservation or affirmative action may be undertaken to remove the 'persisting or present and continuing effects of past discrimination; to lift the 'limitation on access to equal opportunities; to grant opportunity for full participation in the governance' of the society; to recognize the discharge of 'special obligations towards the disadvantaged and discriminated social groups; to overcome substantial chronic under-representation of a social group; or 'to serve the important governmental objectives; what applies to American society, applies ex proprio vigor to our society. The constitution of India seeks to secure to all its citizens justice, liberty, equality, and fraternity. These are the basic pillars on which the grand concept of India as a sovereign socialist secular democratic republic rest. This splendor that is India rests on these magnificent concepts, each of which, supporting the other, upholds the dignity and freedom of the individual and secures the integrity and unity of the nation.

Reservation- Purpose to off-set inequality and achieve equality-

The basic policy of reservation is to off-set the inequality and removes the manifest imbalance, the victims of which for bygone generations lags far behind and demand equality by special preferences and their strategies. Reservation is not an end in itself. It is a means to achieve equality. The policy of reservation adopted to achieve that end must, therefore, be consistent with the objective in view.

Reservation must not outlast its constitutional object and must not allow a vested interest to develop and perpetuate itself. There will be need for reservation or preferential treatment once equality is achieved. Every reservation founded on benign discrimination and justifiable adopted to achieve the constitutional mandate of equality, must necessarily be a transient passage to that end. It is temporary in concept, limited in duration, conditional in application and specific in object. Reservation must contain within itself the seeds of its termination. Any attempt to perpetuate reservation and upset the constitutional mandate of equality is destructive of liberty and fraternity and all the basic values enshrined in the constitution. A balance has to be maintained between the competing values and the rival claims and interests so as to achieve equality and freedom for all.

The sooner the need for reservation is ended, the better it would be for the nation. The sooner we redressed all disabilities and wiped out all traces of historical discrimination and stopped identifying classes of citizens by the stereo-typed, stigmatized, and ignominious label of backwardness, the stronger, healthier, and better united we will emerge as a nation founded on diverse custom, practices, religion, and languages but knitted together by innumerable binding stands of common culture and traditions.

Representation and its adequacy

There is no doubt that the adequacy of representation in administration has also to be judged based on the qualitative representation in it. However, the qualitative representation cannot be achieved overnight or in one generation. Secondly, such representation cannot be secured at the cost of the efficiency of the administration which is an equally paramount consideration while keeping reservation. Thirdly, the qualitative representation can be achieved by reservations in direct recruitment at all levels. It is true that there is some basis for the grievance that when reservations are kept only in direct recruitment, on many occasions the rules for appointment to the posts particularly at the higher level of administration are so framed as to keep no room for direct recruits. However, the remedy in such cases lies in ensuring that direct recruitment is provided for posts at all levels of the administration and the reservation is kept in all such direct recruitment.

Reservation—Purpose to test of reasonableness

Any reservation made by virtue of executive power of state must stand the test of reasonableness, unlike other reservation like “eminent sportsmen”. Sportsmen are to be selected on the basis of their eminence. But it reservation, categories like disabled, ex-servicemen, etc., once they are within a particular category, there cannot be further differentiation to the course, i.e., based on their academic performance.

Purpose to identification of Creamy Layer in Backward Class

The identification of creamy layer in every backward class is in fact based upon horizontal division of every section of the backward class into creamy layer or non-creamy layer. For example, if there are a dozen named backward classes and each has percentage of quota in the reservation, they can be arranged in a vertical distribution one after the other and the separate and the aggregate quota meant for them can be spelled out. But in each of these named backward classes listed one below the other, it is not difficult to make horizontal divisions of those belonging to (i) constitutional offices, (ii) particular services, (iii) professions, (iv) industry and trade, (v) particular income level, and (vi) particular holding of property etc. to segregate the creamy layer and non-creamy layers in each vertical sub-classification of backward class and say that the children of such persons in these horizontal sub-divisions of the backward classes will be creamy layer and therefore outside the backward classes.

Positive and affirmative action and positive discrimination

Concept of Article 15(4) is a provision envisaging programmes of positive action and article 16(4) is a provision warranting programmes of positive discrimination. It is well-settled that reservations in educational institutions and other walks of life can be provided under article 15(4) just as reservation can be provided in services under article 16(4). If so, it would not be correct to confine article 15(4) to programmes of positive action alone. Article 15(4) is wider than article 16(4) in as much as several kinds of positive action programmes can also be evolved and implemented there under (in addition to reservations) to improve the conditions of SEBCs, scheduled castes and scheduled tribes, whereas article 16(4) speaks only of one type of remedial measure, namely, reservation of appointments/posts. But it may not be entirely right to say that article 15(4) is a provision envisaging programmes of positive action. Indeed, even programmes of positive action may sometimes involve a degree of discrimination.

Reservation is the extreme limit to which the doctrine of affirmative action can be extended. Beyond the strict confines of clause (4) of article 16, reservation in public employment has no warrant in the law for it then becomes the very antithesis of equality. While reservation is permissible for appointment to higher posts by promotion from lower posts, any other legitimate affirmative action in favour of disadvantage classes of citizens by means of valid classification is perfectly in accordance with the mandate of article 16(1). It is within the discretion of the state to extend to all disadvantage's groups, including any backward class of candidates, preference or concessions such as longer period of minimum time to pass qualifying tests, etc.

Reservation- Purpose of proportion in society

State Government often makes special provision under article 15(4) mostly in regard to admission in colleges and the universities. In **M.R. Balaji's case**² the state had reserved 65% of the seats for the socially and educationally backward classes and scheduled castes. This order was challenged and **Gajendragadkar, J.**, Observed

“The adjustment of the competing claim is a difficult matter but if under the guise of making a special provision the state reserves practically all the seats available in all the colleges that clearly would be subverting the object of article 15(4) speaking generally and in a broad way, a special provision should be less than 50% how much less than 50% would depend upon then relevant prevailing circumstances in each case”.

In **State of A. P v/s Balaram**³ the total reservation was only 43%. The breakup of that per college was 25%, 4% and 14%, for backward classes, scheduled tribes, and scheduled castes respectively. The question of reservation was thus within the limits mentioned in the above case.

Any provision made under this clause must be within the well-defined limits and should not be based on caste alone. But it should not also be missed that a caste is also a class of citizen and that a caste as such may be socially and educationally backward. If after collecting the necessary data, it is found that the caste is socially and educationally backward, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. There is no gain-saying the fact that there are numerous castes in country, which are socially and educationally backward and therefore a suitable provision must be by the state as charged in article 15(4) to safeguard their interest.

In **R. Chitrlekha's case**⁴ the government of Mysore defined backward classes and directed that 30 per cent. Of the seats in professional and technical colleges and institutions would be reserved for them. According to that order, a family whose income was Rs.1,200 per annum or less and persons or classes who followed occupations of agriculture petty business, inferior services, crafts or other occupations involving manual Labour were defined to be socially, economically and educationally backward. The Supreme Court observed

“The classification of backward classes based on economic conditions and occupation did not offend article 15(4)”.

The Supreme Court explained M.R.Balaji's case by stating that the authority concerned might take caste into consideration in ascertaining the backwardness of a group of persons but if it did not, the order would not be bad on that account if it could ascertain the backwardness of group of persons based on other relevant material.

Reservation- purpose of discrimination against Domicile of Place

In **Chitra Ghosh v/s Union of India**⁵, a constitution bench of the Supreme Court held that there could be reasonable classification based on intelligible differentia for the purpose of articles article 15(1) and 15(4) as well as article 29(2). In that case, special provisions were made for sons/daughters of central government servants posted in Indian missions abroad, etc. The Supreme Court held that there was no discrimination against the appellants or grounds only of religion, race, caste, language, sex or place of birth and the classification made by central government was reasonable and based on intelligible differentia. While referring to the class of sons/daughters of resident of union territories mention therein, the bench pointed out that the areas in those territories were well-known to be comparatively backward and except for Himachal Pradesh they did not have any college of their own. The bench observed that persons desirous of receiving medical education from those areas should be provided some facilities for doing so.

In **State of U.P v/s Pradip Tandon**⁶, 85 candidates from rural areas were selected in the general seats. One candidate from Uttarakhand area, 7 candidates from hill areas and one scheduled caste candidate also competed for the general seats. The candidates from hill areas, Uttarakhand division and scheduled castes were exceptions, and their performance would not detract from the reservation for scheduled caste, hill and Uttarakhand areas. The Supreme Court further observed

“The Reservation for rural areas could not be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appeared to be made for the majority population of the state. Eighty per cent of the population of the state cannot be homogenous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instruction for reservation of seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural area and had a permanent home there and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made based on place of birth, as this would offend article 15”.

A preference to one attached to one university in its own institutions for postgraduate to technical training is not uncommon. The government which bears the financial burden of running the government colleges is entitled to lay down criteria for admission in its own college to and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has rational basis and a reasonable connection with the object of the rules so long as there is no discrimination within each of such sources the validity of the rules laying down such sources cannot be challenged. The rules laid down a valid classification. **Shelat, J.** observed

“Candidates passing through the qualifying examination held by a university from a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own universities to advance their training in technical studies, such as medical studies. The rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of article 14⁷”.

Reservation- For the Equality in Education

Reservation is anti-thesis to rule of merit. An Eleven Judge Bench of the Supreme Court in **T. M. A. Pai Foundation v/s State of Karnataka**⁸, sought to strike a balance between the rights of minority students to take admission in the minority institutions vis-à-vis the meritorious students. The said decision came up for interpretation in **Islamic Academy of Education v/s State of Karnataka**⁹ wherein the Supreme Court held:

“For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit may be determined in various ways. There cannot be, however, any foolproof method whereby and where under the merit of a student for all times to come may be judged. Only, however, because a student may fare differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose, and in particular for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, and different ways of evaluating the answer books may yield different results in the case of the same student. Selection of students, however, by the minority institutions even for the members of their community cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vis-à-vis the general category; but therefore, the modality has to be worked out. For the said purpose de facto equality doctrine may be applied instead of de jure equality as every kind of discrimination may not be violative of the equality clause.”

Clause(4) of article of 15 of the constitution does not confer any right, much less a fundamental right, in the classes, castes or tribes specified in that clause to have seats reserved for them in services or educational institutions. But it is only an enabling provision. It does not make it obligatory on the state to make special provision for the advancement of the backward classes but merely leaves it to its discretion to take suitable action if found necessary. No right as such could be carved out on the basis of clause (4) of article 15. The provision made in article 15(4) was only by way of exception to the fundamental right guaranteed under clause (1) of article 15 and clause (2) of article 29 and that it was only an enabling provision. It could not, therefore, be said that any right was guaranteed to the backward communities or classes under that clause¹⁰.

There is at Indore a Medical College known as the Mahatma Gandhi Memorial Medical College run by the state of Madhya Bharat. The petitioner a resident of Delhi was studying as a student in Indore Medical College. His complaint was that the rules in force in that institution discriminated in the matter of fees between students who were residents of Madhya Bharat and those who were not, and that the latter had to pay in addition to the tuition

fees and charges payable by all the students a sum of Rs.1, 500 per annum as capitation fees, and that this was in contravention of articles 14 and 15 of the constitution. The object of the classification underlying the impugned rule was clearly to help to some extent students who were resident of Madhya Bharat in the prosecution of their studies, and it could not be disputed that it was quite a legitimate and laudable objective for a state to encourage education within the borders. Education is a state subject, and one of the directive principles declared in part IV of the constitution is that the state should make effective provisions for education within the limits of its economy. If the state had to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent as least ensure for the benefit of the state. A concession given to the resident of the state in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the college, settle down as doctors and serve the needs of locality. The Supreme Court held that the classification was based on a ground which had a reasonable relation to the subject-matter of the legislation and was in consequence not open to attack¹¹. It cannot be laid down, as an inflexible dogma of universal application that under utterly different social and educational environs university-based grouping of candidates for specialized courses will, willy-nilly, be valid.

The supreme court in **D.N.Chanchala's case**¹² held that since the universities were set up for satisfying the educational needs of different areas where they were set up and medical colleges were established in those areas, it could safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities, such a basis for selection did not have a disadvantage of district-wise or unit-wise selection as any student from any part of the state could pass the qualifying examination in any of the three universities irrespective of place of birth or residence. The discretion of the selection committee to admit outsiders up to 20 per cent. Of the total available seats in any of these colleges was held to advance the interest of education by drawing the best students not only in the state but also elsewhere in India. While the object of article 15(4) is to advance the equality principle by providing for protective discrimination in favour of the weaker section so that they may become stronger and be able to compete equally with others more fortunate, one cannot ignore the wider interests of society while devising such provisions. Undoubtedly, protective discrimination in favour of the backward, including scheduled castes and schedule tribes is as much in the interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to the society, which have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests.

Article 15(4) and the spirit of reason which permeates it; do not permit lowering of minimum qualifying marks at the post graduate level to 20% for the reserved category as against 45% for the general category candidates. There can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super-specialist courses¹³.

There is no rule under article 15(4) that a student cannot be given the benefit of reservation at more than one stage during his education career. Where to draw a line is not a matter of law but a matter of policy for the state to be evolved keeping in view the larger interests of the society and various other relevant factors. Unless the line drawn by the state is found to unsustainable, the court cannot interfere¹⁴.

Certain number of percentage of seats for the purpose of admission to the post-graduate courses in medical studies could certainly be set apart or specified for in-service doctors as a separate and distinct source for admission to the said course and the same does withstand itself on reasonable classification under article 14 of the constitution of India and notwithstanding the fact that such-in-service category is not mentioned in article 15(4) and/ or article 16(4) of the constitution of India, the in-service candidates not forming a weaker section of the society, could still be treated as a separate source for admission as a class different and distinct from the non-service doctors. In public interests and setting apart certain number of percentage of seats for in-service candidates does not offend any constitutional provisions¹⁵. In **(Dr.) Narayan Sharma v/s Dr. Pankaj Kr. Lehkar**¹⁶, it was held rule 5(i) of

“The Assam Medical Colleges (Regulation of Admission to Post Graduate Courses), Rules, 1977, which exempted the candidates referred to in sub-rule

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(iii) of rule 4, that is teachers working in medical colleges, from appearing in the entrance examination was not invalid. There was no need for teachers to participate in the entrance examination as they were constantly in touch with the subject/ discipline for which reservation was made. The concept of entrance examination was evolved for the purpose of prescribing uniform standard for judging all the candidates, since merit should be the criterion for admission to post- graduate courses, both the tests would be satisfied in the case of teachers who had been working in the medical colleges of Assam for the required number of years. Hence, there was no necessity for them to appear in the entrance examination was valid”.

Conclusion and suggestion:

Now we have seen as aptly mentioned that government had kept various welfare scheme for the SC & ST in India. If we take few examples then reservation in educational system, land allotment, edifice making, agriculture land etc. in the 21st Century, it is quite questionable issue that the caste of person is a sole basis for reservation in education and jobs. This system provided better opportunities to the reserved category [applicants who are fewer in number than the general category applicants. The idea was to create fissures in the Hegemonic hold of the immutable status of the higher caste over public services. In spite of giving opportunities to less efficient candidates, reservation should provide better chance of study to weaker section of the society to compete with the unreserved class by way of offering the resource to the weaker class. Now a days, reservation is just a vote bank banks for politicians. They are hindering the countries growth and development. The deprived sections from within the reserved segment are hardly aware about how to get benefited from the provisions or whether there are such provisions. Tough the reservation systems work in favor of backward class of the society, the existing system has not been fulfill the equality clause of the constitution under Article 14. Country needs a better basis of reservation which includes the poor and the backward groups and excludes the rich and dominating section among all caste.

Whether to have a reservation system or not is still a debatable question in India. The Indian Constitution has a law for the same and according to this; reservation has been made to bring under privilege classes at par with privileged ones. Tough reservation system is an evident system discrimination, but it had been started with a very good objective of uplifting the socially backward society. But with time its meaning and the way it has been taken by the people has left many of us to believe that it has stopped delivering for what it was made. People have stated misusing it. The deep routed caste system in India is the actual cause of reservation system. This laid to the total segregation of our society and to equalize this, the idea of reservation came into existence after independence.

So, I think reservation system should be synchronized again and first such section of the society should be clearly identified that need development and financial aids. If government really want to uplift under privileged section of the society then a well decorated laws and policies should be formulated. They should be uplift with free education and other incentives which is helpful to make them capable and infuse them up fighting spirit to face the true competition.

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