

Reservation Policy : Need for Re-Look

Abstract

Reservation in India

Reservation in India is the process of facilitating the person in education, scholarship, jobs and in promotion who have category certificates. Reservation is a form of quota-based affirmative action. Reservation in government by constitutional laws, statutory laws, and local rules and regulations. For e.g. Scheduled Castes (SC), Scheduled Tribes (ST) and other Backward classes (OBC) etc. and in some states Backward classes among Muslims Under a category called BC (M) are the primary beneficiaries of the reservation policies under the constitution.

Keywords: Reservation System, Fundamental Rights, Directive Principles, Constitution of India, Supreme Court.

Introduction

In India being a developing nation is currently facing many challenges and the caste system being one of them. In today's time one of the major road blocks to this equality is the caste system. Our society has always seen full of inequalities. "We the people" realized the malady impelling the framers of our constitution to think in India large number of people have experienced social discrimination for which effects have seen made to provide redress under constitution of India. Our constitution framers made special provisions for four-under privileged classes, which not provided to other classes. These under - privileged classes are : scheduled castes (SCs), the scheduled tribes (STs), other backward classes (OBCs). This paper is an attempt to discuss Reservation Policy in India and Reservation Rights provided to SCs, STs and OBCs and deprived classes which are provided in Constitution.

History of the Reservations System

In India being a developing nation is currently facing many challenges and the reservation system being one of them. In today's time one of the major road blocks to this equality is the reservation system.

The rationale have is that without centuries of discrimination, it would be reasonable to expect that such equitable representation would have resulted naturally. In the absence of any beliefs of 'natural superiority' of any one group, such an assumption seems valid. So reservation effectively creates a "protected class" that compete with the rest of the country.

The reservation system finds its origin in the age-old caste system of India. The caste system at its birth was meant to divide people on the basis of their occupation like teaching and preaching (Brahmins), Kingship and war (Kshatriya) and lastly business (vaish) etc. but soon it became an instrument to divide the society on caste-basis, creating various walls between different sections of the society. Today we stand divided widely into Hindus, Muslim, SC, ST and OBS with newer reservations coming up for other different sections of the society.

Caste and Community Profile Peoples Below Poverty Line in India Based on NSSO 1999-2015.

Caste and Community Groups	Rural	Urban
Schedule Tribes	45.8	35.6
Schedule Caste	35.9	38.3
Other Backward Castes	27.0	29.5
Muslim Upper Castes	26.8	34.2
Hindu Upper Castes	11.7	09.9
Christian Upper Castes	09.6	05.4
Upper Caste Sikhs	00.0	04.9
Other Upper Castes	16.0	02.7
All Groups	27.0	23.4

Present reservation system has a long history and has been debated before and after Independence from the British in 1947.

In 1908, reservations were introduced in favour of a number of castes and communities that had little share in the administration by the



S.K. Chadha

Assistant Professor (Sr. Scale),
Deptt. of Law,
HNB Garhwal Central University
SRT Campus, Tehri Garhwal

British. There were many other reforms in favour of and against reservations before the Indian Independence itself.

The concepts of "untouchability" was not practised uniformly throughout the country, therefore the identification of oppressed classes was difficult to carry out. Allegedly, the practice of segregation and untouchability prevailed more in the northern part of India as opposed to in southern India. Further more, certain caste or communities, "untouchable" in one province were not in other provinces"¹

The constitution of India states in Article 16 (4) : "Nothing in Article 16 or in clause (2) of article 29 shall prevent the state from making and special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled Tribes"²

According to Article 46 of the constitution "The state shall promote with special care the educational and economic interests of the weaker section of the people and in particular of the scheduled castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation."³

Seats are reserved for people under the following criteria:

Enrolment in educational institutions and job placements are reserved based and variety of criteria. The quota system sets aside a proportion of all possible positions for members of a specific group. Those not belonging to the designated communities can compete only for the remaining positions, while members of the designated communities can compete for either reserved or open position.

For example when 1 out of 10 clerical positions in railways are reserved for ex-servicemen, those who have served in the Army can compete both in the "General category" as well as in the specific quota.

The various Criteria for Reservation of Seats are as follow

Caste

The central government funded higher Educational institution, 22.5% of available seats are reserved for schedule caste (SC) and scheduled tribe (ST) students (7.5% for STs, 15% for SCs).

This reservation percentage has been raised to 49.5% by including an additional 27% reservation for OBCs.

Gender

In 1993, a constitutional amendment in India called for a random one third of village council leader, or pradhan, position in gram panchayat to be reserved for woman.

The village council is responsible for the provision of village infrastructure such as public buildings, water and roads and for identifying government program beneficiaries.

"Recent research on the quota system has revealed that it has changed perceptions of women's abilities, improved women's electoral chances and raised aspirations and educational attainment for adolescent girls."⁴

There is a long-term plan to extend this reservation to parliament and legislative assemblies. For instance, some law schools in India have a 30%

reservation for females. Progressive political opinion in India is strongly in favour of providing preferential treatment to woman to create a level playing field for all of its citizens.

The woman's Reservation Bill was passed by the Rajya Sabha on 9 March 2010 by a majority vote of 186 members in favour and 1 August. As of March 2013, the Lok Sabha has not noted on the bill.

Critics say gender cannot be held as a basis for reservation alone other factors should also be considered e.g. economic, social conditions of women candidate especially when applying reservation for educated women.

Religion

There is no reservation granted on the basis of religion in the central educational institutions at the national level, although reservation has been extended to religious minorities in some states.

Status as a Domicile

With few exceptions, all jobs under certain state governments are reserved for those who are domiciled within the jurisdiction of that government.

There are also some seats reserved for the Jammu and Kashmir 'migrants' in every government aided educational institute.

Other : Some Reservations are also made for

1. Terrorist victims from Kashmir, eg. in Punjab.
2. Single Girl child (in Punjab).
3. Migrants from the State of Jammu and Kashmir.
4. Sons / daughters / grandsons / granddaughter of freedom fighters.
5. Physically handicapped.
6. Sports personalities.
7. Non-Resident Indians (NRIs).
8. Candidates sponsored by various organisations.
9. Those who have served in armed forces (ex-serviceman quota).
10. Dependents of armed forces personnel killed - in - action.
11. Repatriates.
12. Seat reservation for senior citizens and Physically handicapped in public (bus) transport.

Article 16 Clause (4A) was further modified through the 85th amendment to give the benefit of consequential seniority to SC/ST candidates promoted by reservation.

"The apex court reiterated the law down through various Judgements by the constitution benches in the M. Nagaraj, Indra Sawhney and other cases wherein it was declared that reservation in promotions can be provided only if there is sufficient data and evidence to Justify the need".⁵

"Creamy Layer and Indra Sawhney Versus Union of India"⁶

The term creamy layer was first coined by Justice Krishna Iyer in 1975 "in state of Kerala versus NM Thomas" case, wherein he observed that "benefits of the reservation shall be snatched away by the top creamy layer of the Backward class, thus leaving the weakest among the weak and leaving the fortunate layers to consume the whole cake".⁷

"Indra Sawhney versus union of India"⁸ Judgement laid down the limits of the state's powers; it upheld the ceiling of 50 percent quotas, emphasized the concept of "Social backwardness" and prescribed 11 indicators to as certain backwardness. The nine-

judge Bench judgement also established the concepts of qualitative exclusion, such as "creamy layer"⁹.

Reservation of 68 percent of seats in that case was found by the court plainly inconsistent with Article 15(4).

"Balaji, in T. Devadasan versus Union of India."¹⁰ a rule of the central Government which actually reserved only 17.5 per cent posts in the Central services for the scheduled castes and the scheduled Tribes but provided for carrying forward of their unfilled quota to the next two succeeding years, if suitable candidates were not available, was invalidated on the ground that accumulation of 17.5 per cent in three years would come to approximately 54 percent and in the instant case it had come to 64 percent because out of 45 vacancies, 29 went to the reserved quota.

Both, Balaji and Devdasan were decided on the plea that Article 15(4) and 16(4) were exceptions to the general rule embodied in Articles 15(1) and 16(1) respectively as well as in Article 14.

The general rule required that in the interest of the community as a whole admissions to the institutions of higher learning on employment with state must be made on merit in order to ensure an efficient society and administration.

The constitution 93rd Amendment 2006 added clause (5) in Article 15. Its addition because imminent because in **"P.A. In amdar versus state of Maharashtra"**¹¹ the supreme court held that neither the policy of Reservation can be enforced by the state nor any quota or percentage of admissions can be carved out to be appropriated by the state.

State from discriminating against citizens on ground only of

1. Religion
2. Race
3. Sex
4. Caste
5. Place of birth
6. Any of them

Between the scheduled castes and the scheduled tribes reservation under Article 15(4) and 16(4) generally go in favour of the other if suitable candidates are not available in either of the categories.

"State of U.P. versus Pradip Tandon"¹² and **"Anil Kumar Gupta vs state of U.P."**¹³, the state of U.P. treated the entire population of hill districts as SEBC for the purpose of admission to the educational institutions as well as for reservation in jobs on years to year basis.

Conclusion

The reservation system only divides the society leading to discrimination and conflicts between different sections. It is oppressive and does not find its basis in casteism. It is actually the antithesis of a communal living.

Currently, as per the government polity, 15% of the government jobs and 15% of the students admitted to universities must be from scheduled caste and for the scheduled Tribes there is a reservation of about 7.5% other than this the state governments also follow their own reservation policies respectively based upon the population of each state. So nearly 50% seats are reserved.

93rd constitutional amendment allows the government to make special provisions for "advancement of any socially and educationally backward classes of citizens", including their admission in aided or unaided private educational institutions.

Article 15 (4) of our constitution empowers the government to make special provisions for advancement of backward classes. Similarly Article 16 provides for equality of opportunity in matters of employment or appointment to any post under the state.

"Clause 2 of Article 16 lays down that no citizen on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them be discriminated in respect of any employment or office under the state".

However clause 4 of the same article provides for an exception by conferring a certain kind of power on the government.

"It empowers the state to make special provisions for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the state are not adequately represented in the services".

Two conditions have to be Satisfied

1. The class of citizens is backward.
2. The said class is not adequately represented.

In a case "A Balaji versus State of Mysore"¹⁴ 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 backward classes.

Suggestions

Reservation should be purely made on the basis of the economical conditions of the applicant and nothing else. The kind of reservation policy that our government currently follows does nothing but divide the society into different sections.

Thus reservations are anti-thesis of development and equality. We don't need reservation based on caste or religion but only to actually provide aid to those who have minimum resources; and merit should be given equal and due importance in admission procedures as well employment opportunities. This way we would be successful in removing caste discrimination and unite the economically rich together in helping the economically poor, irrespective of their castes.

Reference

1. P. Ishwara Bhat, "Law and social transformation", First Edition, 2009, Eastern Book Company, Lucknow.
2. V.N. Shukla's, "Constitution of India, Eleventh Edition, Eastern Book Company, Lucknow.
3. <https://en.wikipedia.org/wiki/reservation>.
4. Pandey J.N., the constitutional Law of India, 46th Edition, 2009 Central Law Agency.

P: ISSN NO.: 2394-0344

E: ISSN NO.: 2455-0817

Remarking

Vol-II * Issue-VI* November - 2015

5. Shukla V.N. constitution of India, 12th Edition 2008, Eastern Book Company.
6. Basu, D.D. constitution of India, Prentice Hall of India, New Delhi.
7. Tripathi, G.P. Law and Social Transformation, 1st Edition 2012, Central Law Publication.
8. Kumar Narender, Constitution Law of India, 7th Edition 2010, Allahabad Law Agency.
9. Mc Graw Hill Education 4th Edition, Indian Polity, 2014.
10. Lauv Kumar and Radhika Gupte's constitutional Law-I, (Quick reference guide) Lexis Nexis, 2014.

Other Sources

1. wikipedia.org
2. lawnotes.in

Footnotes

1. "The untouchables of India" Prianis Retrieved 20 Oct. 2011.
2. Article 16 of the constitution of India Section 4, constitution of India (1950; in English). Retrieved on 8 Sep. 2013.

3. Articles 46 of the constitution of India, section 0, constitution of India.
4. "Raising Female Leaders" J-PAL Policy Briefcase April 2012 <http://www.povertyactionlab.org/publication/raising-female-leaders>.
5. U.P. Power Corp. Ltd. vrs Rajesh Kumar & Ors on 27 April 2012.
6. AIR 1976, SC 490.
7. "Supreme Court of India Judgement Information System"
8. "Scourge of Reservation : The Invisible Creamy Layer"
9. AIR 1992 SC 477
10. AIR 1964, SC 179
11. AIR 2005 6 SCC 537.
12. AIR 1975 SC 563
13. AIR (1995) 5 SCC 173
14. AIR 1963 SC 649