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Reservation Policy in India: An Analysis

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Abstract

Pre-Independent India was a country with a very rigid cast based hierarchal structure where the highest casts enjoyed most of the benefits while the lower casts were looked upon by the higher casts. The majority of the population was backward socially, economically, educationally and politically. The backward classes were classified as the Scheduled Castes (SC) and Scheduled Tribes (ST) and Other Backward Classes (OBC). In order to meet out the backwardness of these castes, reservation policy have been adopted in post Independent India under the Constitution so that equal protection of laws may become in reality. In this context, Indian judiciary has taken reformist role by reviewing policy considerations taken by the Government under political pressure which will be clear from the foregoing judicial interpretation. How much this reservation policy become fruitful has been examined in this paper.

Keywords: Reservation, Scheduled Castes, Scheduled Tribes, Other Backward Classes, Constitution, Quantum, Discrimination.

Introduction

The policy of reservation, which was incorporated in the Constitution of India, has lately been receiving a lot of attention. It seems to have become a subject of controversy. Various factors are responsible for creating a climate of diverse and conflicting opinions relating to this policy. The basic assumption underlying 'reservation' was to provide social and economic justice to certain sections of our society, which has so far been suffering from social stigma and disabilities. These sections were not only the poorest of the poor but they were also denied certain social and political rights and benefits for centuries, having been 'negative discriminated' against. The deprived sections of Indian society were to be positively discriminated so that they could advanced in society and benefit from the process of social change and transformation, inequality of one kind was to be replaced by inequality of another kind to neutralize the negative impact of the former.

Objectives of the Study

The policy of reservation based on caste has been highly contentious issue form independence. The conflict as to whether caste should be the criterion of backwardness and it should be continued or should be done away with. Many times it was argued by many scholars that we should abandon the criterion of caste for being as the base for the determination of backwardness. But, this could not be argued in such plain manner because the reach of benefits of reservation policy even after so many years of implementation of reservation policy is not much effective and large percentage of the down trodden caste based society are still in the darkness of the undevelopment. And the second most important aspect of the reservation policy to the SCs and STs is that since the creamy layer concept. is not applicable for them as per the ruling of the court and policy of the government, -the benefits of the reservation policy is mainly absorbed by the people of the same class who have the better facilities in terms of the economy and in facilities of the other development. This paper is an attempt to give a solution to the conflicts relating to reservation policy so that the constitutional goal of equality may be achieved.

Review of the Literature

Singh in his book “Reservation Policy for Backward Classes (1996)” defines the term OBC on the basis of their traditional occupations. To deal the problems of reservational policy he says; different states have their own classification of backward class categories. In the same way to give concession to the right community from Backward Classes, Karnataka has distinguished between ‘backward and more backward’, while Bihar and Kerala have made backward and most backward. He says such differences are not made by Government of India, but by the States.

Sharma in his book, “Reservation and Affirmative Action: Models of Social Integration in India and the United States (2005)” presents the

models of affirmative action. India's reservation policies, which set aside a quota ofseats for lower-caste and tribal applicants in higher education and government employment, are among the oldest and most far-reaching affirmative action policies in the world. Mr. Sharma astutely points out that it is not just caste discrimination that has historically been reinforced through religion but also gender and racial discrimination.

Ambedkar in his book entitled "Reservation Policy - Issue and Implementation (2008)" tells about the term 'creamy layer'. He tells that the term was first used in 1992 Supreme Court Judgment, in the case of Indira Sawhney Vs the Union of India. Further he writes the criteria for being enlisted in the creamy layer are based on the profession ofthe parents and on the basis of family income. Anybody who meets either professional or income criteria would be considered part of the creamy layer. Under this criteria of professions, the children of Constitutional Heads including President, Judges of SC and High Courts and UPSC Members, and a range also declared by the Govt, for creamy layer, the range changes by time to time. He says that all these are not able to get the benefit ofreservation policy.

Sekhri in her study, "Affirmative Action and Peer Effects: Evidence from Caste Based Reservation in General Education Colleges in India (2011)" finds that low caste students are hurt by better average quality of high caste students. The highest achievers in both caste groups are hurt disproportionately due to peer effects from opposite caste peers. The lowest achieving low caste students also experience negative peer effect from the high caste students, but the lowest achieving high caste students, who are the 65 median students in the cohort, do not get hurt by peer quality of low caste students. These results are supportive of a model in which the peer effects are mediated by a competition effect among low caste and high caste students which is more prominent for the highest achievers, students receiving academic support only from their own caste peers, and teachers targeting teaching to the median students

Methodology

The Doctrinal research method has been adopted to accomplish the present study. In this connection constitutional provisions, statutory laws, related judicial pronouncements, books, journals and reports etc. have been consulted, analysed, and examined as an instrument to meat out the objectives of the study.

Quantum of Reservation

The questions regarding the quantum of reservation came before the Court for the first time in *M.R.Balaji* v. *State of Mysore*.[1] The Supreme Court rejected the argument that Constitution does not talk of the fixation of quantum of reservation and pointed out necessity of reasonable limits. With this balance approach the Supreme Court held the impugned order providing for 68 percent of reservation a fraud on the Constitutional power conferred on the state by Article 15(4). The Court maintained that speaking generally and in a broad way, a special provision should be less than 50 percent. The actual percentage must depend upon the relevant prevailing circumstances in each case.

In *T. Devadasan* v. *Union of India*[2], the Supreme Court read the *Balaji* below 50 percent rule as a rigid one and applicable equally to reservations under Article 16(4). *Devdasan* involved a Central Scheme reserving posts in favour of the Scheduled Castes and Scheduled Tribes for promotion from Grade IV to Grade III posts in the Central Secretariat Service. The Government had applied the "carry forward rule" under which the unbilled reserved posts were carried over to the three succeeding years. The result was that for the year in question 64.4 percent of the available vacancies were reserved in favour of the favoured groups. Proceedings from the notion that Articles 15(4) and 16(4) are exceptions to the equality clauses, the Court struck down the "carry-forward rule" as unconstitutional the effect of which was to allow reservations above 50 percent in a particular year of recruitment.

The Court held that reservations could not be used to destroy or nullify the ideal of equality of opportunity enshrined in Article 16(1). "The overriding effect of clause (4) on clause (1) and (2) could only extend to the making of reasonable number of reservations of appointments and posts in certain circumstances."[3] And "the reasonable number is that which strikes a reasonable balance between the claims of the backward classes and the claims of other employees as pointed out in *Balaji's* case".[4] Following the *Balaji* technique of balancing, the Court indicated that" the reservations should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities".[5] In B.N. Tiwari V. *Union of India*[6], the Supreme Court reiterated its proposition laid down in *Balaji* case. In *Periakaruppan* v. *State of Tamil Nadu*[7] the Supreme Court upheld reservation of 41 percent for backward classes.

But in *Subhasini* v. *State of Mysore*[8], the Mysore High Court held that *Balaji's* limit applied only in cases of reservation under Article 15(4) and other reservation could be made by the State in the exercise of its executive power. The Court observed that *Balaji's* case was concerned with the scope of Article 15(4) and had no occasion to consider any other type of reservation. The Court upheld reservation up to the extent of 56.3 percent as valid. However, the Apex Court in *State of Kerala* v. *N.M. Thomas*,[9] upheld the below 50 percent rule in relation to the total cadre strength. The five out of seven justices upheld the Kerala's test exemption rule the effect of which was that in a particular year 62 percent of promotions went to the members of the Scheduled Castes and Tribes. It is true, that Ray C.J. referred to *Devadasan* and gave an example of the operation of the carry-forward rule as destructive of equality[10] but he upheld the preference to the extent of 62 percent because the promotions made in the services as a whole are nowhere near 50 percent of the total number of posts.[11] He found that the Scheduled Castes and Tribes comprised 10 percent of the population of Kerala but their share in the non-gazetted posts in the State was only 7 percent and in

the gazetted posts it was only 2 percent.[12] Ray C.J., therefore applied the below 50 percent limit in relation to the total cadre strength although without saying anything against *Devadasan.*

But Krishna Iyer and Fazal Ali JJ.explicitly opposed the *Devadasan's* notion of "equality". Krishna Iyer J. said: "The arithmetical limit of 50 percent in any one year set by some earlier rulings, cannot, perhaps, be pressed too far. Overall representation depends on the total strength of cadre.[13] After the decision in *Thomas,* controversy arose whether the 50 percent rule enunciated in *Balaji* stands overruled by *Thomas* or does it continue to be valid. In *K.C. Vasanth Kumar* v. *State of Karnataka*[14] two learned judges came to precisely opposite conclusions on this question. Chinappa Reddy, J., held that *Thomas* has the effect of undoing the 50 per cent rule in *Balaji* whereas Venkataramaia J. held that is does not Mr. Justice Chinappa Reddy was of the view that tit was not the function of Court to pronounce the percentage of reservation. According to the learned judge fixation of the percentage by the Court 'would be arbitrary and the Constitution does not permit us to be arbitrary.[15]

Mr. Justice Chinappa Reddy in *A.B.S.K. Sangh (Rly)* v. *Union of India*[16] observed that "there is no fixed ceiling to reservation of preferential treatment in favour of the Scheduled Castes and Scheduled Tribes though reservation may not be for in excess of fifty percent.[17] Thus, the maximum limit of 50 percent for reserved quotas in their totality was held to fair and reasonable in that very case. However, Justice Pathak dissented, excess over 50 per cent will necessarily injure meritorious individuals and holding that reservation can never exceed 50 percent in a given year and any affect efficiency. He adhered to the majority view in *Devadasan* and held that *Thomas* was inapplicable in situations like the one involved in *Soshit Sangh* case.[18]

It is submitted that the below fifty per cent limitation should be applied by looking at the overall position of the backward classes. The State should not be allowed to provide more than adequate opportunity to reserve more than 50 per cent of the openings in a given year. It is further submitted that whatever may be the shortcomings of the below 50 percent limitation, it might still be viewed as reasonable method of balancing the competing of "equalities". But neither the State practice nor the Court cases have taken any notice of the lower limits indicated in *Balaji* and a flat reservation of 50 percent is now seen with approval. And excepting Karnataka, all other States have adhered to this 50 percent limitation.

The quantum of reservation under Articles 15(4) and 16(4) has been settled in *Indira Sawhney* v. *Union of India*[19] wherein it has been laid down that the quantum of reservation should not exceed 50 per cent. The Court has categorically said that Article 16(4) of the Constitution speaks of adequate representation and not proportionate representation and that adequate representation cannot be read as proportionate representation. The Court has emphasized that just as every power must exercise reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and reasonable limits and what is more reasonable than to say that reservation under clause (4) shall not exceed 50 percent limit barring certain extraordinary situations.[20] The Court has explained that while 50 percent should be the rule, it cannot be made absolute in each and every case. According to the Court some relaxation in this strict rule may become imperative in cases of the people of remote areas who are out of the main stream of national life and who need some extra care. However, this relaxation has to be exercised with extreme caution and in a special case.

It has also been made clear that the rule of 50% shall be applicable only to reservations proper. They shall not be, indeed can must be, applicable to exemptions, concessions or relaxations, if any, provided to 'Backward Class of Citizens'. The Court has also explained that the rule of 50% should apply to each year and it cannot be related to the total strength of class, category, service or cadre, as the case may be. For the carry forward rule the Court has also ruled that a year should be taken as the unit or basis and not the entire cadre strength for applying the rule of 50%. The application of carry forward rule should also not result in breach of 50% rule.

Reservation Policy at Promotional Level

At the time when reservation policy was introduced, it was only for entrance into services but later on it had been extended to promotions in Central as well as State Government's job, public sector undertakings and nationalized banks. Because of this policy there were three-fold reservation in government services, i.e.,

1. Reservation in the matter of initial appointments;
2. Reservations in promotions; and
3. Reservation in promotions in accordance with minutely classified rosters.

The Supreme Court, in this connection, has interpreted Article 16(4) of the Constitution liberally as the Constitution attaches great importance to advancement of backward classes and held that equal representation means not merely quantitative representation but also qualitative representation.[21] In *State of Kerala* v. *N.M.Thomes* [22] case, the Kerala Government made rules for promotion from cadre of lower devision clerks to the higher cadre of upper devision clerks depended on passing a test within two years. This period could be extended for two extra years for the members of reserved categories, *i.e.,* Scheduled Castes and Scheduled Tribes, to pass the test. The exemption was challenged as discriminatory under Article 16(4), so the persons belonging to reserved categories were not entitled to get any preferential treatment in promotion. By majority, the Supreme Court rejected this argument and held:

The Classification of employees belonging to Scheduled Castes and Scheduled Tribes for allowing them an extended period of two years for passing the special tests for promotion is just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office.[23]

Again in *Akhil Bharatiya Soshit Karmchari Sangh (Railway)* v. *Union of India,*[24] it was argued that circulars issued by the Railway Administration, extending concessions and other measures to ensure that members of Scheduled Castes and Scheduled Tribes avail of the posts reserved for them fully, being inconsistent with the mandate of Article 335 of the Constitution, are bad, and *Rangachari* case was sought to be reopened because Article 16(4) of the Constitution does not permit reservation in the matter of promotions. The *Division Bench of Supreme* Court refused to re-open the *Rangachari* case and held that no dilution of efficiency in administration resulted from the implementation of the circulars. In as much as they preserved the criteria of eligibility and minimum efficiency required and also provided for in service training and coaching to correct the deficiencies if any.

Prior to *Indra Sawhney* case[25] under Article 16(4), reservation in government services could be made not only in the initial appointments but even in the matter of promotions too. But in *Indra Sawhney* case majority of the judges felt difficulty to agree with the view expressed in *Rangachari* case that Article 16(4) contemplates or permits reservations in promotions as well. They are of the view that reservation in promotions would not be in the interest of efficiency of administration nor in the larger interest of the nation. The Court, in this way, clearly said that Article 16(4) does not permit provisions for reservations in the matter of promotions in government jobs. But the Government has enacted the Constitution 77th Amendment in order to bypass the Court's ruling on this point.

The Constitution 77th Amendment Act, 1995 added a new clause (4-A) to Article 16 of the Constitution which provides that "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 the services of the State in favour of the Scheduled Cates and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State."

This means that reservation in promotion in government may be continued in favour of Scheduled castes and Scheduled Tribes even after the Mandal case if the Government wants to do so. This is thus clearly intended to nullify the effect of the evil of reservation in promotion. The evil of reservation in promotions was abolished by the Supreme Court as it caused a lot of bitterness and disappointment among employees of the same category who were by passed by their collegues having less merits. There was no demand for it from any section of Scheduled Castes and Scheduled Tribes. In view of this the amendment for reservation in promotions is hardly justified. The haste in which the government had brought the 77th Amendment Bill clearly shows that it was passed for political considerations. It has its own dangers. Although at present it covers only the Scheduled Castes and Scheduled Tribes, but in due course a demand for such reservation can be made for other backward classes also.

The Supreme Court has to intervene again. In *Union of India* v. *Virpal Singh*,[26] the Supreme Court has tried to mitigate to some extent the inquiry that reservation in general has to represent by holding that caste criterion for promotion is violative of Article 16(4) of the Constitution. The case was concerned with the legality of the extention of reservation to promotions in Railway service which enabled specified groups (SC's & ST's) not only to get jobs on their caste lebles but also get promotions on the same basis. The Supreme Court rightly held that *seniority between reserved category candidates and general candidates shall continue to be governed by their panal position prepared at the time of selection.*

High Caste Marrying SC, ST Or OBC: Not Entitled To Reservation Benefit

There were cases where the reservations for SCs and STs had been entangled in marital and parental status problems, upsetting the valid claims of the real consumers of compensatory justice. In *Dr. Neelima* v. *Dean of P.G. Studies A.P., Agriculture University Hyderabad,*[27] it has been held that a high caste girl marrying a boy belonging to Schedule Tribe is not entitled to the benefit of reservation available to Scheduled Tribes. The appellant was born in a Reddy caste which is a forward class and married to an Erukala Tribe boy one of the Scheduled Tribe in the State of Andhra Pradesh. After marriage she sought admission to M.Sc. course in the Agriculture University Hyderabad under reservation quota for Scheduled Tribe. The Andhra .Pradesh High Court ruled that such person had not undergone the stresses or strains or suffered environmental disadvantage, the real backward class citizens faced. Strains or suffered environmental disadvantage, the real backward class citizens faced. The Court warned that, "If they were permitted to invoke the benefit and protection available to the classes of persons who really suffer from environmental disadvantages and incidental stresses and strains, it amounts to letting the purpose of reservation to whittle down." [28]

However, *Dr. R. Uma Devi* v. *Principal, K. Medical College*[29], a girl of high caste married to a backward class boy successfully claimed a reserved seat to the post-graduate medical course. The interesting aspect of this case was that the girl's marriage took place after she completed MBBS degree. This meant that she had not lived with the 'strains and stresses' of the downtroddens and still the High Court, it may be submitted, incorrectly deemed her to pass through such state of affairs to get the privileges. The Court, it seems, forgot the basic principle that such reservation is meant to offset the past inequalities.

Finally, the Supreme Court in *Valsamma Paul (Mrs.)* v. *Cochin University* [30] settled this issue. The Court said, when a member is transplanted into the Dalits, Tribes and other Backward Classes, he/she must also, of necessity, have had undergone the same handicaps and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle him to avail the facility of reservation. Therefore, a candidate who had the advantageous life but transplanted in Backward caste

by adoption or marriage or conversion does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution and would frustrate the being Constitutional policy under Article 15(4) and 16(4) of the Constitution.

I.P.S. Etc. Children Not Entitled For Reservational Benefit

In *Ashok Kumar Thakur* v. *State of Bihar*,[31] the Supreme Court has quashed the economic criteria laid down by the Bihar and Utter Pradesh Governments for identifying the affluent sections of the backward classes (creamy layer), and exclude them for the purpose of job-reservation, and held that the criteria for identification of 'creamy layer' is violative of Article 16(4) and Article 14 and against the law laid down by this Court in *Mandal* case. The Court held that the Supreme Court in *Mandal* case had categorically held that a person belonging to a backward class who because a member of the IAS, IPS or any other All India Service could not seek benefits of reservation for his children.

By striking down the criteria laid down by the States of Bihar and Utter Pradesh for identifying the "creamy layer" the Supreme Court has removed a glaring anomaly in the job-reservation policy adopted by the two governments for the benefit of the backward classes. The very purpose of the reservation was to help the poor. This purpose would be defeated if no distinction is made between the rich and the poor among the backward classes. This was the reason why the Court has to strucked down the creamy layer test of the Bihar and U.P Governments. If the rich and the poor are treated alike in the matter of job reservation, they are bound to benefit at the cost of the poor. The Supreme Court by striking down the creamy layer test by the two Governments has contributed considerably for social justice. In the *Mandal* case the apex Court had made it clear that a person belonging to a backward class who become a member of IAS, IPS, or any other All India Service could not seek the benefit of reservation for their children. Since neither the Constitution nor the Court prescribed any procedure for identifying the creamy segment among the backward classes the Court left it to the Centre and the State Government to evolve the requisite criteria by setting up permanent commissions. In pursuance of the Court's order the Centre has formulated such a criteria. But the State of Bihar and Uttar Pradesh added unacceptable criteria with it as to what constitutes the 'creamy layer'. Therefore, the Court was left with no options again to nullify the criteria adopted by the State Governments against the guidelines laid down by it in the *Mandal* Case.[32]

Reservation in Proportion to Population of Backward Classes

The fifty percent reservation rule has been evolved by the judiciary asa maximum limit. But the problem of reservation further becomes complicated where the backward classes people demanded for reservation of seats in proportion to their population. Assuming that a State decides 75 per cent of its population is backward. Here a question arises that may the State reserved 75 per cent seats for them. In *State of Kerala* v. *N.M. Thomes*[33] Fazal Ali, J. raised this question and answered it affirmative. He described the *Balaji* below 50 per cent rule as nothing but a "rule of caution" and "not exhausting all categories"[34].

However, the view that even 75 per cent of the people can be treated as backward and can be provided the benefits of reservation of similar percentage leaving the benefits of reservation of similar percentage leaving only 25 per cent for open merit competition is questionable. In *Ramkrishna Singh* v. *State of Mysore*[35] . The Mysore High Court repudiated a scheme of reservation in which more than 95 per cent of the population was treated as backward. The Court indicated that 95 per cent population could not be regarded as "really backward". In *Balaji*," the Supreme Court objected to the division of backward into "backward" and "more backward" and this was impermissible under Article 15(4). The Court struck down a scheme, the effect of which was to treat 90 per cent of the State's population as backward. Both in *Ramkrishna Singh* and *Balaji* the Court's objection was based on the belief that such a high percentage of the population could not be regarded as "really backward."

It is submitted that the percentage of reservation should depend upon the relative deprivation and degree of backwardness rather than on the principle of proportional representation. And if the principles enunciated in *Balaji* and repeated in subsequent decisions are strictly adhered to the number and the size of the beneficiaries can be severely restricted. There are two principles which will serve to restrict the number of beneficiaries. One is, that only these communities can be designated as educationally backward classes whose educational attainment is 'well-below' the State average (implying less than half).[36] The other principles is that the beneficiaries to be selected must be in the matter of their backwardness comparable to the Scheduled Castes and Scheduled Tribes.[37] In Thomas case Krishna lyar J. clarifies that in implementing the directive principles contained in Article 46, in the area of State employment the weaker sections will include only "those dismally depressed categories comparable economically and educationally to the Scheduled Castes and Scheduled Tribes[38] and that the "social disparity should be so grim and substantial as to serve as a foundation for benign discrimination.[39] Even the framers intended that 'reservations' in services could be made not only for minority of posts but also for minority of population.[40] It is submitted that by no reasonable standard can seventy five per cent of a State's population be described as 'really backward'. Only in respect of the

Scheduled Castes and Tribes there is a clear national policy to provide 'reservations' for them commensurate to their ratio in the population. Both at the Centre and the State these classes are provided reservation in accordance with the ratio of their population. This is mainly because that dismal social milieu of these depressed classes. This is mainly because that dismal social milieu of these depressed classes. It may be that some members of these groups might have achieved upward mobility, but in their greater masses they are still "really backward." But the presumption of the utter deprivation applicable in relation to the Scheduled Castes the Tribes cannot be extended to "other backward classes". and once the principle that reservations should be commensurate with the population of the backward classes is pressed for all the categories, it will be difficult or even impossible to confine the aggregate reservation to maximum limit of 50 per cent as laid down in *Indira Sawhney's* case. [41]

Conclusion

Ever since Rangachari[42] it has consistently been insisted that reservation should not empair the efficiency of administration although some impairment of administrative efficiency is seen as inherent in the very idea of reservation.[43] It is implicit in the idea of reservation that a less meritorious person is to be preferred to another who is more meritorious [87]. Although unlike Article 335 which is related to the Scheduled castes and the Scheduled Tribes only Article 16(4) does not limit the state's power to make reservations "consistent with the maintenance of the efficiency of administration", yet the Courts have imported the requirement of Article 335 as a broad nation of policy applicable to all reservations. It is in the public interest which is always paramount that reservations are compatible with the efficiency in services. But who should decide whether reservations are compatible or incompatible with administrative efficiency and what Standard of efficiency is constitutionally required. In *Rangachari* case the Supreme Court left it to the State to strike a reasonable balance between the claims of backward classes the claims of other employees and the maintenance of the efficiency of administration. It declined to go into the policy questions[44].

But in later cases the Courts have undertook to review the reservations as compatible or incompatible with the efficiency in Services. In Thomas [45]for instance, all the seven justices have uniformly insisted that a State- employment preference must be consistent with efficiency of administration and even the majority justices who voted for the impugned scheme there, would have struck down the reservation policy if they had concluded that it was inconsistent with administrative efficiency. The majority justices denied that the aim of the impugned rule was not to dispense with the minimum qualification required for promotion but only to give a breathing space to the employees belonging to the reserved group[46]. The minority justices, on the other hand, insisted upon the maintenance of strict meritocracy and fair competition and believed that any waiver of test qualifications for promotion would inevitably reduce efficiency[47]. Once the requirements of administrate efficiency is inferred from the State's power to make reservations, some peculiar problems arise. Can a member of the non-favoured group challenge the 27 State employment preferences on the ground that it is incompatible with efficiency in service? Has he any Constitutional right to do so? And who will ultimately decide whether a preferential scheme impairs or does not impair efficiency. It is clear that a member of a non-favoured group can question a compensatory measure as violative of his guaranteed fundamental right to equality but his right to question such measure on the ground of its incompatibility with the administrative efficiency is far from being clear. The Constitutional limitation regarding the maintenance of efficiency in administration has been inferred by the Courts from the language used in Article 335. It is a limitation on the power of the State to make reservations but it in no way creates any Constitutional right in favour of a citizen to demand a certain standard of efficiency.

It is submitted that when a State provides reservations it may be presumed that it has kept in view the efficiency factor into account and the judges are very less equipped to decide on this issue. They can simply set Constitutional limitations but have to leave the State to do the required balancing. But if the Courts undertake the review of this kind they have also to do a delicate balancing of the claims of meritocracy with the claims of backward classes to have more share in the administration and the national interest involved in the efficiency in service. And in such balancing the Courts must answer the questions of unfair burdens and stigmatizing effect on those adversely effected. But even in *Thomas* the majority justices focused mainly on the Constitutional core of equality rather than on the problem of unfair burdens imposed on those who were excluded by a beneficial measure. It is also submitted that the mere existence of a provision for reservation does not necessarily result in the impairment of administrative efficiency or adversely affect those who are excluded unless the members of the backward classes are really presented in service. The questions of reservations and stigmatizing effect on the non beneficiary class is closely related to the question of who should be designated as the backward class and what criteria should be applied for selecting the legitimate beneficiaries. In sum, judicial interpretation of reservation policies in the light of constitutional safeguards given to weaker sections of society marks a peculiar judicial awareness of Indian Social phenomena. Indian judiciary is fully aware of structural properties really downtrodden people. It has continuously attempted to maintain a proper balance between legal equality and positive (actual) of the society with the social interests and Constitutional protections given to other sections of the society.

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