



Reservation system in India vis-à-vis right to equality: A critical study

Roopangshu Banerjee¹, Punam Kumari Bhagat²

¹ BALLB (Hons), Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand India

² Assistant Professor, Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand, India

Abstract

India is a country of various castes, creed, religion, languages etc. where different people of different languages follow different religion and speaks different languages in the context of that 'unity in diversity' term has been given to it. But no such unity is being seen when it comes about the caste system in India among Hindus divided between Brahmins, Kshatriya, Vaishyas, and Shudras. Outside the Hindu cast system Schedule caste and Schedule tribes are those who are socially backward class people for whom the reservation system was made to protect their rights and provide them proper education jobs etc. so that they could live a proper life. After the constitution was made reservation was given for a period of 10 years so that the backward class could not remain that backward. But today even after the 70 years of Independence the reservation system continues not as policy but as vote bank politics by the politician. The explicit purpose of the reservation policy was and is to promote social, economic, and political equality for Scheduled caste, tribal peoples, and other lower castes peoples, (i.e. OBCs (Other Backward Communities) through positive or compensatory discrimination. By this policy, the leaders of independent India declared their determination to eradicate inequalities. The Indian government has appointment various commissions for measurement quota system. This research paper will put a light on the impact of reservation on non SC ST candidate. This paper will research that whether all the SC ST candidates are in condition to take reservation without it they cannot live a proper social life and also put a light on the argument that reservation should not caste based reservation but a economic based reservation. This study the researcher collected secondary data from different Journals, books, etc and give the details on references.

Keywords: reservation, schedule caste, schedule tribe, other backward class, equality

1. Introduction

The socially and religiously-imbedded caste system in India created schisms among the Indian population, forming large groups of ethnic and caste minorities. Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Class (OBC) constitute about half of the country's population. Due to beliefs that the historically low castes are impure by birth and association with stigmatized occupations such as butchers and day laborers, the lower castes - SC, ST, and OBC - have been socioeconomically marginalized.

Quota systems favouring certain castes and other communities existed before independence in several areas of British India. Demands for various forms of positive discrimination had been made, for example, in 1882 and 1891^[1]. Shahu, the Maharaja of the princely state of Kolhapur, introduced reservation in favour of non-Brahmin and backward classes, much of which came into force in 1902. He provided free education to everyone and opened several hostels to make it easier for them to receive it. The depressed classes were assigned a number of seats to be filled by election from constituencies in which only they could vote, although they could also vote in other seats. The proposal was controversial: Mahatma Gandhi fasted in protest against it but many among the depressed classes, including their leader, B. R. Ambedkar, favoured it. After negotiations, Gandhi reached an agreement with Ambedkar to have a single Hindu electorate, with Dalits having seats reserved within it. Electorates for other religions,

such as Islam and Sikhism, remained separate. This became known as the Poona Pact^[2]. A common form of caste discrimination in India was the practice of untouchability. SCs were the primary targets of the practice, which was outlawed by the new Constitution of India.

Reservation is the supportive policy given in the field of education to the backward classes so that each of them could be able get quality education and for that government has reserved certain amount of seats in universities and colleges for the SC'S ST'S and OBC. Leaders like Rajarshree Shahu Maharaj, Dr. Babasaheb Ambedkar took initiatives to help backward class people. They started giving free education to them. He main intention of reservation is to improve conditions of backward castes and community people.

In the quota system the seats are being reserved for the SC, ST, OBC Women and other minorities where it is 7.5% and 15% respectively. After a lot of struggle by teachers even after the fifty years of independence SC ST reservation were allotted in universities and colleges. Other than this each government follows their own reservation system as per their own population in the state so 50% seats are reserved and the General category people are subjected to 50% seats.

In today's scenario whenever a student is being given a form to fill of various universities they are being asked to fill up the SC ST OBC coloum, how does even it matters from what caste does it belong what matters is every university should reserved seats on basis of the merit of the children and not on

the basis of caste. However the merit as well as the economic condition should be taken into consideration so that a rich SC ST student with good marks and a poor general category with good marks could avail the same quality of education.

In terms of the reservation in the job promotion as per given in article 16 clause 4[A] and 16 clause 4[B] which adds to provide more of reservation in the promotion in government services. It is made to be clear that reservation in job promotion should be only to provide equivalent post and not a higher post because that would be against the norms of the right to equality.

2. Caste Based Reservation System in India

In India caste is being considered as the major factor to identify any person, in early period certain class of people were considered as untouchables i.e. dalits who were deprived of their duties and banned from all sort of social gatherings, these untouchables are now being divided in a list of schedule known as the schedule caste and the schedule tribes. SC's and ST's get reservation in different sector for their better upliftment and to fulfill their basic needs.

The reservation scheme exists to provide opportunities for the members of the SCs and STs to increase their representation in the State Legislatures, the executive appendage of the Union and States, the labor force, schools, colleges, and other 'public' institutions.

Reservation was given to improve the condition of the social and instructive position of unprivileged communities and thus allow them to make a equitable position and status in the Indian society, but giving them more and more of reservation in different sectors the privileged community i.e general candidates are being further deprived of their social needs. In the need of their upliftment there is a downfall of general candidates in every sector, the exact necessity of reservation is not being completed rather than misuse is being done.

In 1982, the Constitution specified 15% and 7.5% of vacancies in public sector and government-aided educational institutes as a quota reserved for the SC and ST candidates respectively for a period of five years, after which the quota system would be reviewed. This period was routinely extended by the succeeding governments. The Supreme Court of India ruled that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) and put a cap on reservations. However, there are state laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation stands at 69% and the same is applicable to about 87% of the population in the State of Tamil Nadu. In 1990, Prime Minister V. P. Singh announced that 27% of government positions would be set aside for OBC's in addition to the 22.5% already set aside for the SCs and STs

3 Constitutional provision of reservation

Article 14

"The state shall not deny to any person equality before the law or equal protection of laws within the territory of India"

The obligation imposed on the state by article 14 is for the benefit of all persons within the territory of India. The benefit of Article 14 is therefore not limited to citizens. Every person

whether natural or artificial, whether he is a citizen or alien, is entitled to the protection of this article ^[3].

Article 14 and Admission to Educational Institution.

Admission to Educational institution has been a matter of judicial scrutiny for more than three decades. In the context to provide admission to educational institution such should be imparted to students on the basis of preferential treatment to the students on various grounds has been considered by the courts and such preferential treatment must be on the basis of Article 14. It has been observed that the scheme of any education must be such to provide the best and the meritorious students the best of education without considering the reservation policy, even if some of the educational institution considered reservation it should be such that only required students to be get admitted in these institution and not all those who are under the reservation category. In Pradeep Jain v union of India ^[4] the supreme court held that wholesale reservation in the seats in the M.B.B.S and B.D.S courses on the basis of domicile or residence within the state is unconstitutional and void as being in violation of Article 14.

Article 15[4]

Nothing in this article or in clause ^[1] and ^[2]. It provides Nothing in this article or in clause ^[2] of article 29 shall prevent the state from making any provision for the advancement of any socially and educationally backward classes of citizen or for the schedule castes and the scheduled Tribes"

Such "special provision" as are permissible under the clause ^[4] of Article 15 must however be for the advancement of person belonging to those categories and there for special provision not for the advancement of people would not be included in the clause 4. Even also clause ^[4] of article 15 & 16 cannot be applied to all the reservation, unmindful of purpose of reservation.

In State of M.P v Mohan Singh ^[5] it was held by the apex court that though prisoners were from the backward class they will be equally liable for punishment as of other prisoners as they have broke the law. The invocation of Article 15[4] is wholly unjustified.

Article 16[4A]

"Nothing in this article shall prevent the State from making any provisions for reservation in the matter of promotion to any class or classes of posts in the services under the State in favour of SCs and STs which in the opinion of the State are not adequately represented under the State"(Constitutional 77th Amendment, - Act, 1995).

In Indra Sawhney v Union of India ^[6] it was thus observed by the court that article 16 ^[4] does not contemplate or permit reservation in promotion. The court further observes that while it was just to say that the handicapped should be given to backward classes at the initial stage of career, but it would be unacceptable in equality of opportunity to say that such handicap should be provided with promotion at every stage of the career

In 85th Amendment, 2001 Supreme court clarified in Jagdish Lal v State of Haryana ^[7] that when reserved candidates[Dalits or Tribals] had been promoted earlier to a general candidate,

their seniority in the new cadre would rank from the date of their joining on promotion.

Article 16[4B]

“Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year” (Constitutional 81st Amendment, - Act, 2000).

Article 16[4B] lifts the 50% cap on carry over vacancies. However in working out the carry forward rule^[8], the apex court said that two things should be taken into consideration namely, unfilled vacancies and the time factor as said in *M. Nagaraj v Union of India*^[9]. The Constitution prohibits discrimination (Article 15) of any citizen on grounds of religion, race, caste, etc.; untouchability (Article 17); and forced labour (Article 23). It provides for specific representation through reservation of seats for the SCs and the STs in the Parliament (Article 330) and in the State Legislative Assemblies (Article 332), as well as, in Government and public sector jobs. This new Clause 4[B] Enables the state to carry forward the unfilled reserved vacancies to be filled in any succeeding year as to remove the backlog, notwithstanding the rule of 50%.

4 Impact of Reservation on Education and Employment.

4.1 Reservation in Education

It has been discussed in earlier paragraphs the impact of reservation on education and employment. In reference to the reservation on education, every educational institution have some seats reserved 15% for schedule caste and 7.5% for the schedule tribes it was done for the upliftment and so that they could have an good and quality education to live a good social life. This reservation was given for their upliftment but not for the downfall of the general candidates, though it is necessary that people of backward classes should be given an equal opportunity in educational institutions like IIM, IIT, NLU and so on, but such necessity is being now converted into a general rule of providing reservation though all the candidates are not in such position that without the aid of reservation they cannot lead a good social life.

Reservation in the various medical institution became a matter to discuss in this context the court observed that object of any scheme of admission should be to select the best and the most qualified and abled student by providing equal opportunities to all citizens in the country. Any departure from this rule must be justified on the touchstone of Article 14. It would also depend upon the economic factors in the context of educational opportunities between those who were unequal.

In context to the reservation of the seats the court laid down that in no case it should limit more than the 70% of total number of seats after taken into account others kind of reservation validly made, such was made for the M.B.B.S and B.D.S courses. This limit was to be reviewed by the Indian medical council every three years^[10].

However in the context of admission to *super specialities post graduate courses* like the cardiology or neuro-surgery court held that there should be no reservation at all even on the basis of institutional basis, such admission should be took place only on the basis of the merits^[11].

Special Provision Relating to Admission to Educational Institution.

The Constitution [Ninety-third Amendment] Act, 2005 has inserted that state to enable provision to made for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes or the Schedule Tribes, in so far as, such special provision relate to their admission to educational institution, including private educational institution whether aided or unaided by the state.

In *Ashok Kumar Thakur v. Union of India*^[12] it was upheld the validity of the *93rd Amendment Act, 2005* so far as it related to state maintained and State-aided educational institution.

All India Quota 15 % Admission to PG courses.

This policy of the central government was made for the reserving of seats in the medical colleges for the post graduate courses. The object behind this was that there are numbers of states and union territory and as per that there is not much medical or dental colleges, so in order to meet the requirments of state and union territories a central pool of MBBS\ BDS seats is being maintained.

In *Bhawana Garg v University of Delhi*^[13], held that policy of central government could not be questioned, said that reservation of as many 260 seats might not be justifiable in changed circumstances

4.2 Reservation in Employment

All India Services and central services for which employment is made through the Union Public Service Commission, representation of other backward classes is very near to their share. With the growth in the share of scheduled castes and scheduled tribes in public services, it had positive multiple effects on the social and economic situation of these two disadvantaged groups. The data provided by the ministry of personnel indicates that in recent years the vacancies reserved for the scheduled castes, scheduled tribes and other backward classes are being filled fully even in the ‘elite’ services at the centre.

In relation to the reservation in the employment sector Article 16[1] says that all the citizen must be given an equality of opportunity relating to the employment or appointment to any offices under the state. Clause^[2] further strengthen that No citizen on the basis of religion, caste, creed, colour, religion, sex, place of birth etc shall be discriminated against in respect of employment or office under the state.

The expression ‘*employment*’ may mean either permanent or regular or contractual employment. It could be better explained in the case *Union Public Service Commission v Dr. Jamuna Kurup*^[14] the apex court held that since the term ‘employee’ was not included in *D.M.C Act. 1957* nor in the advertisement, it would include all employees including contractual employees.

In context to the reservation in the employment a provision

was made in reservation in promotion as discussed in the case *Indera sawhney v Union of India* ^[15] which said that the Article 16[4] does not contemplate the or permit the reservation in promotion. Such was upheld in the *77th Amendment Act 1995* which state that nothing in this article shall prevent the state from making provision for the promotion in the state or central services in favour of the backward classes

Creamy layer

The term 'creamy layer' is being used to refer those backward caste be it SC ST or OBC who may be regarded as untouchables or not and got enough land, money to live a healthy life and their children will be not be able to get the reservation. These group of people who has got various sources so that they can get quality education, job and not in need of the reservation even though they are backward but not economically backward are referred as creamy layer.

A committee was formed known as the "Justice Ram Nandan Committee" to identify the creamy layer among the socially and educationally backward classes. They submitted their report on March 16, 1993 which was accepted by the government. It was thus published in column 3 of the schedule to the government of India.

In *Ashok kumar Thakur v State of Bihar* ^[16] the Supreme Court removed the criteria laid down by the State of Bihar and Uttar Pradesh for identifying the "creamy layer" excluding the affluent section for the purpose of promotion in job employment in favour of the backward classes.

5 Conclusion & Suggestion

- Now day's politicians are playing a major role in reservation policy. The reservation policy was only for 10 years after the independence, for upliftment of SC and ST but till now it is continue and no one has taken any step to amend it or revise it or to change it. The reason behind this is the population of SC and ST in country. Nearly 33% voting is done by SC and ST so now if they make any change in the reservation policy against the SC and ST then they have to suffer a lot for the same. So they are not taking any steps against the reservation policy.
- Reservation was made as an policy to help the socially and economically backward people for their betterment and upliftment, but that was before the independence. After 70 years of independence backward classes are not so backward that they require reservation in every sector, it is being used as a tool to live a easy life without prior hard work to get admission in prestigious educational institution or promotion in job.
- Government on other hand should remove this caste based reservation in various states and include a new policy of reservation which should based on economic condition of the people, this will actually fulfill the all norms of reservation for which it was being made and thus it will help the actual backward people. Those backward class people who have a huge amount of money, land, vehicles they do not require reservation to get job and their children for admission in various colleges.

Policy regarding identify the "*creamy layer*" should be upheld and while making the list of candidates in reservation in

educational institution a prior check upon the family background should be done for the exclusion of creamy layer candidates so that the needy candidates could have the benefit of reservation rather than the misuse of it.

6. References

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