

“Reservation System and Judicial Aptitude”

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ABSTRACT

A typical discussion in India is to liken governmental policy regarding the reservation of seats in academic institutions and the reservations of posts in public employment. A form of discrimination in India was the practice of untouchability. Schedule castes (SC) are the primary targets of the practice, which is outlawed by the Constitution of India. An untouchable person is taken as “impure or a derelict human”. Reservation in India has constantly involved a middle stage in the policy regarding minorities in society program for the discouraged classes.

This Article centers around the principle type of reservation strategy, implemented by the 73rd and 74th amendment of the Constitution in 1993 and SC decision on government jobs for reserved category people with Constitutional, judicial and statistical view.

INTRODUCTION

Is India just for the retrogressive? Can anyone explain why each time the politicians are keen on the issue of the backward classes? The higher caste over the generations may have been suppressive but that tools for empowerment like reservations are misused. It has increasingly been the case with the politicians. In every elections it’s a bitter truth, they have some kind of reservation or the other being announced which I think is just a mechanism to get votes. The caste system is so fundamental to the psyche that any changes in favor or against the reservation system have resulted in rioting and political disarray across the country.

India is one of the key means of affirmative action, ensuring lower caste groups are shown clearly in political institutions. The socially and religiously set caste based reservation 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 denounced occupations such as day laborers, the lower castes – SC, ST, and OBC have been taken socioeconomically marginalized from centuries.

The reservation policy today takes three main forms: reservations for positions in elections, civil service jobs & in its promotion, and in educational institutions. Reservation is the process of setting aside a certain percentage of seats (vacancies) in government institutions for members of backward and under-represented communities (defined primarily by caste and tribe).

Reservation is a form of quota-based affirmative action. Reservation in India is a form of affirmative action designed to improve the well-being of perceived backward and under-represented communities defined primarily by their caste, gender or even religion. Call it democratic character or a habit of having an opinion about everything. Reservations in promotions, an issue contentious from the very beginning and fiercely opposed by the upper caste members of Indian Polity, it aimed keeping aside a number of seats in government offices during promotions reserved for the Scheduled Castes and Tribes.

WHAT CONSTITUTION STATES ON CASTE BASED RESERVATION?

The primary stated objective of Indian reservation system is to increase the opportunities for enhanced social and educational status of the underprivileged communities and thus uplift their lifestyle to have their place in the mainstream of Indian society. The reservation system exists to provide opportunities for the members of the Scheduled Castes and Scheduled Tribes to increase their political representation in the State Legislatures, the Executive Organ of the Union (Centre) and States, the labour force, schools, colleges, and other public institutions.

The Constitution of India states in various Articles and amendments regarding reservation in India for backward classes as follows,

- Article 15(4), Constitution of India

“Nothing in this Article or in clause 2 of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribe”.¹

- Article 16 (4), Constitution of India

“Nothing in this Article shall prevent the state from making any provision for the reservation of appointment or post in favor of any backward class of citizens which in the opinion of the state, is not adequately represented in the services under the state”.²

- Article 46, Constitution of India

“The state shall promote with special care the education and economic interests of the weaker sections of the people and in particular of the scheduled caste and scheduled tribes, and shall protect them from social injustice and all forms of social exploitation”.³

¹ Article 15(4) Constitution of India, 1950.

² Article 16(4) Constitution of India, 1950.

³ Article 46 Constitution of India, 1950.

The Article 334 is amended six times through Constitutional 8th, 23rd, 54th, 62nd, 79th and 95th amendment act and through 95th amendment act Article 334 stated below,

– Article 334, Constitution of India

“Notwithstanding anything in the foregoing provisions of this part [part XVI], the provisions of this Constitution relating to (a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and (b) the representation of the Anglo Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of forty years from the commencement of this Constitution: Provided that nothing in this Article shall affect any representation in the House of the People or in the legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be”.⁴

– Article 341 Scheduled Castes

“(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification”.⁵

– Article 342 Scheduled Tribes

“(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification PART XVII OFFICIAL LANGUAGE CHAPTER I LANGUAGE OF THE UNION”.⁶

⁴ Article 334 Constitution of India, 1950.

⁵ Article 341 Constitution of India, 1950.

⁶ Article 342 Constitution of India, 1950.

Article 330, 332, 335, 338, to 342 and the entire fifth and sixth schedule of the Constitution deals with special provisions for implementation of the objectives set forth in Article 46. These provisions need to be fully utilized for the benefit of weaker sections in our society. The “Scheduled Castes” and “Scheduled Tribes” shall have the meaning respectively assigned to them in clause (24) and (25) of Article 366 of the Constitution of India.

- The Article 366 (24) of the Constitution of India defines schedule castes as follows:

“Scheduled Castes means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution”.⁷

- The Article 366 (25) of the Constitution of India defines schedule tribes as follows:

“Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution”.⁸

JUDICIAL APTITUDE AND STATISTICAL VIEW

In the case of **M. Nagaraj Vs. Union of India**⁹, the court in very clear cut terms lay down that if the state wishes to have reservations in promotions, it is free to do so but at the same time it must provide a proper reason for doing so i.e. it must show the backwardness of the community to which it is providing reservation, the compelling reasons must consider the points of inadequate representation and administrative efficiency as well. For this purpose, Article 16 (4A) was constitutionally valid. However, the court also laid down certain precautions in this judgment, namely:

1. The right to equality under Article 16(1) is a fundamental right of every citizen but clauses 4 and 4A do not confer a fundamental right upon those classes for whom reservation is sought to be provided.
2. Clauses 4 and 4A are discretionary in nature. The state may decide when to provide reservation, if any.
3. Besides backwardness and inadequate representation, the state must take care not to extend reservation indefinitely or to extend the 50% cap or reduce administrative efficiency.

⁷ Article 366(24) Constitution of India, 1950.

⁸ Article 366(25) Constitution of India, 1950.

⁹ M. Nagaraj Vs. Union of India, AIR 2007 SC 71, (India).

In the case of **U.P. Power Corporation Ltd. Vs. Rajesh Kumar**¹⁰, the decision in the M. Nagaraj case was upheld and it was stated that:

1. Affirmative action was inevitable in a society divided by thousands of years of discrimination due to an exploitative caste system.
2. Reservations in promotions are a much needed step towards improving representation of the lower classes in the bureaucracy, thus ending their marginalization.
3. Those who base their argument on the fact that efficiency would be reduced are of the opinion that the lower classes are by default intellectually inferior and no amount of affirmative action would do them any good. This mindset needs to be both abolished and removed.

In **Union of India Vs. Virpal Singh Chauhan**¹¹, two judge bench of the supreme court reiterated what had been said in the Indira Sawney case that providing reservation under in promotion was not warranted under Article 16(4). The rule of reservation actually created an objectionable situation in this case. Out of 33 candidates being considered for promotion to 11 vacancies, all were SC\ST candidates. Not a single candidate belonged to the general category. The court noted that these candidates had left behind even their general category counterparts in matter of merit and thereby did not need reservation. The court also stated that there was no uniform or prescribed method providing reservation. Its extent and nature were purely upon the state to decide. And when a candidate from the reserved category would get promoted, he would assume seniority over his general counterpart only as long as that person didn't get promoted to the same rank. In other words, such seniority would be temporary.

In the case of **Ajit Singh Januja Vs State of Punjab**¹² a three judge bench of supreme court went a step ahead of Virpal case and laid down that when there would arise a question to fill up a seat reserved for a SC/ST candidate in a higher grade then a person that category would receive first preference while for vacancies in general category seats, a person of general category would be given first preference. There by in such instances, the court put a limit on the discretion of the state in respect to matters related to reservations in promotions. The court agreed that the seniority between the two categories in promotion would continue to be regulated by their penal position i.e. with reference to them inter se seniority in the lower grade.

The court laid down in the case of **M.R. Balaji Vs State of Mysore**¹³ that Article 16(4) and Article 16 (4A) contain no directive or command, it is only an enabling provision and it imposes no Constitutional duty on the state and confers no fundamental right on any one. It is necessary to balance all these provisions. The interests of the reserved classes must be balanced against the interests of other segments of society. The doctrine of equality of opportunity is to be reconciled

¹⁰U.P. Power Corporation Ltd. Vs. Rajesh Kumar, AIR 2012 SC 2728, (India).

¹¹Union of India Vs. Virpal Singh Chauhan, AIR 1996 SC 448, (India).

¹²Ajit Singh Januja Vs State of Punjab, AIR 1996 SC 1189, (India).

¹³M.R. Balaji Vs State of Mysore, AIR 1963 SC 649, (India).

in favor of backward classes in such a manner that while serving the backward classes, no encroachment shall be made upon the field of equality. It is necessary to strike such a balance so as to attract meritorious and talented people to the civil services. It is also recommended that the rules of adequate representation be properly followed so that the efficiency does not get affected under Article 335.

In 1982, the Constitution determined 15% and 7.5% of opportunities in public sector and government aided educational institutes as a quota reserved for the SC and ST candidates respectively for a period for five years, after which the quota system would be audited. This period was routinely increased by the succeeding governments. The supreme court of India stated that reservations could not exceed 50% (which it judged would violate equal access guaranteed by the Constitution) and put a cap on reservations.

According to UGC in its report of 2012 recorded that in India, 42 central universities, 275 states universities, 130 deemed universities, 90 private universities, 5 institutions established and working under the state Act, and 33 institutes of National Importance. Other institutions include 33,000 collages including 1800 exclusive women's colleges, functioning under these universities and institutions.¹⁴ India's higher education system is the third largest in the world, next to the United States and China. According to All India Survey on Higher Education which was conducted by MHRD for enrolment of OBC students in higher Educational Institutions in India 2010- 11 has noted up to 27 percent (male 27.3% and 26.8%).¹⁵

The Scheduled Castes establish unmistakable station with explicit culture, word related and religious qualities. They are isolated into in excess of 900 sub castes and are daintily disseminated in 600,000 villages of India. The share of the Scheduled Tribe population in urban territories is 2.4%. In the States like Madhya Pradesh, Maharashtra, Orissa, Gujarat, Rajasthan, Jharkhand, Chhattisgarh, Andhra Pradesh, West Bengal, and Karnataka are having bigger number of Scheduled Tribes. These states have 83.2% of the total Scheduled Tribe population of the whole nation. Assam, Meghalaya, Nagaland, Jammu & Kashmir, Tripura, Mizoram, Bihar, Manipur, Arunachal Pradesh, and Tamil Nadu, represent another 15.3% of the absolute Scheduled Tribe population. The share of the remaining States/Union Territories is irrelevant.

As per the Census 2001, total population of the Scheduled Castes in the nation (barring the population of Mao Maram, Paomata and Purul sub-divisions of Senapati district of Manipur) is 166,635,700 which comprises 16.2% of all out population of SC's. Uttar Pradesh (35,148,377) has the biggest Scheduled Caste population, trailed by West Bengal (18,452,555) and Bihar (13,048,608). These states, with Andhra Pradesh, Tamil Nadu, Maharashtra, Rajasthan, Madhya Pradesh, Karnataka and Punjab have the group of 'top ten' states regarding substantial Scheduled

¹⁴ Reservation Policy in admission and appointment, (Retrieved Feb.7, 2019, 10:34 AM), https://www.ugc.ac.in/pdfnews/6320608_reservation-Policy.pdf

¹⁵ All India Survey on Higher Education , MHRD, (Retrieved Feb.7, 2019, 10:54 AM), http://mhrd.gov.in/sites/upload_files/mhrd/files/statistics-new/AISHE2010-11_0.pdf

Caste population in the country. In Nagaland, Lakshadweep, and Andaman & Nicobar Island, no Scheduled Caste is recorded. Total population of Scheduled Tribes is 84,326,240, according to the Census 2001 which accounts for 8.2% of the total population of country. Majority of the Scheduled tribe population live in rural areas and their population is 10.4% of the total rural population of the country. The Scheduled Castes comprises distinct caste groups with explicit cultural, occupational and religious characteristics. They are divided into more than 900 sub-castes and are thinly distributed in 600,000 villages of India. Around 90% of the Scheduled Castes live in rural areas and they constitute 15% of the population of India.¹⁶

Today, out of 543 seats in India's parliament, 84 (18.42%) are reserved for Scheduled Castes/Dalits and 47 (8.66%) for Scheduled Tribes. Allocation of seats for SC and ST in the Lok Sabha are made on the basis of proportion of Scheduled Castes and Scheduled Tribes in the State concerned to that of the total population, vide provision contained¹⁷ in Article 330 of the Constitution of India¹⁸ read with Section 3 of the Representation of the People Act, 1951.¹⁹

CONCLUSION AND SUGGESTIONS

Despite what might be expected, the velvety layer among the same segment is enjoying special privileges in the sake of reservation and political groups are supporting them for vote banks. Reservation is no doubt good, to the extent it is a technique of appropriate positive discrimination for the benefit of the downtrodden and economically backward Sections of the society but when it prone to harm the society and ensures prerogativeness for some at the expense of others for limited political ends, for what it's worth in the present frame, it ought to be discarded, as soon conceivable.

The recent Jaat fomentation gives the best example, the demand for a reservation by a group considered a "dominant caste" in the Northern part of our country. The nation is to be treated as a retrogressive caste that put lives of many in jeopardy and affected livelihoods of people in three states. So the question is for how long can the demands for "benefits", "privileges" as a "backward" "regressive" class to maintain at the expense of a majority of the population.

One thing, however, stands out clearly. The reservation system in India needs an entire redesign. If equality is the objective, we don't have space for reservations and negligent standards in the name of supporting backward castes and minority religions. The Supreme Court verdict on promotions for reserved people also be quashed and looked once again for the interest of nation. The youth of India need support. Let joins our hands to provide more scholarships, grants, more

¹⁶ Census 2001, Government of India, (Retrieved Feb.7, 2019, 11:14 AM), http://censusindia.gov.in/Census_And_You/scheduled_castes_and_scheduled_tribes.aspx

¹⁷ Census 2001, Government of India, (Retrieved Feb.7, 2019, 11:14 AM), http://censusindia.gov.in/Census_And_You/scheduled_castes_and_scheduled_tribes.aspx

¹⁸ The Constitution of India, 1950.

¹⁹ The Representation of the People Act, 1951, Act No. 43 Acts of Parliament, 1951.

opportunities and infrastructure for the economically backward masses to make them strong enough to walk and run on their own feet, not hand them crutches to use and pass on to future generations by taking reservations.