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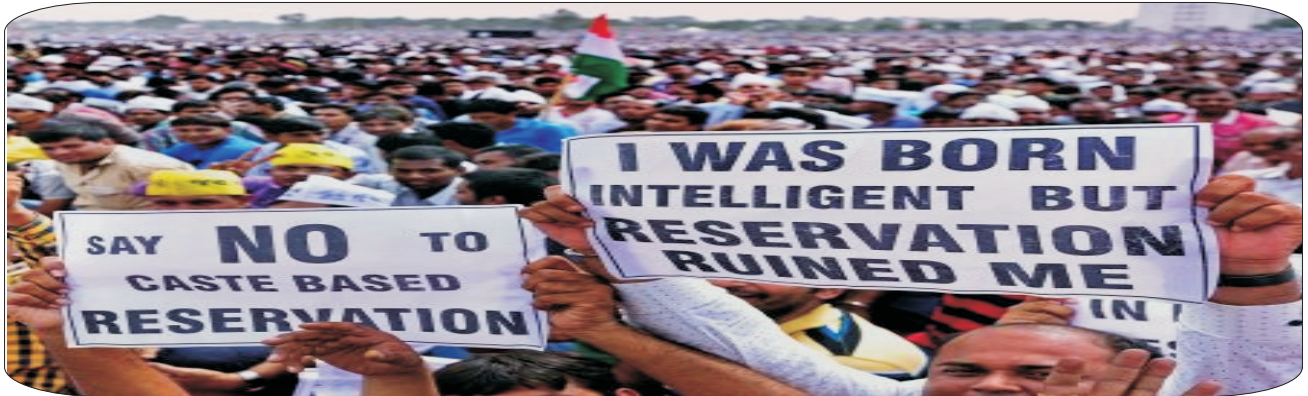
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RESERVATION IN THE INDIAN CONTEXT



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ABSTRACT

Reservation in Indian law is a form of affirmative action whereby a percentage of seats are reserved in the public sector units, union and state civil services, union and state government departments and in all public and private educational institutions, except in the religious/ linguistic minority educational institutions, for the socially and educationally backward communities and the Scheduled Castes and Tribes who are inadequately represented in these services and institutions. The reservation policy is also extended for the Scheduled Castes and Scheduled Tribes for representation in the Parliament of India.

KEYWORDS : Indian law, educationally backward communities

INTRODUCTION:

History of the Reservations System:

In August 1932, the Prime Minister of Britain, Ramsay Macdonald, introduced the Communal Award, according to which separate representation was to be provided for the Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, Dalit. The depressed classes were assigned a number of seats to be filled by election from special constituencies in which voters belonging to the depressed classes only could vote. According to some people, Caste Based Reservation in India started in 2nd Century B.C. where upper castes enjoyed caste based reservation. The Award was highly controversial and opposed by Mahatma Gandhi, who fasted in protest against it. Communal Award was supported by many

among the minority communities, most notably revolutionary Dr. B. R. Ambedkar. After lengthy negotiations, Gandhi reached an agreement with Dr. Ambedkar (Initially opposed it) to have a single Hindu electorate, with Dalits having seats reserved within it. This is called the Poona Pact. Electorates for other religions like Muslim and Sikh remained separate. Present reservation system has a long history and has been debated before and after Indian independence from the British in 1947. Reservations in favour of Backward Classes (BCs) were introduced long before independence in a large area, comprising the Presidency areas and the Princely states south of the Vindhyas. In 1882, Hunter Commission was appointed. Jyotirao Phule made a demand of free and compulsory education for Smrti along with proportionate representation in government jobs. In 1891, there was a demand for reservation of government jobs with an agitation (in the princely State of Travancore) against the recruitment of non-natives into public service overlooking qualified native people. In 1901, reservations were introduced in Maharashtra (in the Princely State of Kolhapur) by Shahu Maharaj. Chatrapati Sahuji Maharaj, Maharaja of Kolhapur in Maharashtra introduced reservation in favour of non-Brahmin and backward classes as early as 1902. He provided free education to everyone and opened several hostels in Kolhapur to make it easier for everyone to receive the education. He also made sure everyone got suitable employment no matter what social class they belonged. He also appealed for a class-free India and the abolition of untouchability. The notification of 1902 created 50% reservation in services for backward classes/communities in the State of Kolhapur. This is the first official instance (Government Order) providing for reservation for depressed classes in India. In 1909, reservations were introduced in favour of a number of castes and communities that had little share in the administration by the British. There were many other reforms in favour of and against reservations before the Indian Independence itself. Even after the Indian Independence there were some major changes in favour of the STs, SCs and OBCs. One of the most important occurred in 1979 when the Mandal Commission was established to assess the situation of the socially and educationally backward classes. The commission did not have exact figures for a sub-caste, known as the Other Backward Class(OBC), and used the 1930 census data, further classifying 1,257 communities as backward, to estimate the OBC population at 52%. In 1980 the commission submitted a report, and recommended changes to the existing quotas, increasing them from 22.5% to 49.5%. As of 2006 number of castes in Backward class list went up to 2297 which is the increase of 60% from community list prepared by Mandal commission. But it wasn't until the 1990s that the recommendations of the Mandala Commission were implemented in Government Jobs by Vishwanath Pratap Singh. The concept of untouchability was not practiced 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 parts of India as opposed to in Southern India. Furthermore, certain castes or communities, considered "untouchable" in one province were not in other provinces. [Rakaia, A (6 June 1992)]

Background of caste based reservation:

A common form of caste discrimination in India was the practice of untouchability. Scheduled Castes (SCs) were the primary targets of the practice, which is outlawed by the Constitution of India. 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 could not exceed 50% (which it judged would violate equal access guaranteed by the Constitution) and put a cap on

reservations. The primary stated objective of the 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 article 16(4): "Nothing in [article 16] 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 Tribes." Article 46 of the Constitution states that "The State shall promote with special care the educational and economic interests of the weaker sections 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." (Sheth, 2010) Today, out of 543 seats in India's parliament, 84 (15.47%) are reserved for SC/Dalits and 47 (8.66%) for ST/Tribes. Allocation of seats for Scheduled Castes and Tribes in the Lok Sabha are made on the basis of proportion of Scheduled Castes and Tribes in the State concerned to that of the total population, vide provision contained in Article 330 of the Constitution of India read with Section 3 of the R. P. Act, 1950. 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 OBCs in addition to the 22.5% already set aside for the SCs and STs. [Chattopadhyay, 2000]

Impact of reservation policy on employment and education:

Impact of reservation policy on employment and education, as may be evident from the particulars in the earlier paragraphs, the strategy of reservation had a helpful effect in conditions of induction of scheduled castes, scheduled tribes and other backward classes into public sector employment and in educational institutions. However, their accessible share in employment and educational institutions still falls short of the target in certain categories of jobs and higher education. The target in the case of Groups D and C are close to the population mark of 15 per cent for scheduled castes and 7.5 % for scheduled tribes but fall short in Groups A and B. As against this, the true position regarding the representation of other backward classes in central services is not available. However, as stated in para 6.4, in the 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. Reservation did not provide equal opportunities within each group/community to all beneficiaries. Consequently, different castes and tribes within a group/community have not benefited from reservation equally. Almost in all categories of beneficiaries among scheduled castes, scheduled tribes or other backward classes and minorities, there is a growing sense of deprivation amongst different categories, which is leading to internal dissension. For example*, in Punjab, the Valmiki Samaj is asking for a separate quota of reservations on the ground that Ramadasis and Mazbis have cornered the benefits. Likewise, Chamars in Uttar Pradesh and Mahars in Maharashtra are said to have benefited from the reservations more than other castes identified in the schedule from these

regions. Similar accusations have been made against the Meena community by other scheduled tribes. Problems of this kind are manifold in the case of other backward classes, as in each state there are dominant groups, usually with economic and political clout, who reap the benefits of reservations. There are Ezhavas in Kerala, Nadars and Thevars in Tamil Nadu, Vokkaligas and Lingayats in Karnataka, Lodhs and Koeris in Central India, Yadavs and Kurmis in Bihar and Uttar Pradesh and Jats in Rajasthan, which, despite their dominant status, have been clubbed as backward classes eligible for benefits under reservations. For these reasons, reservation has become a contentious issue today, more so when it is applied to other backward classes.

Report on Workshop, „Assessment of the impact of reservation policy “,organized by JNU, New Delhi. Reservation for minorities has been provided by the state governments of Kerala and Karnataka. [Kerala provides 10 per cent reservation in educational institutions and 12 per cent reservation in employment for Muslims as well as two per cent reservation in educational institutions and four per cent reservation in employment for Christians/LCs/Anglo-Indians. Karnataka provides four per cent reservation in educational institutions and four per cent reservation in employment for Muslims.] The government of Andhra Pradesh also passed an act providing five per cent reservation for Muslims. However, this has been turned down by the apex court for want of specific recommendations by the state Backward Classes Commission. On March 25, 2010 the Supreme Court gave an interim order upholding the validity of four per cent reservation provided to backward members of the Muslim community in the situation. A bench comprising Chief Justice KG Balakrishnan and Justices JM Panchal and BS Chauhan however referred the issue to a Constitution bench to examine the validity of the impugned act, since it concerned vital issues of the Constitution. (Reservation as a welfare measure, communalism combat 2010)

The Present Status:

After introducing the provision for reservation once, it got related to vote bank politics and the following governments and the Indian Parliament routinely extended this period, without any free and fair revisions. Later, reservations were introduced for other sections as well. The Supreme Court ruling that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. The central government of India reserves 27% of higher education, and individual states may legislate further reservations. Reservation in most states is at 50%, but certain Indian states like Rajasthan have proposed a 68% reservation that includes a 14% reservation for forward castes in services and education.

However, there are states laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69% and is applicable to about 87% of the population in the state of Tamil Nadu.

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.

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.

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