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Equality vis-à-vis reservation system in India

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Abstract---Reservation is defined as preserving a clear-cut fraction of seats for reserved classes in government jobs, educational departments, promotions, and in legislature also. Reservations can be considered as political utensil that provides a public good which prevents social economic wrongs. It basically ensures a level playing field. In India, the concept of reservation system is derived due to long-established caste system and customs used by privileged classes against underprivileged by different levels. Due to persistent efforts made by Dr. B. R. Ambedkar it is transformed into new opposite importance. The India's First Prime Minister 'Mr. Jawahar Lal Nehru' was against reservation, but this continues to exist. It creates a conflicting matter among the Indian society. The Intention of government of India is to uplift the historically underprivileged and depressed sections of Indian society. Various commissions were appointed by Indian Government to ensure and revise these reservations policies to fulfil the intention of our Constitution drafters. The Researcher explained towards the historical background of reservation, constitutional provisions related to reservation, Present Scenario, Arguments by supporters and non-supporters and judicial pronouncements related to reservation in India.

Keywords---Reservation, Caste, Constitution of India, Article, “Schedule Caste”, Schedule tribe, Other Backward Classes.

I. Introduction

The greatest of all revolutions, the French Revolution, was founded on three pillars: liberty, fraternity, and equality. In India, the freedom struggle led by Mohan Das Karamchand Gandhi foresaw equality as a major theme for the country's struggle for independence. However, even after 74 years of independence, equality remains a critical issue. Reservation has existed in Indian society for over 2000 years and has been elevated to a new level of importance as a result of the persistent efforts of Dr. B.R. Ambedkar, Mohan Das Karam Chand Gandhi, and numerous other prominent leaders. The 1950 Indian Constitution contains 'special establishments' for securing certain amount of seats in the Union and State civil services, public sector undertakings (PSUs), and union and state government departments.

The same section establishes 'backward classes,' but without ensuring an appropriate definition or making any specific provisions. "Educational and economic weaker portions of the population ("SCs" and "STs") and other weaker sections should be conserved and protected against unfairness as well as all forms of exploitation," says Article 46 of the Indian constitution. In other words, reservation refers to the process of allocating a certain percentage of seats in society for specific groups or classes in terms of employment, promotion, education, and scholarships. Reservation can be viewed as a form of reasonable discrimination. Reservations can be viewed as a political tool that provides a public good by averting social and economic injustices. The reservation system's origins can be traced back to the long-established caste system. The primary goal of establishing the reservation system is to ensure a level playing field for the privileged upper and lower classes.

The foremost purpose of the reservation scheme is to improve the social and educational status of "Scheduled Castes" ("SCs"), "Scheduled Tribes" (STs), and Other Backward Classes (OBCs) through constructive as well as compensatory reservation. Historically, these groups have endured prejudice based on their caste identification. Reservation is a quota-based kind of affirmative action. Constitutional requirements, statutory provisions, and local norms and regulations control reservation policy. Reservation Schemes primarily benefit "Scheduled Tribes" ("STs"): tribes that are fundamentally unaffiliated with Hinduism, "Scheduled Castes" ("SCs"): those castes that are lower in the Hindu culture's caste hierarchy, Other Backward Classes ("OBCs"): backward classes of Muslims in some states classified as BC(M), Women and Children, and Senior Citizens.

II. Historical Background

In India, reservation began in the early second century B.C., when the upper class of the Indian society gained additional privileges. The Hunter commission was established in 1882. The desire for unrestricted and requisite teaching for smriti, as well as equivalent representation in régime jobs, was envisioned by Mahatma Jyoti Rao Phule. In 1902, the Maharaja of Kolhapur, 'Chatrapati Sahu Ji Maharaj,' implemented India's first reservation policy. He established reservations for non-Brahmins and the backward classes. Additionally, he provided free

education to all and established several hostels. He also ensured that everyone received respectable jobs regardless of their social caste.

In 1908, the British introduced reservations in favour of specific communities and classes with a limited role in British administration. However, the reservation system as we know it today began in August 1933, when Ramsay Macdonald, Britain's then Prime Minister, introduced the 'communal award'. Numerous changes were made to the reservation system as a result of this award, including the establishment of separate electorates for "Muslims", "Sikhs", "Indian Christians", "Anglo-Indians", "Europeans", and the "Scheduled Caste".

A few seats have been assigned to the depressed classes for them to file for elections from special constituencies in which depressed class voters can vote. This prize was divisive, and Mahatma Gandhi protested by fasting, while Dr. B.R. Ambedkar supported it. After protracted negotiations, Mahatma Gandhi and Dr. B.R. Ambedkar (who were initially opposed) signed a pact in 1935 agreeing that the country would be divided into a solo Hindu electorate, with seats reserved for "Scheduled Castes". This is referred to as the 'Poona Pact'. This resolution formally declares the abolition of 'Untouchability.' The electorates of "Muslims" and "Sikhs" remained distinct.

Following Indian independence, significant changes were made to benefit "SCs", "STs", and "OBCs". The Mandal Commission was established in 1979 to establish norms for classifying India's "socially and educationally disadvantaged classes." In 1980, the Mandal Commission submitted a report recommending variations to the prevailing quotas, increasing them from 22% to 49.5 percent, and estimating that approximately 52 percent of India's population were "OBCs", and thus 27 percent of régime jobs should be reserved for them. In 1992, the Supreme Court of India established a cap on reservations, stating that they could not exceed 50%. Anything above will be deemed a violation of the Indian Constitution's guarantee of equal access.

III. Constitutional Provisions Backing the Reservation System:

The Indian Constitution was drafted with great care, bearing in mind the importance of incorporating these provisions necessary to ensure people's equality. The provisions relating to 'reservation' have been drafted in such a way that they confer discretionary authority on the states. The states have the discretionary authority to determine which reservations must be granted and in what proportion. After understanding these provisions, we can say that framers of Indian constitution deliberately planned to empower the state to work towards raising the position of needy and oppressed sections of society and to make India an egalitarian society. The Preamble of Indian Constitution also advocates for "social, economic, and political fairness". It is only looks possible by enabling provisions under Article 14,15 and 16.

Equality of Opportunity –Is the fundamental right provided by, Indian constitution is Article 14. Article 14 states, that "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India prohibition of discrimination on grounds on grounds of religion,*

race, caste, sex and birth". Basically, two concepts are look-alike in the Article 14 namely "equality before the law" and "equal protection of law". These two phrases seems to be synonymous, but actually refer to two distinct groups.

"Equality before the law" is a negative concept and of an English origin, while "Equal protection of laws" is a positive concept with an American origin. In simple terms, "equality before the law" means that no one, high or low, poor or rich, official or unofficial, is above the law and that all people, regardless of their status or position, are to be treated equally and brought before the same court. This means that there are no privileges accorded to anyone on the basis of their birth, creed, sexual orientation, caste, religion, or race. The concept of equality before the law ensures total equality for all individuals who are equivalent, not identical. Equal protection of the law implies that every person living on the Indian subcontinent will enjoy equal protection of the law. It entails the right to equal treatment under comparable circumstances. "Equal protection of the laws" requires the state to act favourably in the face of equity. It is essentially a guarantee of equal treatment for individuals under the same circumstances and allows for differentiation under different circumstances. Thus, Article 14 establishes the basis for differential treatment based on a variety of factors.

Article 15(3) and Article 15(4)- According to Article 15(3) of the Indian Constitution, *"Nothing in this article shall prevent state from making any special provision for women and children"*. This article states that the state has the authority to establish particular arrangements for women and children in order to protect their interests. This article allows the state to take supportive actions for the above-said class of people through reservation. The Indian constitution states in Article 15(4) that *"Equal access to education shall be provided to all citizens"*. It empowers the government to make special arrangements for socially and educationally disadvantaged people, as well as "Scheduled Castes" and "Scheduled tribes". This article primarily discusses those oppressed classes that have faced discrimination and prejudice at the hands of the ruling class. This article's purpose is to elevate them.

Article 16(4)(a) provides that *"nothing under this article shall preclude state from making any edicts for reservations in the matter of elevation to any class or classes of posts in the service under the state in the favour of "SCs" and "STs" which in the opinion of state are not properly represented under the state"* .

Article 16(4)(b) provides that *"Nothing in this article shall preclude the state from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any edicts made for reservation made under clause (4) or clause (4A) as a discrete 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 that year in which they are being filled up for determining the ceiling of fifty five percent reservation on total number of vacancies of that year"*.

Exclusive reservation has been provided for the economically weaker section (EWS) of society under Article 16(6) of the Indian Constitution. This means that people from EWSs will receive a 10% reservation in government jobs and services,

as well as admission to educational institutions (Constitutional 103rd Amendment Act, 2013).

Certain seats in each Panchayat are to be allocated for “Scheduled Castes” and “Scheduled Tribes”, according to Article 243D of the Indian Constitution. “Scheduled Castes” (“SCs”) and “Scheduled Tribes” (“STs”) have seats reserved in the Parliament and State Assemblies under Articles 330 and 332 of the Indian Constitution. Articles 330 and 332 provide for census-based seat reservations in the Union and State Territories. The claims of “Scheduled Castes” (“SCs”) and “Scheduled Tribes” (“STs”) must be balanced against the administration's efficacy, according to Article 335.

IV. The Present Scenario

After the introduction of the provision which states about the ‘reservation’, it became associated with vote bank politics. The time period for reservation was routinely extended without any free and fair revisions by the Parliament of India. Later, for other sections reservation was also introduced. The Supreme Court of India established a cap on reservation, stating that it cannot exceed 50%. (Anything above it will be judged as violating equal access as guaranteed by Indian Constitution). India's central government reserves approximately 27% of higher education, and each state may enact additional reservations. Reservation is provided to “Scheduled Castes” (“SCs”), “Scheduled Tribes” (“STs”), and Other Backward Classes (“OBCs”) at a paces of 15%, 7.5 percent, and 27%, individually, for recruitment on an all-India basis. In the majority of states, reservation is approximately 50%, but in some states, such as Rajasthan, reservation is approximately 68 percent, including 14% for forward castes in education and service, and Andhra Pradesh has approximately 80 percent reservation for “Scheduled Tribes” (“STs”).

V. Arguments by Supporters of Reservation:

- Reservation is necessary to increase the representation of depressed and marginalised castes and thus to increase diversity.
- In India, caste-based reservation is essentially required as a result of historical injustice perpetrated by the privileged classes against the less fortunate classes.
- Reservations contribute to the establishment of a level playing field.
- The process of “forward becoming richer and backward becoming poorer” have been only slowed down due to reservation.
- Reservation policies have the potential to significantly increase female political representation;
- Recent research indicates that reserving seats for women in panchayats has a beneficial effect.
- According to a study conducted in Indian railways, where the proportion of SC/ST employees is higher and the results are better, reservation has increased the efficiency of administrative policies.

VII. Arguments by Non-Supporters of Reservation

- The reservation scheme is concealed from the needy peoples of the reserved class, while the creamy layer and well-off peoples of the reserved class benefit from it, while politicians manoeuvre behind these policies.
- Reservation policies are the primary adversary of meritocracy, the bedrock of many developing nations.
- Reserving seats or quotas is essentially a form of discrimination that violates the right to equality.
- Around 70% of the Indian population lives in rural areas; their primary need is for health care, education, and improved infrastructure, not for reservation in urban areas institutions.
- As a result of reservation, undergraduates and graduates from unreserved classes will begin seeking higher education at foreign institutions.
- If the ceiling on reservation is increased above 50%, the overall efficacy of government positions and educational quality may be jeopardised.
- As a result of reservation, a country's economic growth rate may be impacted due to a reduction in labour force effectiveness.

VIII. Judicial Scrutiny of Reservation

Smt. Champakam Dorairajan vs. State of Madras (1951): This was the Supreme Court's first significant ruling on the subject of reservation. The court held in this case that that caste-based reservations violate 'Article 15' clause (1) guaranteed by the Indian Constitution. Due to the absence of such provisions in Article 15, 'Article 15(1)' forbids the state from discriminating solely on the basis of religion, race, sex, caste, or place of birth, or any combination of these factors. As a result, the constitution's 1st Amendment was ratified. Article 15(4) was inserted by the Parliament of India and inserted provisions relating to reservation.

M R Balaji vs. State of Mysore (1963): In its ruling, The Hon'ble Apex Court of India limited reservation to approximately 50%. In this case, the government's 68 percent college admissions reservation was deemed excessive and unreasonable and was reduced to 50%.

T. Devadasan vs. Union of India (1964): This case is also well known as the 'Carry Forward Rule Case,' this case thought about the extent of Article 16 of the Constitution (4). The state's 'appropriate rules,' which allowed candidates from "Scheduled Caste"s and "Scheduled Tribe"s to get over half of opportunities to be filled in a given year, were considered unlawful for this situation by the Hon'ble Supreme Court of India.

Union of India vs. Indra Sawhney (1992): The Supreme Court of India considered the expansion and application of Article 16. (4). The Supreme court upheld the quota's constitutionality. 27 percent for economically backward classes. However, a government notice reserving 10% of government employment for economically challenged members of upper castes was set aside. Additionally, the court determined that reservations should not be used in promotions. Additionally, the Supreme Court endorsed the notion that reservation quotas should not exceed 50%. As a result of this decision, the term 'creamy layer' was coined. According to the court, the creamy layer of Other Backward Classes ("OBCs") ought to be eliminated from the record of people eligible for reservation.

P.A. Inamdar & Ors. vs. State of Maharashtra (2005): The Hon'ble Supreme Court of India held in its judgement that the state can't force its booking plans on minority and non-minority private establishments, including proficient foundations, without their help.

Union of India vs. M. Nagaraj (2006): The Supreme Court of India maintained the sacred lawfulness of Article 16(4A) and Article 16(4B), holding that any reservation policy must satisfy three constitutional requirements in order to be valid:

1. The "Scheduled Castes" and Tribes (SC and ST)'s communities should be socially and economically backward.
2. There must be an insufficient number of "SCs" and "STs" employed in the public sector.
3. Such a reservation policy should have no adverse effect on the administration's overall effectiveness.

I.R. Coelho v. State of Tamil Nadu (2007): This case is also popularly known as '9th schedule case'. The Hon'ble Supreme Court of India held that all those enactments or laws falling under the 9th schedule cannot enjoy blanket immunity from judicial review as it is a part of the constitution.

LachmiNarain Gupta vs. Jarnail Singh (2008): This is commonly referred to as the 'Reservation in advancement case'. According to the Hon'ble Supreme Court of India, reservation in advancements doesn't need the state to gather quantifiable information exhibiting the "Scheduled Castes" and "Scheduled Tribes" backwardness. Also, the Court held that the creamy layer avoidance applies to "Scheduled Castes" and "Scheduled Tribes". Thus, the state can't give reservations to "SCs"/"STs" in advancements in light of their participation in the creamy layer of their local area.

IX. Conclusion

Reservation is essentially a temporary policy measure intended by the framers of our constitution and should not be interpreted in the wrong way. It was instituted to promote the overall development of all segments of society. Various individuals from lower standings have ascended the social and financial stepping stool and are currently on an equivalent balance with the remainder of the populace. Numerous upper caste people remain impoverished and illiterate.

In the twenty-first century, one could contend that an individual's caste gives a sensible premise to reservation in government occupations and educational institutions. However, we cannot conclude that Caste-based Reservations are irrelevant because, at the time they were adopted, numerous discriminatory laws and practises were being carried out at various levels by our religious leaders. Even after 74 years of independence, the working class continues to be exploited and discriminated against, as Rohith Verma's case demonstrates.

Reservations have evolved into a vehicle for politicians to conduct vote bank politics. The best illustration is Following independence, a ten-year reservation policy was adopted for the purpose of upliftment of ST and SC Communities. However, these policies are still in effect, and no action has been taken to revise, amend, or change them, despite the large population of SC and ST in India.

India's "SCs" and "STs" now account for around 25% of the population. If anyone changes the reservation policy in a way that discriminates against SC/ST, they will face severe consequences.

Progressively increasing the number of reservations is not a long-term solution. However, people from all strata of society have developed socially, economically, and culturally in the modern era. As a result, the reservation requirement is limited. Reservation benefits should be reserved for those who truly need them, and individuals should be tracked on a regular basis. The needy individuals who fall into reserved categories are rarely aware of reservation policies. The creamy layer individuals in these categories are reaping the benefits of these policies to the fullest extent possible. Our country requires a comprehensive reservation system that benefits the poor and underprivileged while excluding the wealthy and privileged segments of all castes. However, when the system harms society and benefits some at the expense of others for narrow political ends, as it currently exists, it should be amended immediately.

It is very clear that existing reservation system has many errors in it. No doubt we have many remedial measures for example-'Creamy layer'. We require many more remedies. Some ways through which the present reservation system can be improved are laid down below:

First of all, we have to identify the sections of society who really require development and financial aids. Then to uplift them free education, financial incentives and quota should be provided.

The advantage of reservation must be given to just initial two offspring of the family.

Foundation of an internet-based data set to monitor each Indian who gets reservation honors in education, service, or in advancement.

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