

INDIA TOWARDS ECONOMICAL BASED RESERVATION

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Abstract

Reservation means the action of reserving something or an arrangement whereby something; especially a seat is booked or reserved for a particular person. Caste based reservation is a governmental policy in India for the minority group in the society. This reservation system has only divided the society which has led to discrimination and conflicts between different sections. This critical part of the policy that reservation to be given based on the caste irrespective whether that person belongs to rich or poor family needs a very deep analysis apparently there is paucity of research in this area and this is leading to violation of most cherished right i.e. Right to Equality given under Article 14 of the Indian Constitution. Keeping this in the mind, this paper is presented for critically analysing and it proposes reservation to be based on the class not caste based.

Keywords: Reservation, Equality, Caste, Quota, weak.

Introduction

“The worst form of inequality is to try to make unequal things equal”.

-Aristotle

India was a country with highly harsh caste-based hierarchy structure, which had ascendant order privilege and descending order, which has operated for almost 3000 years. There was a vast majority in the nation which was still backward - socially, economically, educationally, and politically. Among the victims of backward backwardness, the present is included Scheduled Caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC). Reservation is a policy which was brought to uplift the lower class and minority group against the past discrimination on the basis of economic and educational opportunities. Reservation is an attempt to promote equal opportunities. It is often established in government and educational settings to ensure that all programs include minority groups of a society. The rationale of reservation is to compensate past

discrimination, harassment or exploitation or remove existing discrimination by ruling class of a culture. Social equality is the basis aim of the reservation policy.

Social equality is a social situation in which all people of a particular society or a separate group receive equal status in a certain respect. At the very least, social equality includes equal rights under the law, such as safety, voting rights, speech and freedom of assembly and property rights. However, it includes access to education, health care and other social securities. It also includes equal opportunities and liabilities, and therefore the entire society has been included. Here, social equality is referred in terms of social rather than economical basis or income equality.

Quotas in India are given on the basis of caste, not class, why? The deprived, weaker sections of society are not necessarily of any particular caste; Economic inequalities are not addressed through caste based reservation system.

There is a need to amend article 15 and 16 of the constitution in order to grant the 10 per cent reservation for those who are economically weaker in the general category. This amendment will provide for reservation of 10 per cent to the economically weaker section among castes that fall under the general category which would benefit those who belong to the upper castes. This amendment would give benefits of reservation in government jobs and education which was not available to them previously.

Statutory Provisions

Article 15(4) 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 Tribes.¹

There is nothing in this article or in clause (2) of Article 29, the state will not be prevented from making any special provision for the advancement of the citizens of any social and educationally backward class or for the Scheduled Castes and Scheduled Tribes.

Article 16(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.²

Our constitution has incorporated the word 'reservation' from Article 16(4) which is neither a constitutional right nor a fundamental right for claiming reservation for anyone. It is the discretion of the state for making provisions for the reservation of appointments or posts in favour of the backward class of citizens which are inadequately. Article 16(4) is a special provision for the

¹ Constitution of India, 1950.

² *ibid.*

socially disadvantaged classes while article 16(1) is for equality of opportunity for all the citizens. Both must be balanced against each other.

*Article 16(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.*³

Article 16(4A) of the constitution which was inserted by the constitution 77th amendment in 1995 which provides provision for the reservation for the scheduled castes and scheduled tribes in the matter of promotion to any class or classes of posts in the services which in opinion of the state is inadequately represented in the services under the state.

*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 per cent reservation on total number of vacancies of that year.*⁴

Nothing in this article will prevent the State from considering any incomplete vacancies of the year, which is reserved for the year to be filled in, which is reserved for the reserved category under Clause (4) or Clause (4A) as reserved according to any provision. In any succeeding year or years, such class of vacancies will not be treated with the vacancies of the year in which they are being filled up to determine the limit of fifty percent reservation.

The court laid down in the case of **Mr Balaji vs. State of Mysore**⁵ that Articles 16 (4) and 16 (4 A) contain no directive or command, it is only a enabling provision¹⁵ 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.

From the language used in Article 46 of the Directive Principles of the Constitution, there is a word which has been adopted. But where Article 46 talks about promoting "special care of the educational and economic interests of the weaker sections of the people", the Constitution Amendment Act converts it into "economically weaker sections of citizens".

In addition, the Constitutional framers have deliberately left the religion under Article 29, and under Article 46, the Scheduled Castes and Scheduled Tribes have to be encouraged by the State

³ *ibid.*

⁴ *ibid.*

⁵ AIR (1998) 4 SCC 1.

with special care for the weaker sections. In the end, the Constitutional framers kept the provision of reservation under the strict parameter of Article 335.

Article 335 provided, "The claims of members of Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State."

Amendment

For providing the 10% reservation for general category, Parliament has passed a bill on January 9 and on the Constitution (103 Amendment) Act, 2019 received the assent of the president.

On the basis of the act, the state is now capable of making special provisions for the advancement of such classes, in particular in relation to their admission to educational institutions including private educational institutions, and in addition to reservations for appointments or posts in their favour Reservation and subject to a maximum of 10% positions in any category.

For this purpose **Article 16** has to amend and state 'economically weaker sections' which shall be on the basis of family income and other indicators of economic disadvantage, the notification read-

*Amendment of Article 16 stated, "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category."*⁶

Condition to Claim 10% Reservation

The revision will be for the families whose income is less than 8 lakh rupees per year, which has less than five acres of agricultural land and the residential house is below 10,000 feet. For urban areas, residents of residential plots below 200 yards and in non-notified municipal areas below 100 yards in the notified municipality will be entitled to reservation.

Today, when a student applies for admission to any university, then the admission forms ask questions like '**Are you Scheduled Caste / Scheduled Tribe or Other Backward Classes or General Category?**' 'What category does he belong to' should not matter instead his merit should be considered. Category should not be the basis whether he is eligible for admission or not. There are many economically vulnerable children in the forward class, but they cannot get the benefits of such reservations that belong to 'general' category.

⁶ 10% "Reservation For Economically Poor Comes Into Force", Hindustan Times, Thursday, Jan 31, 2019.

Sometimes these children of the backward classes are not fit and yet they get admission just because they belong to the reserved category instead of the child who worked hard for months to get admission or seat, which takes away the seat only because he belongs to a particular religion or caste as our government has provided reservation.

The supportive points for amendment are as follows:-

1. Caste-based and not merit-based

The biggest disadvantage of the reservation system is that reservation defines this argument and it is rewarded by people on the basis of their caste and not on merit. In the case of competitive examinations, a person should be selected on the basis of merit and not on the basis of caste.

2. Based on income

Another argument against the reservation system is that it is caste based and not income based, because in the case of income-based reservation system, all the people who are poor, will get reservation despite their caste, because poverty is not based on their caste. And therefore, if the country wants to bring equality between the citizens, it should be income based reservation rather than caste based reservation.

3. Political Tactics

Another limitation of this system is that due to this, politicians and political parties with vested interest try to play this reservation card in order to win the elections which in turn divide the country. Therefore, due to reservation in simple words, politicians get the opportunity to play with the feelings of people using it as a tool to win elections and it is not used for the benefit of the people of the country.

4. Gap in Society

Due to unequal distribution of wealth or lack of opportunity to the economically weaker section there exists possibility that rich will become richer while the poor remains in the same financial position. To avoid this issue this amendment would bring a change in position of the poor by providing them so for the healthy economic condition of the county there must be equal or uniform distribution/flow of wealth in the country which would help them.

This would reduce the economical gap between the rich and poor due to this gap rich people impliedly show dominance over the poor which creates the unfavourable environment for them. This amendment has not hampered or taken away any ones right. In case if 10% reservation seats are given then the other remaining portion may have the other opportunity.

As a person can see from the side of the reservation and the opposition that this is a matter of debate while some people will support it while some will oppose it, but one thing is to ensure that if the government applies it properly So it can be ensured that apart from this, removing the distinction between the rich and the poor will also ensure that people of all sections of society participate in economic growth of the country.

In a case, **Balaji v/s State of Mysore**⁷ it was held that ‘caste of a person cannot be the sole criteria for ascertaining whether a particular caste is backward or not. Determinants such as poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. The court further held that it does not mean that if once a caste is considered to be backward it will continue to be backward for all other times. The government should review the test and if a class reaches the state of progress where reservation is not necessary it should delete that class from the list of backward classes.’

Reservation under RTE

However, it can be argued that, the "economically weaker sections" (EWS) category is already well-established in the law through the provisions of the Right to Education Act, 2009, which is in both government and private schools providing 25% Reservations for those Children who belong to the poor families. But on closer analysis, it has been found that in the RTE Act, "weaker sections or deprived groups" are very different from "economically weaker sections" in the 124th Amendment.

In the Right to Education Act, 2009, the "disadvantaged groups" are defined as "Scheduled Castes, Scheduled Tribes, Socially and Educationally Backward Classes or Groups, who have social, cultural, economic, geographical, linguistic, gender or similar facts as may be specified by the government. The "weaker section" is defined as a child related to a parent or guardian whose annual income is less than the specified minimum limit by the appropriate government. "

Obviously, the "weaker class" here is related to the benefit of a person who is considered to be below the cut-off indicating poverty, with no reference to poverty or any other social identity. Various State Governments have set different cut-off figures for this purpose.

⁷ (AIR 1963 SC649).

Conclusion and Suggestion

Propose reservation based on economic status. Basis of reservation should not be caste as these conditions are bad and unacceptable. Fair and just reservations should be given to those people with poor conditions of life, those who don't have meals to eat, clothes to wear and no home to live in so that these people can be uplifted. Reservation should be given to those individuals who truly are economically deprived and bring them all to justice.

This amendment would give financial support to those who are economically weaker to get an opportunity for admission in the educational institutions and opportunity in the matter of employment and this will provide better standard of living to the economically weaker section of the society.

