

BACKWARD CLASS OF CITIZEN VIS-A-VIS SOCIALY BACKWARD CLASS OF CITIZEN: A CRITICAL STUDY WITH SPECIAL REFERENCE TO THEIR LEGAL PROTECTION

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ABSTRACT

Almost 30% of the total population are backward classes. The main characteristic of citizens is to distinguish between the people based on their social status and to form different types of groups in the common society. The difference depends on the birth or the means of subsistence of the people. Mainly the of SC, ST, and Other Backward Classes. Due to the backwardness in education or we can say lack in education, ignorance, lack of adequate skill, exploitation by the advanced classes, colonial rule, and untouchability the backwardness in the society has risen. Who suffered from social, economic, educational disparities in the egalitarian society the constitution-makers were conscious about their condition. The Constitution of our country plays a very major role in regulating the class system in our country. Under the Constitution of our country Article 15(1), 15(2), 16(2), 17, 23, 29(2) talks about abolition of discrimination based on the cast. On the other side, the legislation is the only strong system to balance and check the concept regarding the numerous religious groups in the society¹ of our country. As we know the Preamble of the Indian Constitution describes regarding the people's equal right towards their status and opportunities. Straightaway it is a citizen's fundamental right which violates the any kind of discrimination which is based on sex, race, cast, etc².

This is a very significant topic for the social reforms by legal developments. The Abstract of my research seeks to examine the legal protection regarding the socially & backward class of citizens.

KEYWORDS- Backward classes, Caste, Caste System, Discrimination, Class System.

INTRODUCTION

In India, caste is a rigid social system. The term "CASTE" is often applied to the hierarchical divisions which are established among the different religion on the Indian subcontinent. In the 16th century, the word caste was first used by Portuguese traders, it is derived from the Portuguese casta³. In human society, the main feature is to induce the difference in the reputation of the individuals. It also make the different types of groups in the common society. And these kind of deviations are to be created by the livelihood of the individual or either by birth. In our Indian Society caste system plays a vital role. This type of caste system only not an evil during

¹Marc Galanter, Structure and Change in Indian Society, chapter: Changing Legal Concept of Caste

²Article 15 of the Indian Constitution

³The word caste derives from the Portuguese casta, meaning breed, race, or kind. Among the Indian terms that are sometimes translated as caste are varna jati (see Glossary), jat, biradri, and samaj.

previous times but still it is running like a blood in our society. And it is true to say that unless the caste system will remove from our country there will be no social development.

BACKWARD CLASS IN ANCIENT PERIOD

In the past, many cultures were flourished in India. Culture at the time of Indo- Aryan is not only the culture among them that consistsof the caste system but also shown a repeated history of the same. Under this culture, the basis of making differences was the “Color” or “Varna”. They use to treat the natives as their slaves and for their sexual desire they exploit the female slaves. But the ceremony ofmarriage inbetween the female Indo-Aryan and make ‘Das’ was completely restricted or we can say prohibited⁴.

During the period of Brahman civilization, the individuals society were distributed into four parts ie. Kshatriyas, Brahamans, Vaishya, and Sudras. Where Brahmanas were to be known as the highest cast and the Sudras were to be known as the lowest caste. Brahmanas were not only make the rule and regulations for themselves but they also make the rules and regualtions for the rest of the society. Brahamanas are the only one who can be Priest or we can say this occupation can only be consuected by the Brahamans only⁵. In writing by the BR Ambedkar, the position in the society of Sudras can be easily traceable⁶. And with regarding of Sudras,in his writing he have said that they were Aryan Community’s part. Earlier in the society of Indo-Aryan which recognized 3 Varna only which was Brahmanas, Kshatriyas, and Vaishyas. Because of many problem faced by the Brahmanas, there was continuous conflict between Brahmans and Sudras Kings. And because of the conflict Brahman grow evilness in the direction of Sudras and also prohibit them to give the permission to wear the sacred thread which is known as Upanayanas. The permission to wear the sacred thread was to be known as one of the major ritual as it gives the permission to learn the Vedas. And because of losing this right Sudras were become the fourth class of the society. And this results in them looking at the rest of the three castes as their superior and started to treat them as their inferior.

The class system was so strict that the lower class had a separate way to enter into the temple or most of the temple they had no permission to enter in the temple and if they enteredconsensually whether accidently into the temple it was considered it a crime and under which they have to pay the damages for that. And after that, there was also a purification ceremony of the temple. They also have no right to take bath from the same tanks also they cannot take the water to drink from the commonplace⁷.

BACKWARD CLASSES UNDER THE CONSTITUTION OF INDIA

As we all know that the Indian Constitution have a very important place regarding the regulation of the class system in our country. Under Article 15(1), 15(2), 16(2), 17, 23, 29(2) of the constitution of our country which saysregarding abolishment of differentiation which is based onthe cast. But on other hand, if we see the Article 19,25, 26, and 30 of the Constitution of India which talks regarding the constitutional security of the religious groups and religious organizations. So it is not clear regarding the legalityfor the class groups in Indian Society. Law is the only powerful method to balance and check notions about the various religious groups of the Indian society⁸.

The Preamble of the Indian Constitution talks about the equal status and the equal opportunity to the people. It has become an essential fundamental right of the individual that there should not be any differentiation which is based on caste, sex, race,colouretc. Under the Article 15 (2) of the Constitution, there should not be any

⁴G.S Ghurye, Race and Caste in India, chapter: origin of cast system, Popular Prakashani, pp- 163-181.

⁵ G.S Ghurye, Cast and Race in India, chapter: origin of cast system, Popular Prakashani, pp- 163-181

⁶ Ambedkar on theHistory of India, THP Chentharassery, Rawat Publication.

⁷Marc Galanter, Changeand Structure of Indian Society, chapter: Changing Caste legal concept,

⁸ Marc Galanter, Structure and Change in Indian Society, chapter: Changing Legal Concept of Caste

differentiation to use of common public places, restaurants, water tanks, shops, etc. Whereas under the Article 17 of the Indian Constitution there is the abolition of untouchability. For the discard of all types of discriminations based on the class system, the commencement of the Untouchability (offense) Act, 1955 is an essential step. Any discriminatory act under this Act based on un-touchability will be treated as a punishable offense. Another important Act to prevent any kind of discriminatory act is the SC and ST (Prevention of Atrocities) Act, 1989 which mainly came to remove the negative effect of the class system from our society of India.

In a landmark case “State of Madras vs Chamkan Dorairajan⁹, the case regarding the reservation based on caste came before the Hon’ble Supreme Court where the Central Govt. occupied the medical college seats that to be based on class/ caste.

The Hon’ble SC disapprove the reservation by stating that it violates Article 15(1) of the Indian Constitution.

In that case, Article 15(1) was coming through to make the special provisions for the educationally and socially backward individuals.

So in solution to the problem Article 15(4) was inserted into the Constitution which states that the State is not to be prevented to make any kind of special provisions for the betterment of any educationally and socially backward class of citizen for the individuals who comes under the category of ST and SC. But under the Article 15(4) which only confers a unrestricted power. Therefore mandamus can’t be under this Article¹⁰. Under this Article, the trouble arises to define the word ”socially and educationally backward persons”. And because of this problem, the ability to process the provision is given to the state to determine the concerned things. But the Hon’ble court can intervene with such kind of determination by the state to verify the procedure conducted by the state.

Definition of Schedule Tribe and Caste is under Article 366(24). Whereas under Article 341(1), the President of India can by declare by a public notification any race or caste as SC and ST.

Under Article 330 of the Indian Constitution SC and ST reservation in Parliament (Lok Sabha) can be found. Under 243-T any Municipal Corporation reservation for the SC and ST can be process.

After Independence, SC and ST reservation was made. But under a Landmark case, Indra Sawhney vs Union of India¹¹ the reservation for the backward class is done which is also known as the Mandal case. The Majorily decisions under this case were as follows:-

- a. Caste is the main factor rather than class to determine the backwardness, said by the court by departing from its previous position.
- b. After excluding the Creamy layer 27 percent of reservation which is to be given to the OBC.
- c. Other Backward class have to be divided into backward and more backward then respective quotas should have been given.
- d. The govts. recommendation was rejected by the court which was regarding 10 Percent of reservation for the poor individuals from the forward classes.
- e. Court retained a 50% ceiling on the reservation.
- f. There will be no promotions for promotions.
- g. There should be no reservation in the professional techniques are to be considered as an important point for aneg. Pilots, physician and military.
- h. Court order to set up a permanent commission which will look whether a concenered caste is excluded or correctly included as a backward class or not¹².

⁹ AIR 1951 SC 226 1951 SCR 525

¹⁰ Union of India v. R. Rajeshwaran, (2003) 9 SC 294: (2001) 10 JT 135 in M P Jain, Indian Constitutional Law, 6th Edi 2010, LexisNexis Butterworths Wadha Nagpur.

¹¹ 1993 AIR, (SC) 477.

¹² George H. Gadbois, Jr, Mandal and Other Backward Classes: Affirmative Action in India in The 1990s, U.S.F Journal of Law & Social Changes, 1997, www.heinonline.org.

Several steps were taken in the year 1993 for the Sawhney decision implementation. National Commission was established for Backward classes. And these steps were most important for the benefit of the backward class of individuals. Reservation for the OBC was given a consideration and the word 'creamy layer' was also defined under the constitution.

Under the Constitution the Caste-less society has been discussed. Yes, undoubtedly it is a fact that there are some Articles in Indian Constitution that talk about the preservation of some religious groups. But there have been a crystal clean rejection by the Hon'ble Court to use discrimination like caste as an essential factor in our society. The legal identity of a caste has been rejected by the court and it has been prohibited to appeal towards the caste loyalty at the time of the elections. It is truly stated that some of the groups which are based on the caste have hold some right to their inside level management but those rights are limited and the Hon'ble court have put restrictions on those kinds of rights.

EXISTING PLACE OF CASTE SYSTEM IN INDIA

Under the Indian Periodical report under International Convention on the Elimination of all Form of Racial Discrimination (ICERD),¹³ said the following:-

According to the above-stated report, nearly 167 million people of India are continuous in nature discriminate the individuals based on their caste. In our country today also the practice of untouchability has been performed in many parts. In every sphere of life they prejudice. NHRC¹⁴ which is an apex body for looking towards the status of human rights in our country said that the exploitation on Dalits by looting them, raping inferior women who are in custody are still going on. Various legislation has been adopted to prevent such kinds of offenses but still, they are not implemented properly even the policy of the police is now a days is 'ignorance'.

102nd AMENDMENT ACT, 2018

In May 2021 the Hon'ble Supreme Court held that the 102nd Amendment Act, 2018 has removed the power of the states to identify socially and educationally backward classes for grant of quota in admissions and jobs. This Act received presidential assent and came into effect in August 2018. The Amendment inserted two Articles 338B and 342A in the Constitution of India. Article 338B deals with the duties, structure, and powers of the National Commission for backward classes (NCBC). Whereas Article 342A deals with the power of the president of India to notify a particular caste as a socially and economically backwardness also the power of the Parliament to change the list.

Under this amendment, states can only make suggestions to the President or to the commission to adding or removing or modifying the list of the class. The judgment also held that the 102nd amendment is valid and that it did not affect the federal nature of Indian polity and also did not adversely affect the basic structure of the Indian Constitution.

CONCLUSION AND SUGGESTIONS

While the Indian Constitution bars any form of discrimination amongst any class of people in the society, yet protective discrimination becomes legal in the context of reservation. As Dushkin says¹⁵ "India's system of official discrimination in favor of the most backward section of the population is unique in the world". Discrimination is a dangerous instrument it does not matter how pure the intention is or how careful we are in

¹³Discrimination with respect to caste system Against Dalits Or Untouchables in India, presented by Centre For HR And Global Justice with Human Right Watch, February 2007.

¹⁴ National Human Rights Commission

¹⁵Lalah Dushkin, "Schedule Caste Politics" in J.M. Mahar Untouchables in contemporary Indian, P-165

using it for a desirable end. To date, there have been no set criteria for the identification of backward classes the National and State Commission set up have used various kinds of permutation of the caste poverty occupation criteria. The Hon'ble court has been directing a nationwide survey to make note of caste's changing dimensions for better identification of backward classes which also includes SC and ST to get ensured that backwardness is not perpetuated but little has been done by the government in this regard¹⁶. It is true that the concept of equality before law emphasis minimizing the inequalities in income, status, facilities and opportunities not only among individuals but it is also among a large group of individuals for securing the sufficient means of livelihood to the citizens and also promote the educational, social, and economic interest of the weaker or we can say the backward section of people. Should also protect them from exploitation, rape, social injustice, etc. It has been already discussed that the Indian constitution was categorical in reservation in reservation for the SC and ST as it was ambiguous about the OBC (Other Backward Class). And this was due to identifying the beneficiaries due to ambiguity, implementing the policy of preferential treatment, and specifying the types of benefits that would accrue to them. Thus after 73 years of Independence, it is high time to assess that how far is necessary to retain those affirmative provisions in the constitution which are discriminatory.

Our nation will all its boosts and hope, can never really be free till all the citizens can claim equal justice through law in action. All the citizen should minimize the inequalities which are based on birth. This is best done as the framers of the Indian Constitution envisaged by outlawing discrimination and also by providing positive help. There are various groups presently who demands for various benefits. And the state is helpless because of that. The old order may change yielding place for a new social and economic order but the process of transition must be accompanied by an honest and transparent attitude and then only Social Justice can be said to have been done.

In the light of the above stated the following suggestions have been made to make sure that the avowed object of social justice is being ensured through an equitable and adequate representation of backward classes. The following are some of the suggestions-

1. Proper education for all.
2. There should be an Anti -Discriminatory campaign throughout the country.
3. There should be Anti- Discriminatory lessons in the school curriculum.
4. In this regard, media should play a vital role.

In the end, it should be considered that the judicial role in a democracy is not only to decide the dispute before the Hon'ble court but also to uphold the rule of law and to make sure the access to justice to the marginalized section of the society like different backward classes. It also needs to be emphasized simultaneously regarding the fundamental right in chapter 3 of the Indian Constitution, Constitution makers also deemed it proper to impose certain obligations on the State in the form of DPSP which is Directive Principles of State Policy (Part 4) as a mark of good governance because it is that part of the Indian Constitution which provides an ideal and purpose to our constitution and delineates certain principles.

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