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CASTE BASED RESERVATIONS AND AFFIRMATIVE ACTION

Introduction

Reservation is the process of setting aside by law a definite share of educational or employment opportunities, for certain marginalized sections or communities of the society in order to promote their rights and to provide them an equal level playing field. The prerequisite for the scheme of reservation is active intervention of Government, backed by the policy of strong affirmative action. Reservation means facilitating access to seats in the government jobs, educational institutions, and even legislatures to certain sections of the population who have faced historical injustice due to their caste identity. It is a quota based affirmative action and can also be seen as positive discrimination. Reservation Policy is one of the constitutional compulsions adopted by India to address and eradicate the problems of social stratification and centuries of discrimination faced by certain sections of Indian society in the form of bestowing concessions and relaxations in allocation of state's resources to the deprived and marginalised sections of the society.

Article 14 of the Indian Constitution provides every person equality before the law or equal protection of the law. However, our policy makers, keeping in mind the policy of positive discrimination and in order to bring special provisions of laws for welfare of any backward class of citizens, not adequately represented in services under the state also introduced Article 16(4) in the Indian Constitution in 1949.

India follows a policy of reservation wherein positive steps have been adopted to increase the representation of deprived and marginalized sections of population in areas of employment, education, cultural spaces and even legislature from which they have been historically excluded backed by strong affirmative action to eradicate poverty and social inequality. However, it is with great regret to note that despite seventy years of such affirmative action, nothing concrete

has been achieved yet and social disparity based on caste, gender or religion is still the biggest challenge that we are facing. The real challenge lies in identifying and eliminating the root causes which have denied fairness to the weaker and vulnerable sections from exercising their natural rights, leading to their social, educational and economic backwardness.

Historical Perspective

The idea of caste-based reservation was first propounded by William Hunter and Jyotirao Phule in 1882. After independence, reservations were initially provided only to Scheduled Caste (SCs) and Scheduled Tribes (STs). Later in 1991 27 % reservations in government jobs were also extended to Other Backward Communities (OBCs) on the recommendations of the Mandal Commission, set up in 1978, under Article 340 of the Constitution.

In 1991, the Government, further reserved 10% of the posts for economically backward sections of the people who are not covered by any of the existing schemes of reservation.

However, Supreme Court in Indra Sawhney Case of 1992, while upholding the 27 percent quota for backward classes, struck down the government notification reserving 10% government jobs for economically backward classes among the unreserved category. Supreme Court in the same case also prescribed the principle that the combined reservation beneficiaries should not exceed 50 percent of India's population. The concepts of creamy layer as well as the provision that reservation in government jobs should be restricted to initial appointments only and not to promotions were also introduced through this judgement.

The Government, through the Constitutional (103rd Amendment) Act of 2019, amended Article 15 and 16 of the Constitution and provided 10% reservation in government jobs and educational institutions for the "economically backward" in the unreserved category. This 10% economic reservation is however over and above the 50% reservation cap.

Reservation – A Critical Analysis

In *M.R. Balaji & Ors. Vs. State of Mysore*, 1963, it has rightly been pointed out by Supreme Court that Reservations are exceptions to the principles of Equality. Further in case of *Janaki Prasad Parimoo & Ors. Vs. State of Jammu & Kashmir & Ors*, in 1973, it was ruled by a panel

of five judges that “It is inherent in the concept of reservation that a less worthy individual is to be favoured over a more meritorious individual.”

Article 335 of the Indian Constitution clearly specifies the reservation of government jobs for Scheduled Castes and Scheduled Tribes; however, it must be balanced with the need to keep government operations running efficiently.

During the past few years, Reservation has become the mechanism of exclusion rather than inclusion as many upper castes poor and backwards are also feeling deprived and facing discrimination and injustice which breeds frustration in the society. Reservation acts as psychological crutches to the recipients, thus, weakening them. The beneficiaries have now started availing reservation as a matter of right and privilege and it has become a gratuitous law especially in today’s time when literacy rate is nearing 74.04 per cent. In new India, which is witnessing a tremendous surge in literary and cognitive growth of the society, a need has arisen to revisit and update the policies such as reservation.

According to a report, nearly 75,000 students have committed suicide between 2007 to 2016 alone due to academic pressure created owing to caste-based discrimination in the name of reservation.

Reservations are serving the policy of divide and rule of the political rulers, as they create a divide and acrimony between haves and have nots. A general candidate being denied job despite scoring far more than the beneficiary of reservation feels anguished and deprived.

Beneficiaries of this eternal reservation must realise that Caste reservations have further perpetuated the caste system, instead of helping in destroying, it has further ingrained it deep into our social psyche.

It has rightly been said that higher education, unlike primary education, and other basic prerequisites, is not a fundamental right. No group or caste can lay claim to any intellectual or higher education degree just by subscribing to a particular caste. These are all aspirational posts and everyone has the right to aspire to this position and to be treated fairly and equally in the admissions process, in accordance with justice and equality standards.

Apart from denial of fairness to the general category, reservations, though purporting to even out disparity in the society, are legitimately being usurped by the privileged among the underprivileged. As a result, it exacerbates existing disparities among already marginalised

groups. Reservation can only be termed as fair when it truly sticks to its theory of positive discrimination and confers the benefit to the actual needy and downtrodden.

What is most alarming is that the social disparity between such backward elites and the actual backwards is widening day by day and by leaps and bounds creating infinite subsets within a set. Such types of emerging social disorders will further perpetuate social disparities already existing in our society. There is only one solution, which is to amend the law and remove this vestigiality of dichotomy, so that only those people who truly need the benefits of reservation can get them.

