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Examining Distributive Justice through Reservation Policies: A Socio-Legal Perspective

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"The day when a Tribal Woman becomes the President of India, The reservation in the country should be abolished." - Anonymous

Abstract

Reservation policy is a positive behavior of the state and distribution is an instrument of justice that promotes positive equality. This concept can be understood by three ideologies – positive differentiation, opposite differentiation and compensatory differentiation. Positive differentiation means providing special assistance to people who are exploited or on the verge of exploitation. Opposite discrimination means providing protection to people who have been discriminated against. To protect the interest of people who have been victims of exploitation in the past under compensatory discrimination. This research paper discusses the differentiation of the second school of thought. Reservation has always been controversial in India, any political party avoids talking about it, but it is the judiciary which has always bound the boundary of reservation with its impartial justice.

Keywords: Reservation, Schedule Caste, Schedule Tribes

Objective of Study

The key provisions of reservation in the Indian Constitution are to be collated and analyzed in this research paper. Researcher is conducting a thorough investigation on the causes and effects of reservations; its fundamental quality is to comprehend its availability.

Significance of the study

The author of this research work has attempted to explain the foundation for the availability of reservation provisions to the general public as well as how this privilege may benefit the general public's advancement.

Research Methodology

The researcher has prepared this topic using doctrinal methodology and has gathered information from both primary and secondary sources. As a primary source, facts have been gathered from the Indian Constitution and numerous court rulings. As a secondary source, facts and information have been gathered by reviewing the reservation provisions.

Literature Review

The researcher has done a detailed study of the decisions given by the Indian Constitution and the judiciary to prepare this research paper, some of which are as follows- (1) Constitution of India by Dr J.N.Pandey, (2) Constitution of India by Prof M.p.Jain.(3) Indain Bar Reviews Article (4) Political constitution.(5) Various Research Paper.

Introduction

The policy of reservation has always been a controversial issue since the constitution came into force. Reservation has been given by the states in the form of communal award. Talking

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about the people, there is an ideology of the people of India both in favor and against reservation. The strongest basis of reservation in India is "Caste". The extent and percentage of reservation is decided by the states on the basis of caste. To remove the demon of reservation, socio-economic rules will have to be firmly laid down. A critic of reservation says that the basis of reservation should be merit, intelligence, superiority and talent and not just caste. The ideology of the critics is based on negative reservation policy; they talk about reservation on the basis of merit. The founders of independent India wanted to see India in a democratic and secular form. After the end of British rule, due to social and political pressure, the country was divided on the basis of religion and caste. Caste and religion had become a threat to the unity of the country. Dr. Ambedkar started reservation by providing reservation for the up liftment of Dalits. Reservation was promoted for Dalits by making proper policy in the constitution. But what is the proper principle of implementing reservation? Should the recall be given on the basis of economic or social backwardness?

In order to properly implement the reservation in the true sense, it needs a deep thought. If we look at history, caste has always been the foundation for reservation, and the majority of Indians benefit from it. According to the constitution, reservations are given based on economic, social, and backwardness. Due to political ambition in India, the direction of reservation has been changed continuously. Political parties, in the pursuit of power, have fixed the extent of reservation purely on the basis of caste. Due to this, many groups in society are not being treated equally in terms of opportunities. In the country, the benefit of reservation is given in the field of government jobs, education and promotion. Contrary to the constitutional spirit, the distribution of reservation is also being done by many states which violates constitutionalism.

Meaning of reverse discrimination

The term Reverse Discrimination refers to that discriminatory policy that is being given prominently from the past and those people who are getting priority in employment in a proper manner in economic, social and legal, educational and employment. Considering that a community or communities may already be subject to racial, ethnic, handicap, and/or gender discrimination. According to Webster's dictionary, reverse discrimination refers to the exclusion of people from the majority class who have not been wronged and to compensate for the people of the minority who have been traditionally discriminated against.

Reverse discrimination is available against for those sections of the society that who is the majority and has been more influential towards the minority. This differentiation creates inequalities in society and hinders access to facilities. Through this, the availability of facilities is to be made available to the minority society. The issue has always been disputed whether the determination of preference is justified in the form of reverse reservation. Can a policy correct the injustice done in past. It becomes crucial that efficiency can be rejected on the grounds of caste and religious intolerance. Based on the basic premise, reverse reservation creates both favor and equality, which is against the letter of Article 14 of the Constitution.

The Distribution Justice through Affirmative Action

In a democracy, it is up to the executive branch to uphold citizens' rights in accordance with the law and the constitution. The concept of reservation is embedded in the democratic principles. Reservation is the policy by which the government tries to remove inequality by achieving it through socio-economic activities. The aim of reservation is to establish social justice among all sections of the society. The objective of this compensation policy is to achieve positive equality on the basis of priority which is subject to justice and injustice. The

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concept of social justice is related to distributive justice and justice. Distributive justice is given to all those sections of the society who are incapable of power and don't get their right. In order to provide social progress, it is necessary for all people and communities to get the benefit of equality and opportunity. Through reservation by the government, it is ensured that the deserving candidates of the exploited class from the past are provided opportunities in educational and government jobs. Unfortunately, caste and religion-based divisions of society into several classes exist in India. to carry out the goals of the Indian Constitution through its proactive policies, tries to provide equal opportunity to the people of the oppressed class, which has been named as reservation in the society.

Affirmative action is a strategy used by the legislative, executive branch, and administration to help the underprivileged and members of weakened groups in society, such as women, children, members of scheduled castes and tribes, and other members of the working class. The Indian Constitution's reservation clause, which supports the distributive justice principle, must be understood in order to fully comprehend the framework of the reservation policy. The following are the constitutional provisions regarding reservation-

- Article 15 (3) gives permission to make particular provisions for women and children.
- Article 15 (4) People who are socially and educationally disadvantaged can advance with the right support.
- Article 15 (5) to pass legislation governing admittance to educational institutions run by the state government, regardless of whether state funding is involved (except minority institutions)
- Article 15 (6), to provide reservation for the entry of a group within society that is economically weaker.
- Article 16 (4), to provide reservation for those backward classes those who are not adequate representation in government jobs.
- Article 16 (4A) provides for reservation in promotion in Government service
- Article 16 (4B) the prescribed 50 percent limit for Scheduled Castes, Scheduled Tribes, and Other Backward Classes is not met in any given year, the subsequent bus will not be subject to the maximum amount of reservation.
- Article 16(5) nothing in this article will have an impact on the application of any law that mandates that members of the governing body or office holders involved in the operations of a religious or sectarian organization must adhere to a particular religion or denomination.
- Nothing in this Article, in addition to the existing reservation to the State, shall make appointments in favor of any economically disadvantaged sections of Citizens other than those referred to in clause (4), subject to a maximum of 10% of the posts in general category, and shall not prohibit it from making any provision for the reservation.

Giving preference through reservation is the concept of distribution justice, through distribution justice, all the people of the society have to be provided fair opportunities whether they live in the society or outside the society. The concept of distributive justice has been devalued by our politicians; in fact the society has been divided into leading and backward classes for reservation. The reservation has been played with for vote bank politics. On the other hand, the judiciary is trying to solve the principles of social justice. The

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legislative branch and the judicial branch of the government appear to hold different viewpoints on certain issues. If laws are contrary to the spirit of the Constitution, they can be declared unconstitutional.

Critical Analysis of Constitutional Provisions Containing Affirmative Action

- Articles 14 to 18 have been described under the equality clause of the Constitution. Article 15 explains the direct provision of reservation in educational institutions
- Article 16 states that there will be accommodations in the context of 340 government employment. The President is chosen by Article 340 to enact legislation to quell the revolt of the Scheduled Castes and Scheduled Tribes.
- The President should establish and appoint a commission to look into socially and educationally disadvantaged sections, according to Article 340; this is also backed by Articles 46 and 335.

The purpose of reservation is to provide equal opportunities and status to all sections. The above articles do not make detailed provision that the desired citizens should get adequate representation in the governance of the country. Here it has been discussed in detail in Article 330 and Article 332. Both these provisions are to provide representation to Scheduled Castes and Scheduled Tribes in the Lok Sabha and Rajya Sabha according to their proportion on the basis of their population. Basically, Article 15 and Article 16 discuss the two articles of reservation.

On 7 January 2019, a provision of 10% reservation has been made in the Parliament for the economically weaker sections. It will not be considered within the 50% limit of reservation. Articles 15 (6) and article 16(6) were included in the constitution by 103rd amendment of the constitution. Provision was made by the government to provide 10% reservation for economically backward classes in educational institutions and government jobs. This reservation has not been done for the people of any reserved category in the past; it will be available only to those people who are economically backward under the general caste.

Expression of Article 15

- The State is not allowed to treat any citizen differently just because of their race, caste, sex, gender, or place of birth, according to Article 15(1).
- No citizen shall be subject to any disability, liability, restriction, or condition with respect to (a) use of wells, tanks, bathing ghats, highways, and public resorts that are fully or partially supported by state funding or intended for use by the general public; or (b) access to stores, public restaurants, hotels, and entertainment venues. Article 15 (2) makes this clear.
- Nothing in paragraph 3 of Article 15 should be construed as preventing the State from making any further special measures or from addressing the needs of women and children in particular.
- Nothing in this article, article 29(2), or the rules of Scheduled Castes and Scheduled Tribes may be interpreted as prohibiting the State from taking specific measures to advance any socially and educationally disadvantaged groups of persons.[1]
- Nothing in this article, sub clause (g) of clause (l) of article 19, or the Scheduled Castes or Scheduled Tribes insofar as such legislation relates to their admission to

[1] First Amendment Act of 1951, 18 June

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educational institutions, including non-state-funded private educational institutions, regardless of whether they receive State assistance or not, prohibits the state from passing special legislation for the advancement of any socially and educationally underprivileged classes of citizens.[2]

- According to Article 15(6), any special measures for the advancement of the economically underprivileged group of people inasmuch as such measures relate to their entrance to educational institutions, including private educational institutions, excluding the minority educational institutions enumerated in Article 30(1) clause (1), which in the case of reservation would include private educational institutions, whether aided or unaided by the State.

Explanation- According to this article 15 and article 16, "economically weaker section" refers to those who the state may occasionally identify based on things like family income and other economic disadvantage indicators.

Discrimination is prohibited by Article 15 on the following grounds:

Religion- It means that neither the state nor any organization should discriminate against anyone in accessing any public space or policy on the basis of their faith.

Race-Discrimination shouldn't be based on a person's ancestry; it shouldn't face the same discrimination as someone of Indian descent.

Cast-Caste-based discrimination is also illegal in order to stop upper caste members from harming members of lower castes.

Sex-A person's gender cannot be used as justification for discrimination in any situation, discrimination against women, transgender people, etc.

Place of Birth-It should not be acceptable to treat other citizens differently based on where they were born.

Expression of Article 16

- Article 16 outlines the equality of opportunity in sectors of public employment, when it comes to seeking for jobs or being appointed to positions in the government, every citizen has a right to equal opportunity.
- No citizen will be denied employment or a position with the government only because they are a member of a specific race, caste, sex, ancestry, place of birth, or domicile, or any combination of these, according to Article 16(2).
- Nothing herein shall prevent Parliament from passing a law requiring residence in a State or Union territory prior to employment or appointment to a class or classes of positions under the government of, or any local or other authority within, a State or Union territory, as provided in Article 16(3).[3]
- Article 16(4) states that no clause may be interpreted to prevent the State from setting aside appointments or positions for any disadvantaged group of citizens that it believes is underrepresented in the services it provides.

[2] 93rd Amendment Act, 2005

[3] By the 7th Amendment Act of 1956, some provisions were added

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- Nothing in Article 16 (4A) shall prevent the State from making a reservation for Scheduled Castes and Scheduled Tribes who, in the State's opinion, are not adequately represented in its services, in matters of promotion, with consequential seniority, to any class or classes of posts in the State's services.[4]
- There is nothing in this article that prevents the State from treating any unfilled vacancies of a year that are reserved for filling in that year in accordance with any reservation made under clauses (4) or (4A), and such class of vacancies shall not be taken into consideration with the vacancies of the year in which they are being filled up for determining the ceiling of vacancies.
- Article 16(5) No provision of this article shall affect the application of any law that mandates membership in the governing body or a position of authority over the affairs of a religious or denominational institution for someone who professes a particular religion or belongs to a particular denomination.
- Nothing in this article shall prevent the State from providing for the reservation of appointments or posts in favor of any economically underprivileged weaker sections of citizens other than the classes mentioned in article 16 (4), in addition to the existing reservation and subject to a maximum of 10% of the posts in each category .

Everyone is aware of the evil called reservation. Our politicians who say that we are living in 21st century and merit should be the basis of admission in education and not reservation whenever less qualified candidates are being given more admission in private schools than qualified recruitments. Article 16 talks of equality of opportunity that guarantees equality in government service. If we compare Articles 15 and 16, it is clear that Article 16 is limited to the issue of equality in state jobs. Article 15 is used in all cases like Article 16 (2). Article 15(1) talk about making special provisions for citizens on different grounds. It is a troubling feature of the Constitution of India that the Other Backward Classes have been interpreted differently.

Article 15(4) and article 340 talks about reservation to the backward classes and article 16 to the backward classes of citizens and weaker sections of the society on social and educational grounds. It is also not clear what would be its definition in the absence of the words mentioned in the Constitution. If Scheduled Castes and Scheduled Tribes are defined, both are different from the backwardness mentioned in the Constitution. A judicial decision has to be taken to clarify the position of reservation. In 'Mandal Commission Case' Justice Jeevan Reddy, while delivering the majority decision, said that the 'weaker section of the people' referred term included in article 46. It should be applied to the backward class of citizens, there is no need to give any explanation. Article 15(4) Article 16(2) Inequality appears. Article 15(4) clearly makes special provisions for the process of reservation, this reservation is the most comprehensive and talks about making special provisions on many other subjects as well Panchayat.

Article 16(4) clearly says that government job opportunities are to be provided to the backward class citizens. Another discrepancy is visible in Articles 15 and article 16. Article 16(4) talks about providing citizens with government jobs in favor of backward classes, while article 15 talks about making special provisions for the citizens of social, educational and backward classes, in which people belonging to the Scheduled Castes and Scheduled Tribes are included. This means that some sections which are not included in 15(4) can be included in article 16(4).

[4] Acts 77 of 1995 and 85 of 2001 amending the Constitution

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Judicial Review: The Defender of the Legal System

The judiciary has traditionally served as the lion paddy's teacher. The judges also carefully and appropriately chose the fundamental principles of Articles 15 and 16 of the Constitution. While choosing the Fundamental Rights, the judiciary held in mind the Constitution's core framework. The following are examples of historical decisions made by the judiciary that may have replaced reservations and put an end to the diabolical spirit of Indian politics:

The Hon'ble Supreme Court in "**Balaji v. State of Mysore**"[5] has held that Article 15(4) of the State can make laws only for the backward classes by making special provisions. Although the interest of other sections of the society should not be neglected but their welfare, it should be encouraged with enthusiasm. The Hon'ble Court also clarified that the limits of 50 percent depends on each situation.

After "**Devadasan Vs Union of India**"[6] the Hon'ble Supreme Court has propounded the principle of promotion from 4:1 ratio. Under in the case of 16 (4) the opportunity of equality in government service is to be made available to all the backward classes; it should also not exceed the limit of 50% reservation per annum.

"**State of Kerala Vs NM Thomas**"[7] later came before the Hon'ble Court while dealing with the case of Scheduled Castes and Scheduled Tribes that article 16(1) talks of providing special assistance to them. The Hon'ble Court, by majority ratio of 5:2, determined that any government person. Those belonging to Scheduled Caste and Scheduled Tribe community can get promotion on the basis of rational classification after completing two years for advancement. Equal opportunities should be available to the right persons in the matter of government service. Article 16(4) deemed as an exception to article 16(1).The honorable judiciary, with a majority, expanded the reservation from article 16(4).

"**ABSK Singh Vs Union of India**"[8] Later the Hon'ble Court reconsidered the Thomas case that Article 16(1) can differentiate between class and group of the state and society. Therefore, as a fundamental right, special provision can be made separately for reservation in government services to Scheduled Castes and Scheduled Tribes until all sections have got adequate representation in government jobs.

"**A. Periakaruppan Vs State of Tamil Nadu**"[9] - In this case, the court held that the backward classes should not be treated as a single class, but as a backward class for all cases, for the benefit of reservation by the government scrutinized in a timely manner . The backward class people should be identified socially and educationally .Everyone is not in the form of entitled on the seat of reservation, rather it is determined by the policy of the government.

"**State of Andhra Pradesh Vs. AUSP Balaram**"[10] - The Hon'ble Court again suggested that if a section of backward class has achieved progress, it does not have the effect that the entire backward class is considered competent, or the government should reconsider the list of backward class.

[5] AIR 1963 SC 649
[6] AIR 1964 SC 179
[7] AIR 1976 SC 490
[8] AIR 1981 SC 298
[9] AIR 1971 SC 2303
[10] AIR 1972 SC 1875

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"**KC Vasanthakumar Vs State of Karnataka**"[11]Hon'ble Court clearly asked the State of Karnataka to explain its policy on Scheduled Castes and Scheduled Castes. Although the court laid down five clear guidelines that on whose basis Balaji and Devdasan cases have been given the reservation to Scheduled Castes and Scheduled Tribes in the above cases, it should be made the basis of reservation in government services.

"**Indira Sawhney Vs Union of India**" **(First)**[12] Mandal Commission case. The Hon'ble Supreme Court has elected 16(4) in detail in this historic case. The nine judges Constitution Bench decided that the Union Government should provide 27% reservation to the Other Backward Classes in government services. This reservation should be given to the socially and educationally backward class, in which the advanced class should be excluded. The second rule is that the reservation limit should not exceed 50%. It was also clarified that Article 16(4) is not an exception to article 16(1). The judgment settled a landmark milestone for the reservation, in which many guidelines related to reservation were set. The political vote bank was hit by this decision. By the 77th constitutional amendment 1955, bypassing the above decision, the provision of reservation in promotion was made. The effect of this is that even after the decision of the Mandal Commission, people belonging to Scheduled Castes and Scheduled Tribes will be given reservation in promotion, if the government wants. The purpose of constitutional amendment was to abolish the effect of Mandal Commission, bringing new amendment after the decision of Mandal Commission shows political panic. If at present all reservations are being given to Scheduled Castes, Scheduled Tribes and Other Backward Classes and economically weaker sections according to the policy of the government.

"**Indira Sawhney Vs Union of India**" **(Second)**[13] the latter decided how the decision of the Hon'ble Supreme Court was bypassed by the politicians. The Supreme Court held the Kerala State Act 1995 to be unconstitutional and invalid in respect of article 14, Article 16 (1) and Article 16(4). The advanced class was considered ineligible to give reservation on the basis of backward class. The court clarified that neither the legislature nor the parliament can destroy the basic structure of the constitution. The equality mentioned in article 14 which should also be complied with in 16(4).

"**M. Nagaraj Vs Union of India**"[14] It was later observed that the basic structure of the constitution has been violated by this constitutional amendment 70th , 81th and 85th .The Court held that the above constitutional amendment is not meant to make the reservation successful, which cannot be allowed as per 16(4).

"**UP Power Corporation Vs Rajesh Kumar**"[15] Hon'ble Supreme Court held that, M. Nagaraj later modified some of the judgment, like **(1)** efficiency of service as required under article 335. **(2)** Maintaining equality in Articles 16(4) and 16(1) **(3)** Adhering to the ceiling of 50%. **(4)** Giving Article 16(4) by the government on the basis of two reasons backwardness and adequacy of representation.

The issue of reservation has been reconsidered by the judiciary from time to time. Reservation was given earlier for a total of 10 years; the purpose of reservation was to uplift the socially and educationally backward people. Some castes and tribes were initially included in this reservation list, it was never decided that the reservation would be given from

[11] AIR 1985 SC 1495
[12] AIR 1993 SC 477
[13] AIR 2000 SC 498
[14] AIR 2007 SC 71
[15] AIR 2012 SC 2728

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generation to generation. The expanded limit of reservation has always increased, it has been more than 65 years, it has been increasing every time after expiry date, but both the extent and dimensions of reservation are increasing. Today the provisions of reservation are posing a challenge in the society.

Conclusion

After discussing the above, the fact has come to know that reverse reservation should be provided only in a limited way subject to equality of opportunity. It was also clarified that reservation has always been done by the judiciary in a proper manner in accordance with the Constitution. While giving reservation, it has also been tried that there should be harmony between the backward classes and the people of other classes who are selected by merit. The purpose of reservation is to promote to the people suffering from backwardness and not to punish others. The Hon'ble Court has suggested to the government many times that the government should not implement reservation in the case of some government services so that competent people can be selected on the basis of merit. Government should not apply reservation in case of some government services like research and development organization, medical specialist, technical specialist, engineering, space and aeronautical field; merit should be the basis of selection. The suggestions of the hon'ble Court was not taken seriously by the political parties as it affects their vote bank. By making reservation the basis of backwardness, many political parties have been using it to shine their politics. The exercise of power in the matter of reservation is against the principles of the constitution and also against the interest of the country. The issue of reservation should be considered and reviewed from time to time so that the sovereignty and integrity of the country and the ability of the citizens remains intact.

Suggestion

By taking some drastic steps, the government can maintain the balance between reservation and eligibility-

- The government should identify those who are the weaker sections of the society, caste should not be a basis for reservation.
- Reservation should be given mainly on economic basis only, those people who have improved their economic condition after getting reservation, they should not get the benefit of reservation again, and otherwise the purpose of reservation will be frustrated.
- Constitutional amendments 77^{th}, 81^{th} and 85^{th} have been made with bad intention, which is not proper, they should be declared to be null and void. Instead, people belonging to Scheduled Castes and Scheduled Tribes should be made eligible by providing them assistance in education. The government should emphasize on the advancement of education, it has become the most appropriate and best effort.
- Article 16(4) should be reconciled between them without taking exception to article 16(1). The proper evaluation by the honorable supreme courts in various cases like Mandal Commission should be applied in reservation policy. So that meritorious and efficiency could not affect. The decision of the Mandal Commission should be made the basis of reservation because the standards laid down in this latter seem to be appropriate according to the Indian society.

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