

RESERVATION – INJUSTICE IN ITSELF!

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ABSTRACT

This article deals with the problems faced in the name of reservations. It is said that in India all are treated equally however in the name of reservations injustice still prevails. One of the objectives stated in the preamble is to secure equality for all citizens which is one of the most important requirements for a country to be democratic. Although India is said to be a democratic country we still have a long way to go to be true of that nature. Reservation has served its purpose long ago and even after 73 years of independence we still have this system. Although we have progressed over these years in almost all the sections when it comes to laws we remain outdated. We can only develop at a faster phase when deserving candidates are given the opportunities and it should be completely based on merit. To bring equality in society reservation is not an ideal solution. For a person to occupy a position either in terms of job or education, some kind of merit has to be shown, should be deserving to occupy that seat. By relaxing the criteria requirements essentially required our country's future is jeopardized. Reservation is an onerous topic and needs a lot of modification. What we need is not a reservation but scrapping of the caste system prevailing in India. I want this paper to be an eye-opener. After going through this article it will help you understand why the reservation was ideally brought in and its purpose and whether it's a boon or ban to the country in the present scenario. Reservation has been termed for centuries as a necessary evil. However, my thoughts on that state otherwise.

INTRODUCTION

Let us first understand the term equality. According to common usage, Equality means being in the same zone, there is no scope of difference. When we talk about equality from the perspective of the constitution it means the right to be treated equally. Article 14 of the Constitution of India lays the foundation for equality, the succeeding Article 15, Article 16, Article 17 and Article 18 lays down the specific application of the general rule laid down in Article 14. Although Article 14 sets the two very important criteria to achieve fairness in all aspect by introducing Equality

before Law and Equal Protection of Law, it has set certain limitation too which overrides the very basic principle which it tends to achieve.

Article 14 – Article 18 are all incorporated under Part iii of the Constitution which deals with fundamental rights and is the basic feature of the constitution hence cannot be violated. Herein one can understand the importance given to the concept of equality in our system.

CONCEPT OF EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAW

1. Equality before Law

This is considered to be a negative concept because no special privilege is given to anyone. Everyone is subjected to ordinary laws of land except for the king, as in earlier times the concept was that “King can do no wrong”. This concept is taken from Dicey’s Rule of Law in England.

2. Equal protection of Law

Compared to Equality before Law, this is more of a positive concept. Emphasis is given on treating people of like nature alike and among equals law should be same and equally administered. It is to be noted that in both the above concept although there is a difference in the administration of law, there is no discrimination shown of any kind. In Sri Srinivasa Theater V. Govt. of Tamil Nadu¹, Supreme Court held that although both the concept sound similar they are different in application.

EQUALITY BEFORE LAW IS NOT ABSOLUTE RIGHT

Law should be equal and equally administered the right to sue, to be sued .to prosecute or to be prosecuted should be same irrespective of race, social status or political influence.

However, our constitution provides certain immunity to certain individuals.

- Article 361 – President Of India and Governors of State
- Foreign Diplomats
- Members of the Armed Forces are controlled by Military Rules.
- Certain other members of society are governed by special rules in their profession.

¹ Sri Srinivasa theatre V. Govt. of Tamil Nadu AIR 1992

So when we discuss the concept of equality we have to understand that there are various other criteria's also comes into the picture.

Article 14 permits class legislations. The needs of the different class of people often require separate treatments.

The two tests recommended under the same is:

- Intelligible differentia
- They must have a rational relationship to the object which it seeks to achieve by the act.

We have understood that absolute and clear cut equality is more or less impossible to implement and hence now we will discuss our core problem of the Reservation system.

Although in Article 14 classification is permitted for the administration of fairness and to prevent arbitrariness, their implementation in long run has more or less proved otherwise.

HISTORY OF RESERVATIONS²

The reservation system is not a concept introduced after independence, its existence is marked way before that. The idea of a caste-based reservation system was originally drawn up in 1882 by William Hunter and Jyotirao Phule. One of the major reason for drawing up this system is to curb the injustice faced by certain sections of societies in the name of the caste system.

In 1902, Shahu, the Maharaja of the princely state of Kolhapur, in favour of non-Brahmin and backward classes in education had introduced a reservation system.

British Prime Minister Ramsay Macdonald presented the 'Communal Award' in 1933 which provided separate electorates in India for Muslims, Buddhists, Sikhs, Christians and other depressed classes. Later Mahatma Gandhi demanded separate electorates for the Dalit community and this issue for resolved through the Poona Pact which reserved seats for depressed communities within Hindu electorates.

² Drishtias.com

EVOLUTION OF RESERVATION SYSTEM AFTER INDEPENDENCE³

As previously discussed reservation system was brought in to uplift the weaker society whose development was hindered and squashed in the name of caste. We discussed earlier in Article 14 reasonable classification is possible. Initially, the reservation was only provided to scheduled caste and scheduled tribes. The main objective for this is not just to secure jobs for their development but also to let them participate in the decision-making process of the state.

In December 1981, the President of India in the exercise of the power conferred to him under Article 340 of the Constitution appointed backwards class commission B.P.Mandal. The main agenda was to ascertain the socially and educationally backward classes and to recommend steps for their advancement. Hence on the recommendation of the Mandal Commission in 1991 under the purview of reservation Other Backward classes were also included.

Another landmark judgement in Indra Sawhney case⁴, Supreme Court upholding 27% quota for backward classes struck down 10% Government jobs for the economically backward classes among the higher castes. It was also stated that reservation is done in terms of the only appointment and not promotions.

DEMERITS OF RESERVATION SYSTEM

- In Article 16(4A) for scheduled caste and scheduled tribe reservation was set forth for not only appointments but for promotions too.
- There is no concept of the creamy layer under scheduled caste and scheduled tribe that means irrespective of income status or government posts held by the parents, children can still avail this reservation which is very much injustice done to the other lot of deserving candidates.
- Since there is no time frame set under Article 15(4) and Article 16(4) wherein the former state can make provisions relating to the advancement of socially and educationally backward classes of citizens and the latter for reservation for appointment or posts in

³ clearias.com

⁴ Indrasawhney V. Union of India, 1993

favour of backward classes they can also prove to be a hindrance for the deserving candidates.

- Reservations in themselves divide us, it creates an ill will and enmity.
- The idea behind reservation should be based on just uplifting economically weaker sections and should not be based on caste.
- Reservation in itself destroys the main agenda which it wanted to achieve. Some people are already socially advanced and still availing this quota and thereby destroying the opportunities of the deserving candidates.
- It is an instrument used by most the political party to increase their vote bank
- The reservation is a headache to all. There is no satisfaction and fighting for constant enhancement of the limit. The communities of Andhra Pradesh – Mala and Madiga is one such example.
- Many upper caste poor are facing discrimination and injustice due to this reservation system.
- Meritocracy is killed by the reservation system.

RESERVATION IN INDIAN CONSTITUTION

Reservation is backed by the Constitution of India. This is mostly discussed under Article 15(4), Article 16(4) and Article 46. No state shall discriminate against anyone based on Religion, Race, Caste, Sex or place of birth. After the 1st amendment Act of 1951 Article 15(4) was added hereby giving special power to the state to make provision for the advancement of socially and educationally backward classes or SC/ST. Article 16 (1) and (2) states the equal opportunity to citizens for government jobs, whereas Article 16(4) empowers the state to make provisions for the reservation of any backward classes that the state finds inadequately represented in the services. There is no definition of backward classes in the constitution and hence Supreme Court has interpreted the term 'backward classes' as, 'socially and educationally backwards'. To promote the educational and economic interests of the weaker sections of society or SC and ST Article 46 was introduced and it also directs the state to protect them from social injustice and exploitation.

INTRODUCTION OF ANOTHER RESERVATION QUOTA IN 2019

The most recent development in a reservation is seen in 2019. Union Cabinet has approved of 10% reservation for economically weaker sections in general category in educational institutions and jobs. It is for the first time that reservations based only on economic criteria have been suggested. This is done by adding clauses in Indian Constitution (103rd Constitution Amendment Act, 2019). The reservation is set for people whose annual income is less than 8 lakh or those who have below five acres of land.

IS RESERVATION THE ONLY SOLUTION?

Dr. Ambedkar called the reservations compensatory benefits.

The reason for providing reservation by the framers of the Constitution was to uplift those sections of society that were crushed by forwarding class people, however, over the years now the table is turned the other way wherein the forward class people need enhancement.

Reservation is only creating injustice loads of people are losing out on the opportunities because of privileges given to the sections that fall under the minorities' criteria.

Rather than keeping this reservation criterion as of eternity, there needs to be a time fixed. Commendable candidates are overtaken by the lesser academic performance candidates. This is an injustice in itself, to provide justice to one section of society the other sections are treated unfairly. It's time to change, just because parties are in fear of letting go of their vote banks they are reluctant to disrupt the reservation system. An alternative mechanism needs to be brought about to eradicate inequality. The state can provide scholarship scheme or coaching classes with no fees and other such welfare programs. Thereby only deserving candidates will occupy the position and it will no more be based on caste but merit.

EFFECTIVE RESERVATION

- Reservation should be for underprivileged children caste should not have a role to play. The more we stress caste the more it shows injustice and discrimination based on caste.
- The background check should be done while providing reservation, filter the truly economically needy candidate.
- Exclude the creamy layer from all communities.

- Need to assist them in increasing their capabilities not spoiling them by reducing their eligibility criteria required in terms of education.

CONCLUSION

Reservation was introduced as a tool against the injustice done towards certain sections of society. It was considered a method for social upliftment. Although reservation served its purpose by becoming a boon to the underprivileged classes they are often viewed with anger by other communities. The reason for the disapproval is unlike earlier where these backward communities needed assistance now they are more socially and economically well off compared to the forward class people and these sections are often neglected and even at times cannot avail what they are eligible as per merit due to reservation system.

The Constitution of India allowed reservation only for socially and educationally backward classes but in the present scenario, it became a caste-based reservation instead of a class-based reservation. It required the hour that reservation was initially introduced. But in this modern era because of this quota system we can still feel the pressure of the caste system. The only difference is earlier it was from upper caste to lower caste people but now it's vice-versa. Either way what we ideally wanted to condemn we are giving importance to that itself 'CASTE'. It's time to review this old practice and take the necessary steps to terminate it or take necessary measures to eradicate the injustice caused. The forward class should not bear the burden of reservation just because of their ancestors. The idea behind reservation should be to pull out people from poverty and to allow them to attain a good standard of living, it should not have anything to do with caste.