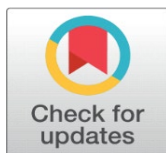
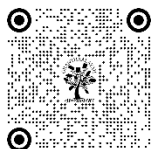


RIGHT TO EQUALITY VIS-À-VIS RESERVATION POLICY AS PER SOCIAL SETUP IN INDIAN CONSTITUTION

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ABSTRACT

India became a Republic in 1950. The Preamble and Directive Principles of the Constitution envisage building a social order around the principles of equality, liberty, and fraternity. The intervention of the State in social transformation for an egalitarian and secular social order is the core and the spirit of the constitution. Keeping this core spirit at heart various articles have been embodied in the Constitution which inter alia covers provisions relating to reservation initially for the Scheduled Castes and Scheduled Tribes, Backward Castes, and Economically Weaker Section (EWS) of the Society.

Keywords: Equality, Reservation, Depressed Classes, Non-discrimination, Educational and Employment Opportunities, Economically Weaker Section of Society (EWS)

1. INTRODUCTION

The Constitution guarantees equality to all citizens and establishes a rule of nondiscrimination by the state in any manner. It ensures the state to treat all citizens equally and allows equality of status and opportunity to all and specifically provides that discrimination based on religion, sex, color, caste, or race is impermissible. The high objective was to convert a society fragmented on the lines of religion, caste, and economic status into a homogenous society. Reservation at the time of independence was meant to achieve the goal of development. But now it has resulted in further fragmentation and division of the society on caste lines which was never the objective with which special provisions for upliftment had been incorporated. (Kriti Gangwar, 2015)

Reservation was considered necessary because at the time when India attained independence from the British rule, and when the Constitution was framed, the condition of such backward castes of the society was extremely poor. They did not have sufficient means to receive proper educational and employment opportunities, due to which they could not improve their standard of living. They were left with no option than to be exploited by the so-called upper caste of the society. Thus, our constitution framers incorporated reservation policies in the Constitution with a view to provide equal status to these backward classes of people. However, with the passage of time, the condition of the society has undergone many changes. These days, it is not possible to determine a person's standard of living simply by knowing the caste that he belongs to depressed classes. The main criterion should be economic and not caste-based. For all such purposes,

arrangements were made to estimate the population of the depressed class and then to allocate the resources efficiently and fairly in Indian society. (Rimsha Javed, 2011)

2. JURISPRUDENTIAL ASPECT IN RESERVATION

The reinforced revival of the reservation debate has prompted the writer to examine a more a fundamental issue- the theoretical foundation of the concept of reservation. (Sameer Pandit, 2005)

John Rawls, in *A Theory of Justice*, while elaborating on the liberal notions of Justice, Equality and fair opportunity has proposed two principles of justice.

His first principle endows upon all persons certain inalienable 'basic liberties' that are to be compatible with the similar liberties of others.

Through his second principle, he recognizes the existence of inequities and allows them if they operate to everyone's advantage. Rawlsian theories of equality and justice have been widely applied to justify various forms of affirmative action from preferential treatment of minorities in American Universities to equitable allocation of medical resources. At first glance, it might seem that the Rawlsian theories are inappropriate tools to judge to reservations in India as Rawls concentrates on economic classes and is largely concerned with distribution of income and wealth, while reservations in the Indian context aim at improving social and educational conditions of the backward classes. (Sameer Pandit, 2005) In fact, while discussing inequality Rawls discusses the unjust and ascriptive nature of aristocratic and caste societies. Rawls' disbelief in the absolutist notion of equality is what makes him particularly relevant for the present analysis. While looking at role of justice he concedes that a certain amount of injustice is tolerable if used to avoid a greater injustice.

Rawls becomes relevant to the Indian context because although he proposes a shift from formal equality to a fair equality of opportunity, he theorizes within the liberal democratic paradigm and does not ignore the necessity of individual rights. Through this piece, analyses whether the concept of reservation is justified at a theoretical level. (Sameer Pandit, 2005) If the concept itself is faulty, then we need to discard the system of reservation as a whole and find a more effective method of promoting equality. In the first part present a critical overview of the Rawlsian notions of justice and equality. In the second part apply these theories to examine the concept of reservation in India. In the third part will show's why, despite the theoretical soundness, the reservation policy has not been a successful form of affirmative action in India.

3. RIGHT TO EQUALITY UNDER THE INDIAN CONSTITUTION

The Preamble of the Indian Constitution states that we the people of India have solemnly resolved: to secure to its all citizens: Justice, social, economic, and political.....; Equality of status and of opportunity." The objectives Resolution from which the above phrase has been carved out states: (Constitution of India, 2015)

- i) Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law.....; and
- ii) Wherein adequate safeguards shall be provided for minorities,' backward and tribal areas, and depressed and other backward classes.

Article 14 of Constitution of India

Highlights two aspects: (a) Equality before the law and (b) Equal protection of the laws. The obligation imposed on the state by Article 14 is for the benefit of all persons within the territory of India. The benefit of Article 14 is therefore not limited to citizens. Every person whether natural or artificial, whether he is a citizen or alien, is entitled to the protection of this article. However, the true scenario often depicts a different picture. (Rupak Das and Mr. Khaleeq Ahamed, 2019) As **Dr. Jennings** puts it: (J. N. Pandey, 2022) "Equality before the law means that among equal the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social, status or political influence."

Krishna Iyer J emphasized: (V. N. Shukla, 2017) "Article 14 enunciates a vital principle which lies at the core of our republicanism and shines like a beacon light pointing towards the goal of classless egalitarian socio-economic order

which we promised to build for ourselves when we made a tryst with the destiny on that fateful day when we adopted our Constitution. If we must choose between fanatical devotion to this great principle of equality and feeble allegiance to it, we would unhesitatingly prefer to err on the side of the former as against the latter.”

Article 15 (1):

The Constitution of India describes that the religion, sex, caste, race, or place of birth is merely one of the factors which the legislature has taken into the consideration, then, it would not be discrimination only on the ground of that fact. But, if the legislature has discriminated only on one of these grounds, and no other factor could possibly have been present, then, undoubtedly, the law would offend against Article 15 (1). (M.P Jain, 2018)

Article 15 (3):

Women and Children require special treatment on account of their very nature. Article 15 (3) empowers the state to make special provisions for them. The reason is that “women’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care to preserve the strength and vigor of the race. Thus, the Article 42, women workers can be given special maternity relief and a law to this effect will not infringe Article 15 (1). Again, it would not be violation of Article 15 if the educational institutions are established by the State exclusively for women. The reservations of seats for women in a college does not offend against Article 15 (1). (J.N. Pandey, 2022)

Article 15 (4) & (5):

Under the Article 15 (4), in innumerable cases, the reservation of seats for Scheduled Caste, Scheduled Tribes and Backward Classes in engineering, medical and other technological colleges have been upheld. Reservation is possible under Article 15 (4) for the advancement of any backward class of citizens for Scheduled Caste and Scheduled Tribes.

Article 15 (5) of the Constitution excludes the minority educational institutions from the power of the State to make any provision by law for the advancement of any socially or educationally backward classes of the citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to educational institutions including private educational institutions whether aided or unaided. (M.P. Jain, 2018)

Article 15 (6):

The Constitution of India under clause (6) of Article 15 is as follows. (J.N. Pandey, 2022) Any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clause (4) and (5) in for as such special provisions relate to their admission to educational institutions including private educational institution referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category.

Article 16 (1) & (2):

Article 16 (1) of the Constitution States that: There shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the state: (Soma Mandal, 2021)

Clause (1) lays down the general rule that there shall be equal opportunity for citizens in matter relating to “employment” or “appointment to any office” under the state. It gives the right only to equal opportunity, i.e., the right to be considered for employment and appointment. It does not give the right to be employed or appointment to any office under the state. Clause (2) lays down specific grounds based on which citizens are not to be discriminated against one another in respect of any appointment or office under the state. (Constitution of India, 2015)

Article 16 (4 - A):

This clause does not affect that decision as regard OBCs but makes it inapplicable to the SCs and STs. Justifying reservations for the SCs and STs candidates in promotions, the court the court had at one pint held that even their seniority acquired by promotion over the general class candidates could not be affected by subsequent promotion of the general class candidates. (V.N. Shukla, 2017)

Article 16 (4 - B):

Explaining the nature of Article 16 (4) the SC held that it is an enabling provision conferring a discretionary power on the state for making any reservation of appointments or posts in favor of any backward class of citizens which in the

opinion of the state, is not adequately represented in the services of the state. Article 16 (4) neither impose any constitutional duty nor confers any fundamental rights on any one for claiming reservation.

Unlike clause (4-A) clause (4-B) is not confined to the SCs and STs. Although no specific case has yet been decided by the court under this clause, in *Nagraj* Case, it suggested that ensure the efficiency of administration required by Article 335 “in each case, the appropriate government will now have to introduce the time-cap depending upon the fact situation” to fill in the backlog vacancies. It is interesting to note that Article 335 which applies only in case of the SCs and STs has been extended to clause (4-B) which is not confined to those classes. (V.N. Shukla, 2017)

Article 16 (6) Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favor of any economically weaker sections of citizens other than the classes mentioned in clause (4). (Constitution of India, 2015) In addition to the existing reservation and subject to a maximum of ten percent, of the posts in each category. (Ramiah, 2015)

Article 46:

Article 46 of the constitution states that “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

Article 330 (1) & (2):

Article 330(1) provides that seats shall be reserved in the House of the People for the SCs, STs except the STs in the autonomous districts of Assam. Article 330(2) provides that the number of seats reserved in any State/Union territory for the SCs STs under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State/Union territory in the House of the People as the population of the SCs in the State/Union territory or of the STs in the State/Union territory or part of the State/Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State/Union territory. (Jyothi Vishwanath, 2020)

Article 331 provides for reservation of two seats for the Anglo-Indian community by nomination to the House of the People by the President. (Jyothi Vishwanath, 2020)

Article 332:

Article 332 provides, that seats shall be reserved for the SCs and the STs, (except the STs in the autonomous districts of Assam), in the Legislative Assembly of every State. Seats are also reserved for the autonomous districts in the Legislative Assembly of the State of Assam. (Constitution of India, 2015)

Article 334:

Article 334 provides, that the reservation of seats for the SCs and STs in the House of the People and State Legislative Assemblies and the representation of the Anglo-Indian community in the House of the People and State Legislative Assemblies by nomination, shall cease to have effect on the expiration of a period of [sixty years] from the commencement of this Constitution. (Constitution of India, 2015)

Article 340: Formation of commission for other backward classes OBCs. The constitution (One Hundred and Second Amendment, Inserted Article 338 B there shall be a commission for socially and educationally backward classes to be known as the National commission for backward classes and inserted 342 A socially and educationally backward classes. (D.D Basu, 2012)

4. SIGNIFICANT ROLE OF RESERVATION POLICY FOR THE UPLIFTMENT OF BACKWARD CLASSES

Dr. Ambedkar rightly pointed out as follows: (Sujata Manohar, 2010) In India there are castes. The castes are anti-national. In the first place because they bring out separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation. For, fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than the caste of paint.

The Constitution guarantees equality to all citizens and establishes a rule of non-discrimination by the state in any manner. It ensures the state to treat all citizens equally and allows equality of status and opportunity to all and specifically provides that discrimination based on religion, sex, color, caste, or race is impermissible. The high objective was to convert a society fragmented on the lines of religion, caste, and economic status into a homogenous society. Reservation at the time of independence was meant to achieve the goal of development. But now it has resulted in further fragmentation and division of the society on caste lines which was never the objective with which special provisions for upliftment had been incorporated. Several constitutional provisions are needed for safeguarding the interests of the weaker sections in conforming with the Directive Principles of State Policy, social justice has been a vowed goal of development. The Indian constitution aims to promote a casteless and non-discriminatory society and emphasizes the importance of achievement, rationality, social justice, equality of opportunity and dignity of the individual.

5. CONCLUSION

The Indian Constitution expressly authorises special preferential treatment for the relief of backward classes. Nevertheless, genuine equality can be achieved through those general provisions of the Constitution which create a General Right of Equality, as this right has been interpreted as requiring equality in fact rather than equality in law. These policies are implemented through a broad discretion vested in the state subject to judicial review to prevent what is intended to establish equality of opportunity, creating instead, institutional discrimination in reverse. In such a structured society, however, the implementation of policies which favor those traditionally seen as less worthy, even 'untouchable,' to the detriment of previously entrenched upper classes, has been easily accepted. The resultant religious and social pressures, outside the scope of this paper, are themselves worthy of careful consideration.

CONFLICT OF INTERESTS

None.

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