

A CRITICAL EVALUATION OF RESERVATION IN INDIA: A SOCIO-LEGAL STUDY

Amit Verma

ABSTRACT

This dissertation traces discussions about reservation policy in India. Reserved quotas in public institutions for communities marked on the basis of caste comprise an stable and comprehensive form of affirmative action. However, the policy provokes deep resentment among upper castes, manifested in virulent protests, judicial challenges and failed implementation. The purpose of this dissertation is to understand how meanings of caste, community and nation are shaped within and through debates about reservation and in turn, how the politics of reservation contribute to the formation of political subjectivities. Drawing on a variety of sites, including the Constituent Assembly debates, the English press and government reports, I chart the development of a dominant discourse about reservations. I interrogate this discourse in relation to anti-caste perspectives on the issue, found in creative and activist writings and studies of Dalit activism. I argue that dominant discourses conflate the issue of caste discrimination with a series of terms that designate inequality more broadly, such as poverty and unemployment. This enables the portrayal of “lower caste” beneficiaries of reservation as inferior subjects that are unable to understand their “real interests”. Thus trivializing discrimination, the discourse naturalizes caste privilege and conceals the historical contestations over the meaning of the quota. In anti-caste discourse, advocacy of reservations is articulated to a critique of the domination of upper caste interests in Indian democracy and the hegemonic vision of the nation through which this domination is naturalized. Thus, power and representation are underscored as integral to assessments of reservation policy. Attending to the affective registers of the debate, I demonstrate that statements about the quota are also statements about history, nationalism and political subjectivity. Reading dominant discourse through anti-caste analytics reveals that the anger against reservations as a threat to the nation is historically related to the antagonism of institutionalized nationalism towards Dalit politics. Through rights claims, Dalit activists contest dominant meanings of caste and in turn, the meanings of community and nation. This epistemological challenge illustrates the contingent relations of group rights and social transformation, as struggles against discrimination generate novel understandings of difference, commonality and personhood.

Keywords: Reservation, Caste System, Social Upliftment, Schedule Caste, Schedule Tribe, Legislation

INTRODUCTION

The system of reservation in India comprises a series of action measures, such as reserving access to seats in the various legislatures, to government jobs, and to enrollment in higher educational institutions. The societal inequality in India is represented by the grossly inadequate representation of Scheduled Castes, Scheduled Tribes and Other Backward Castes in employment and education due to historic, societal and cultural reasons. The reservation nourishes the historically disadvantaged castes and tribes, listed as Scheduled Castes and Scheduled Tribes by the Government of India. The reservation is undertaken to address the historic oppression, inequality and discrimination faced by those communities and to give these communities a place. It is intended to realize the promise of equality enshrined in the Constitution. However, there has been a serious debate about reservation.

The Constitution prohibits untouchability under its Article 17¹, and obligates the state to make special provision for the betterment of the scheduled castes and scheduled tribes, also questions whether such special provisions of reservation would not be considered discriminatory, as it would encourage caste-discrimination and caste based politics.

Over the years, the categories for affirmative action have been expanded beyond the lists of Scheduled castes and tribes to include a special category of Other Backward Classes(OBC). Consideration has also been given to economically backward within the community itself in providing reservations.

Reservation is governed by the Constitution of India, statutory laws, and local rules and regulations. The Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC), and in some states Backward Classes among Muslims under a category called BC(M), are the primary beneficiaries of the reservation policies under the Constitution, the objective of which is to ensure a level playing field. There have been protests from groups outside the system who feel that it is inequitable.

OBJECTIVE

- Reduction in the incidences of poverty and unemployment and thereby reduction in income inequalities.
- Human resource development of the scheduled tribes by providing them economic & health services and development of the confidence among them through intensive educational efforts.
- Development and strengthening of infrastructure base for further economic exploitation of the resources (physical and human both) in tribal areas.
- Providing physical & financial security against all types of exploitation.

Reservation in Political Field

In parliament, caste and tribe based reservations are provided to make it more representative. Today, out of 543 seats in India's parliament, 84 (15.47%) are reserved for SC/Dalits and 47 (8.66%)for ST/Tribes. Allocation of seats for Scheduled Castes and Tribes in the Lok Sabha are made on the basis of proportion of Scheduled Castes and Tribes in the State concerned to that of the total population.

¹ See, Article-17 of *The Constitution of India*.

A similar percentage of exclusive seats has been provided for members of designated castes and tribes in each state legislature. Local self-governments have caste, tribe and gender based reservation system in place.

Reservation in Employment Sector

A fixed percentage of India's government and public sector jobs are made exclusive for categories of people largely based on their caste or tribe.

The 1992 Supreme Court ruling in the Indra Sawhney case² said that reservations in job promotions are "unconstitutional" but allowed its continuation for five years. In 1995, the 77th amendment to the Constitution was made to amend Article 16 before the five-year period expired to continue with reservations for SC/STs in promotions. It was further modified through the 85th amendment to give the benefit of consequential seniority to SC/ST candidates promoted by reservation.

The 81st amendment was made to the Constitution to permit the government to treat the backlog of reserved vacancies as a separate and distinct group, to which the ceiling of 50 per cent did not apply. The 82nd amendment inserted a provision in Article 335 to enable states to give concessions to SC/ST candidates in promotion.

The validity of all the above four amendments was challenged in the Supreme Court through various petitions clubbed together in M. Nagaraj & Others vs. Union of India & Others³, mainly on the ground that these altered the Basic Structure of the Constitution. In 2006, the Supreme Court upheld the amendments but stipulated that the concerned state will have to show, in each case, the existence of "compelling reasons" - which include "backwardness", "inadequacy of representation" and overall "administrative efficiency" - before making provisions for reservation. The court further held that these provisions are merely enabling provisions. If a state government wishes to make provisions for reservation to SC/STs in promotion, the state has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class.

In 2007, the Government of Uttar Pradesh introduced reservation in job promotions. However, citing the Supreme Court decision, the policy was ruled to be unconstitutional by the Allahabad High Court in 2011. The decision was challenged in the Supreme Court, which upheld it in 2012 by rejecting the government's argument because it failed to furnish sufficient valid data to justify the move to promote employees on a caste basis.

² AIR 1993 SC 477

³ AIR 2007 SC 71

Reservation in Education Sector

In India scholarships or student aid is available for—SCs, STs, BCs, OBCs, women, Muslims, and other minorities. Only about 0.6% of scholarships or student aid in India is based on merit, given the grossly inadequate representation of above mentioned categories in employment and education due to historic, societal and cultural reasons.

The University Grants Commission (UGC) provides financial assistance to universities for the establishment of Special Cells for SC/STs⁴. The cells help universities implement the reservation policy in student admission and staff recruitment processes for teaching and non-teaching jobs. They also help the SC/ST categories integrate with the university community and help remove the difficulties SC/ST individuals may have experienced.

New rules implementation of UPA Government do not provide scholarship scheme and reservation quota of students and employees of colleges under central University and State University approved by the UGC.

Constitutional and Legislative Provisions to Ensure Reservation

Various provisions are there in Constitution which introduce the policy of Reservation in our country. The most important of them are Article 15, 16, 330, 332 and 334. To give effect to these provisions various legislations have been introduced by the Parliament and State Legislatures which are as follows:

- The Protection of Civil Rights Act, 1955.
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- The Bonded Labour System (Abolition) Act, 1976.
- The Child Labour (Prohibition and Regulation) Act, 1986.
- The Minimum Wages Act, 1948.
- The Panchayat (Extension to the Scheduled Areas) Act, 1996.

JUDICIAL PRONOUNCEMENTS

1. State of Madras v. Smt. Champakan Dorairajan ⁵

HELD: that the Communal G.O. constituted a violation of the fundamental right guaranteed to the citizens of India by Art. 29 (2) of the Constitution, namely, that "no citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of the

⁴ Available at: <https://www.ugc.ac.in/faq%20sct.pdf> (last visited on 20 April, 2018)

⁵ AIR 1951 SC 226

State funds on grounds only of religion, race, caste, language or any of them and was therefore void under Art.13.

The directive principles of State policy laid down in Part IV the Constitution cannot in any way override or abridge the fundamental rights guaranteed by Part III. On the other hand they have to conform to and run as subsidiary to the fundamental rights laid down in Part III. Judgment of the Madras High Court affirmed.

2. M.R. Balaji and Ors. v. State Of Mysore⁶

The Court observed that Art. 15(4) only enables the state to make special and not exclusive provisions for backward classes. Clause (4) is only an enabling provision and does not impose any obligation on the state to take any special action under it. It merely confer a discretion to act, if necessary.

3. Indra Sawhney vs. Union of India, AIR 1993 S.C. 477.⁷

HELD:

(1) The majority held that a caste can be and quite often is a social class in India and if it is backward socially, it would be a backward class for the purpose of Article 16(4).

(2) Article 16(4) is not an exception to Article 16(1). It is an instance of classification. Hence, reservation can be made under Article 16(1).

(3) The majority held that the backward class of citizens contemplated in Article 16(4) is not the same as socially and educationally backward classes in Article 15(4).

(4) The majority held that while identifying the backward classes, the socially advanced persons—the creamy layer, among them being excluded, for the purpose of giving benefit of reservation.

(5) The majority held that Article 16(4) permits classification of backward classes into backward and more backward classes, for the purpose of giving more protection to more backward class people. (6) The majority held that a backward class of citizens can not be identified only and exclusively with reference to economic criteria.

(7) The majority held that the maximum limit of reservation cannot exceed 50%. However, in extraordinary situations it may be relaxed in favor of people living in remote, far-flung areas of the country.

(8) The majority held that reservation can be made by an executive order. If need be made by Parliament or State Legislature.

⁶ AIR 1963 SC 649

⁷ AIR 1993 SC 477

(9) The majority held that the reservation under Article 16(4) cannot be made in promotions. The reservation is confined to initial appointments.

(10) The court directed the Union Government, State Governments and Union Territories to appoint a permanent statutory body to examine complaints of wrong Inclusion or non-inclusion of groups, classes and sections in the list of other backward classes.

(11) The majority made it clear and directed that all objections to the criteria evolved by the Central Government and State Governments to exclude socially advanced persons creamy layer from other backward classes, shall be filed only before the Supreme Court and not before any High Court or Tribunal.

(12) It was decided by the court that disputes regarding new criteria can be raised only in the Supreme Court. The majority judgment made it clear and directed that all objection to the criteria evolved by the Central and State Governments regarding creamy layer to be excluded from OBC categories and other related matters shall be preferred in the Supreme Court only.

4. M. Nagaraj v. Union of India⁸

HELD:

Clause (4A) of Art. 16 is an enabling provision. It applies only to SCs and STs. The said clause is carved out of Art. 16(4). Therefore, clause (4A) will be governed by the two compelling reasons “backwardness” and “inadequacy of representation” as mentioned in Art. 16(4). If the said reasons do not exist then the enabling provision cannot come into force. The state can make provision for reservation only if the above two circumstances exist. There is no violation of basic structure of the constitution by the impugned legislation.

5. ASHOK KUMAR THAKUR v. UNION OF INDIA⁹

HELD:

The constitution (93rd) Act, 2005, does not violate the basic structure of the constitution so far as it relates to state-maintained institutions and aided educational institutions, Equality is a multi coloured concept incapable of single definition. The principles of equality cannot be completely taken away so as to leave citizens in a state of lawlessness. But the facets of the principles of equality can always be altered, especially to carry out the directive principles of state policy. If any constitutional amendment is made which moderately abridges the principle of equality, it cannot be said that it violates the basic structure of the constitution. It has not

⁸ AIR 2007 SC 71

⁹ (2008)6 SCC 1

been held in **Keshavnanda Bharti case**¹⁰ that all the facets of Art. 14 or any of the fundamental rights would form part of basic structure. If any one of the provisions relating to a particular basic feature of the constitution is altered or modified, that does not amount to the alteration of the basic structure.

The court also held that Art 15(5) is constitutionally valid and Art 15(4) and 15 (5) are not mutually contradictory. But, in the case of Art. 15(5), the minority educational institutions (whether aided or unaided) are excluded from the perview of Art 15(5). Further, classification of SEBCs cannot be done exclusively on the basis of caste as it would violate Art. 15(1). Povert, social backwardness, economic backwardness, all are criteria for determination of backwardness. However it is clear from Indra Sawhney¹¹ case that caste itself is not the final destination, that is, caste by itself cannot be determinative of social and educational backwardness, though caste can be the starting point for determination of backwardness. If 49.5% caste-based reservation was upheld in Indra Sawhney case for government employment, it follows that 49.5% caste-based reservation is permitted in aided educational institutions. Indra Sawhney case compels that conclusion that use of caste is valid. Hence, there is no choice but to uphold the impugned legislation by which the government may still identify SEBCs , in part, by using caste.

CONCLUSION

Reservations are nothing but means to prosper the vote banks of politicians. They are hindering the country's growth, development and competency in all aspects. Reservation is creating disparity and differences amongst the people. By reserving one category against another creates a feeling of division which is now resulting in a chaos with every small section of the society asking for it.

Seventy years after independence, despite reservations of all hues, this scenario has not improved drastically. This suggests that the problem needs different solutions. The problem is endemic and must be addressed at the grassroots. Ensuring that students of marginalised communities are provided the requisite education at the primary and secondary levels – at par with their upper caste colleagues – is one of the most effective means of eliminating discrimination

¹⁰ AIR 1973 SC 1461

¹¹ AIR 1993 SC 477

