

Reservation in the Indian educational scenario - post constitutional amendments

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Abstract

Education is one of the efficient mechanisms whereby a country's progress can be achieved with participation from every section of the society. Our Constitution guarantees equal rights and privileges. Through amendments, the state was given discretionary power to make special provision of reservation for the advancement of socially and educationally backward classes. There is no standardized percentage of reservation followed throughout the country, and it is purely based on a combination of class and political compulsions at the state level. The recent agitations by different classes such as Jats, Patidars, and Marathas with incidents of violence and arson across the states indicates that people from other classes can get involved in similar agitations for benefits. Reservation is beneficial to certain classes of society, but it is anti-thesis of overall development. Ever since the first amendment, many talented students were denied their right citing historical and societal reasons.

Keywords: *Amendment, Reservation, Education, socially and educationally backward class*

1.Introduction

"Education is the most powerful weapon which you can use to change the world"

-Nelson Mandela

Education is one of the critical investments any country can make as it ensures overall development of the country. Education is the key to eliminate gender inequality, reduce poverty and to create a sustainable planet. The educational scenario in India was structurally flawed with inequalities due to caste discrimination and social imbalances. But in the past years, our country has made remarkable progress in

the field of education. Constitutional commitment to compulsory primary education and assisting disadvantaged groups are the affirmative steps taken by the government. Even then, the challenge of getting all the children, especially those in poverty, into the fold of education and equip them with fundamental knowledge and skills and envisage a safe and healthy childhood, seems to be a faraway goal.

Aim of the Study : This article highlights the impact of the constitutional amendments in education particularly reservation policies by analyzing various judicial decisions and other aspects principally focusing on the collective development of the society.

2.Major Constitutional Amendments with respect to Education

Several Changes were made in the Constitution by which it was also clarified that right to equality does not bar the enactment of laws which provide special consideration for weaker sections of the society. In State of Madras V. ChampakamDorairajan(1951), Supreme Court struck down the reservation policy with respect to medical seats since providing such reservations was in violation of Article 16 (2) of the Indian Constitution. The First amendment had set the precedent of amending the Constitution to overcome judicial pronouncements to implement the policies of the Government.

2.1 First amendment, 1951 :

The Indian government within fifteen months since its enactment brought the first constitutional amendment adding "clause 4 to Article 15" whereby the state may provide reservation to socially and educationally backward classes. In C.A.Rajendran(1967), where governmental policy of

1963 did not provide for reservation of posts in class I and II was challenged, a five judge bench upheld the policy by saying that reservation both in appointments and promotions is merely discretionary rather than a constitutional duty of the state.

2.2 Mandal Commission Report :Analysis

In February 1980, second Backward Classes Commission was appointed under the chairmanship of B. P. Mandal, a former member of Parliament. The commission's assignments were:

- to determine criteria for defining India's "socially and educationally backward classes"
- to recommend steps to be taken for the advancement of those classes
- to examine the desirability of reserving state and central government jobs

Accordingly, the Mandal Commission submitted report relying on then Nationwide field survey data, combined with information from the 1961 census, various states lists of their backward classes, and personal knowledge of commission members and others. The Commission culled out caste/community-wise population figures from the Census records of 1931 and grouped them into broad caste clusters and religious groups. According to the report, the backward classes, excluding the SCs and STs, constitute 52 percent of India's population and hence they recommended 27 percent reservation for other backward classes in matters of education and employment in public sector. It is clear that the report was based on 1931 data concerning caste as there was no caste-based census conducted later. The 61st round of the National Sample Survey Organisation (NSSO) placed the OBC population at 41 percent as against 52 percent calculated by the Mandal Commission. The NSSO survey placed the population of Scheduled Tribes (S.T.s) at 8 percent and that of the Scheduled Castes (S.C.s) at 20 percent. The NSSO has, since its 55th round (1999-2000), been collecting data on social groupings, covering parameters such as sex ratio, employment statistics, land-holdings, per capita expenditure and educational levels. In its 61st round (NSS Report 516, 2004-05), the NSSO collected information on various facets of the employment and unemployment situation at the national and State levels through a schedule of inquiry. Mandal commission recommendation has made a huge impact in our

country. Even a slight difference in the percentage has caused great harm to many individuals since they were denied of their eligible seats in institutions as well as jobs since 27% has been reserved for erroneously concluded 52% population. Though the commission's report was tabled indefinitely by Prime Minister Indira Gandhi, a decade later, Prime Minister V. P. Singh of Janata Dal government implemented the recommendation of the report for which the nation witnessed large-scale protests throughout the country, particularly in northern and western India culminating into self-immolations, suicides, and killings in police actions. One of the social consequences of this was further deepening of the caste divide in Indian society.

Apex Court in *Indira Sawhney and others V. Union of India and Others* (1993) upheld the Mandal Commission's 27 percent quota for backward classes, as well as the principle that the combined scheduled caste, scheduled tribe, and backward class beneficiaries should not exceed 50 percent of India's population. However, Court also clarified that in exceptional scenarios this percentage could be increased by states by exercising extreme caution. The provision for reservation has been marked up by the various state governments from time to time consistent with the needs of people.

2.3 76th Amendment, 1994

Tamilnadu Backward classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institutions and appointment of posts in the services under the state) Act, 1993 was enacted to provide 69% reservation. Through 76th amendment this act was put under Ninth Schedule as entry 257 A, But the issue of whether the state act goes against the basic tenets of the Constitution is a matter still pending before the SC. Hence, the final word is not yet out on whether TN's 69% reservation policy is acceptable or not. During the last several years, the apex court permitted the state to continue with 69% reservation by creating an additional 19% seats in educational institutions for the general category to offset the effect of 19% extra reservation. But the SC also ordered the state to produce the actual percentage of BCs in the state.

Another ratio decidendi of the *Indira Sawhney* case was the exclusion of backward elites from the reservation by the creamy layer principle. Still, identifying them is very difficult since the same income means different in different parts of the

country. Landholding might be a better yardstick in rural areas which was not taken into consideration while determining one's backward status. Even after court's direction for a periodic revision of the backward classes lists to exclude those who have ceased to be backward or for the inclusion of new classes, no proper steps were taken by successive governments in this regard. Hence, for the time being, it is an undisputed fact that "once backward always backward" that is once a caste gets added in the list of backward classes they can reap the benefits indefinitely. Also since the constitution itself clearly states that a class that qualifies for reservations must "not only be a backward class, but it should also be inadequately represented in the services under the State". In fact, the court noted the submission of Counsel K.K. Venugopal¹ that before every election in Tamil Nadu, more castes were added to the backward list and all of them could not possibly be entitled. Hence even after seventy years from now, if the government uses the same yardstick never can a caste cease to be excluded from the reservation category as they will always remain to be inadequately represented. As per the constitution, all castes with a significant presence in government will have to be struck off the list. However, this cannot be an arbitrary exercise, for the Government's decision on this will be subject to numerous petitions in courts as well as the withdrawal of benefits enjoyed by communities may result in serious internal disturbances in the country. As the judges observed in their verdict: "Reservation must carry the seeds of its own termination." it may take many more years for some affirmative action from the government. The judiciary made it clear that policy of reservation is not a matter of perpetuity; the state should review from year to year the eligibility of the class of socially and educationally backward class of citizens. Article 15(4) and 16(4) are not exceptions to clauses (1) and (2) of those articles or Article 14; they are the means for achieving the right to equality enshrined in those articles. It can be categorically stated that ensuring absolute equality is impossible since nature itself have created human inescapably imperfect. Hence in the guise of assuring equality and also by elucidating social, historical and political reasons, sheer injustice is done to children belonging to a section of society.

¹Senior advocate of Supreme court who is currently India's 15th attorney general

2.4 Ninety-Third Amendment, 2006

Further, In P.A. Inamdar & Ors. vs. State of Maharashtra & Others (2005), the apex court held that reservation policy could not be imposed on minority and non-minority unaided private colleges, including professional colleges. Clause 5 was added to Article 15 by 93rd amendment to mandate private institutions other than minority institutions to provide reservation citing constitutional objective of uplifting backward classes. Validity of this amendment was challenged in Ashok Kumar Thakur V. Union of India (2008), it was held to be valid leaving unaided private institution's position in providing reservation to be decided in an appropriate case.

2.5 86th Amendment, 2002

A landmark change was brought by adding Article 21 A by which the right to education for children belonging to six to fourteen years was made a fundamental right; it also imposed a positive obligation on the state to make it free and compulsory. Parliament enacted the "The Right of Children to free and compulsory education act, 2009 to implement this constitutional objective by which India became one of the 135 countries to make education a fundamental right. The act requires all private schools to reserve 25% of seats to children which is to be reimbursed by the state as part of the public-private partnership plan.

3. Recent Agitation by several communities:

The nation witnessed several agitation and protest by demanding inclusion of their caste in OBC for receiving benefits. Ever since the implementation of Mandal commission report, Jats, who form 29% of total population in Haryana have been demanding to include them in the Central OBC list which was rejected by national commission on backward classes. Since February 2016, they organized several protests in Haryana blocking railway lines and roads which later spread to Uttar Pradesh, Rajasthan, and Delhi. Counter protests were conducted by others which have resulted in inter-caste violence leading to the death of 30 persons and a loss of about 55.92 crores. In 2008, Gujars demand for the status of Schedule Tribe (ST) and the statewide clashes between Gujars and Meenas threatened the law and order situation in Rajasthan. Meenas who are currently reaping the benefits of ST status feared for

the increase in competition if Gurjars get inducted in ST category. Gujjars also held a ten day protest in May 2015 by blocking railway tracks, bringing train traffic to a halt. The Patidar movement in Gujarat led by Hardik Patel, too went in the same direction in Haryana creating horrendous law and order problem. Demonstrations continued despite death of 11 persons. Marathas with the support of political parties conducted several silent protests in Maharashtra demanding reservation. The Kapu community in Andhra Pradesh has been demanding OBC status for nearly three decades. Other than these communities, many small and large groups across the country have also raised similar demands for reservation in different categories.

These agitations which shocked the nation may be caused either because they are fed up with the oppression and under representation in government institutes for admission and later to government jobs or they have realized that to get included in the reservation quota is the easiest way to get all the benefits. Also, years of underrepresentation have made most of them economically weak which prevents them from giving good education to their children. Either way, it cannot be denied that every citizen has equal right to be part of nation-building. A better-educated person can be a better citizen since chief posts which determines the policies of even private players are still under the control of the government.

4. Conclusion

Ever since the first amendment, deserving children belonging to few communities are denied admission to educational institutions by blocking few seats for other communities on some justifiable grounds. But now after seventy years of independence, if we still rely on the same reasons for providing reservation, it will be grave injustice. Hence it is the need of the hour to revisit the idea of providing reservation concerning education. The key principles should be changed only after thorough consideration and deliberation. Peace and progress of the country should not be put in crisis. Some of the demerits of reservation policy are that the dignity of the children belonging to reservation category gets hurt since even when they are talented, society presumes that they get admission in government colleges only through the reservation. Also, those children who are aware of the reservation benefits in those communities may not bring out their full potential as they are required

to score less marks compared to the general category. When a candidate gets appointed to a reserved post, it inevitably excludes a more meritorious candidate. Also, there is a brain drain since a section of nation's young talents are going to other countries seeking good education and employment. But reservation is now a fact of life, and it will be the ruling norm for years to come. Still there should be an adequate solution to this scenario.

5. Suggestions:

- a. It is high time to revisit the status of communities reaping reservation benefits and eligibility percentage by appointing an independent commission and changes should be made accordingly on giving due consideration to all legal and social aspects.
- b. Caste-based census should be taken which should include taking vital data's of education, employment, annual income, property details, etc.
- c. Political parties should not indulge in vote bank politics by promising quota benefits for communities that are leading protests and agitations
- d. Parliament and Judiciary being the responsible pillars of governance should focus more on general interest of the nation and its development rather than individual interests.
- e. Talented individuals should not be denied education and employment since they will occupy coveted government posts which will have an impact on the country's governance
- f. The state should provide education for all by limiting reservation only for the deserving persons up to 50%.
- g. At least a minimum of 10% Economic reservation for the forward community should be provided taking into account of their rights as a human being and as people who were denied their rights for generations.
- h. People who are entitled to reservation notably scheduled caste and tribes should be given proper awareness about their rights since ignorance among the majority of them also results in their under representation.

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