

NEED OF RESERVATION FOR BACKWARD CLASSES

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Abstract

The goal of giving the Other Backward Classes (OBCs) “reservations in services” is not just to provide employment for some members of these communities; it is primarily “to empower them” and ensure their “participation” in the political process of the State. In order to ensure “equality of opportunity in the matter of public employment,” the Indian Constitution has taken extra care. In accord with the wider definition of “equality”, Clauses (4) and (5) of Article 15 and Clauses (4) and (4B) of Article 16 of the Constitution state that nothing in those Articles shall prevent the State from providing “for the reservation of appointments or posts in favour of a class” of citizens who are considered to be less advantaged and who, according to the assessment of the State, “are not adequately represented in the services” provided by the State. Reservation is not just about grabbing some jobs, it is also about increasing the share of national resources among the deprived and disadvantages sections of society. Reservation is the first step with the help of which we can move towards social equality.

Keywords: Reservation, Caste, Other Backward Classes, Mandal Commission, Constitution of India.

INTRODUCTION

The origin of “the concept of reservation is linked to the birth of castes. The sprouts of the caste system can be seen emerging in the Vedic period itself.”ⁱ “At that time the society was divided into classes, or *Varnas*. Everyone’s place in the society was determined once and for all.”ⁱⁱ

India’s caste structure evolved into such a discriminatory system in which the modern concepts, like, “equality, liberty, justice,” etc., could have no place. “That system took such roots in society that despite the efforts of the reformers from time to time, its harmful effects could not be mitigated. A large part of the society is still compelled to bear the pain caused by that system.”ⁱⁱⁱ “As a result of this system, the gulf between man and man continued to deepen.”^{iv}

Though the Constitution of India “does not define the term backward classes”,^v it is used to refer to “the weaker sections of the society”, especially those who are backward in comparison to the upper castes in education, business and jobs. In the historical context, the word backward class was first used in 1917-18. In 1930-31, this word was used more often. In 1937, the State of Travancore used the term “backward community” for “the educationally and economically” weaker “sections of society”.^{vi} But in the state of Madras the word was used for the ranks above the untouchables.

In 1934, the Provincial Backward Classes Association was established in Madras. The Backward Classes in Madras had more than 100 communities, and they constituted 50 per cent of the total population. Bihar State Backward Classes Federation was established in the year 1947. The All India Backward Classes Federation was established in 1950. In 1954, there were 88 organizations of backward classes in 15 states.

The list of backward classes prepared by the Government of Karnataka included Muslims, Christians, Jains and all non-Hindus except Brahmins. But the upper non-Brahmin castes were not included in the lists of Tamil Nadu and Maharashtra. Theoretically, backwardness is determined on the basis of caste membership. It does not mean backwardness of individuals but backwardness of groups.

CONSTITUTIONAL AND LEGAL PROVISIONS

The goal of giving the Other Backward Classes (OBCs) “reservations in services” is not just to provide employment for some members of these communities; it is primarily “to empower them” and ensure their “participation” in the political process of the State. When “delivering the majority decision” in the case of “Indra Sawhney & Others Versus Union of India & Others”, Justice B.P. Jeevan Reddy noted that “public employment” grants a certain position and “power” in addition to providing a means of subsistence. In order to ensure “equality of opportunity in the matter of public employment,” the Indian Constitution has taken extra care. In accord with the wider definition of “equality”, Clauses (4) and (5) of Article 15 and Clauses (4) and (4B) of Article 16 of the Constitution state that nothing in those Articles shall prevent the State from providing “for the reservation of appointments or posts in favour of a class” of citizens who are considered to be less advantaged and who, according to the assessment of the State, “are not adequately represented in the services” provided by the State.^{vii} The pertinent passages from Articles 15, 16, and 335 of the Constitution of India that directly relate to reservations for Other Backward Classes are quoted below:

The Constitution (First Amendment) Act, 1951, inserted clause (4) in Article 15 which says that “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens . . .”^{viii}

The Constitution (Ninety-third Amendment) Act, 2005, inserted another clause (5) in Article 15 for reservation of seats for the OBCs in educational institutions, clarifying that:

“Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens . . . in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”^{ix}

Further, clause (4) of Article 16 says that:

“Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”^x

The Constitution (Eighty-first Amendment) Act, 2000, inserted a new clause (4B) in Article 16 which reads as follows:

“Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any

provision for reservation made under clause (4) . . . as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”^{xi}

RESERVATION: A RECOGNIZED NATIONAL POLICY

Reservation is, thus, a recognized national policy. The system of reservation for Dalit and tribal groups came into existence with the independence as well as under the constitutional provision. This provision came about because during the freedom struggle itself, the leaders of the newly formed nation had promised to provide special opportunities for the advancement of the exploited and deprived groups.^{xii}

After independence, there was a debate whether similar opportunities are not needed for other backward castes, who have historically been victims of social and economic exploitation too, and who have been economically and educationally backward because of this. These castes have also been oppressed by the *Varna* system, and have been denied for centuries education, wealth and power, which have been the mainstays of a respectable position in society. Article 15 of the chapter on Fundamental Rights in the Constitution of India made provision for providing special opportunities to “the socially and educationally backward classes”.^{xiii} For the purpose of fulfilling this fundamental right, “Kaka Kalelkar Commission was constituted in 1953. Kaka Kalelkar recommended that 70 per cent reservation should be given at different levels of education to give special opportunities in education to the socially and educationally backward.”^{xiv} Later, on 31 December 1980, the Mandal Commission^{xv} solidified the findings of this debate, which led to the proposal of reservation for OBCs.^{xvi} The argument used to support the proposition of the Commission was that “52 per cent” of Indians belong to the category of Other Backward Classes.^{xvii} The Commission held that it is important to acknowledge that the fight “against social backwardness” must also be waged “in the minds of” those who are socially “backward”.^{xviii} “In Bihar, when Karpoori Thakur became the Chief Minister, he implemented reservation for OBCs in 1978 itself as per the recommendations of the Kalelkar Commission.”^{xix}

The Mandal Commission had recommended reservation in government jobs as well as in educational institutions. But under the circumstances of that time, the then Prime Minister V. P. Singh was able to implement it only in government jobs. In this way the question of reservation in educational institutions remained hanging. When United Progressive Alliance government implemented it, it was bound to take that unfinished agenda to its logical conclusion.^{xx}

“On 16 November 1992, in the Indra Sawhney Vs Union of India case, the Supreme Court’s constitutional bench of nine judges” upheld the “the decision of the government”, declaring “that caste was” a legitimate indicator “of backwardness.”^{xxi}

RATIONALE FOR RESERVATION

“The rationale for reservation lies in the socio-historical conditions.”^{xxii} “Reservation system is a measure to restore the self-respect of the people who have been crushed for centuries and to establish social equality through the improvement in the economic condition. Its basic criterion is caste,

because caste is the basic unit of our society. Religions that have not recognized the existence of caste (like Islam and Christianity), have identified them on the basis of occupation, because their real status is the same as that of the lower castes.”^{xxiii}

“No one can deny the fact that whatever development has taken place in the 75 years since independence has been one-sided. The benefits of development have not been equally distributed among all sections, and socio-economic inequality has widened.”^{xxiv} Whenever any revolutionary proposal came for equalization of backward people in education or opportunities, the politics ranging from its neglect to its opposition has been very sharp.

Often making merit the sole criterion of education and opportunities, the upper caste conveniently forgets that the source of its merit lies in its economic means rather than in its genetics, which gives it access to good schools, tuition facilities and finally donations, and lead to privileges. If these resources were accessible to the backward classes, then perhaps their share in higher education, higher jobs and in the fabric of the whole society would have been bigger.^{xxv}

Reservation is not just about grabbing some jobs, it is also about increasing the share of national resources among the deprived and disadvantages sections of society. Reservation is the first step with the help of which we can move towards social equality.^{xxvi}

OPPOSITION TO RESERVATION

In 1990, when “reservation” was given to backward classes “in government jobs”, the opponents of reservation said why reservation in jobs? If these castes are to be promoted, then first “make them eligible for jobs by promoting them in education”;^{xxvii} give them reservation in education. “Now that the provision of reservation has been made in higher education, then it is being argued that attention should be given to strengthen their roots at the primary education level first, not at the higher education level.”^{xxviii} “Since the primary education in the country has gradually gone into private hands, even if the government gives reservation there, it will not make any difference to the affluent sections of the society.”^{xxix} “The conspiracy is going on smoothly, without any organization and propaganda, and is successful: that is – do not let the Dalit and backward children who have reached the classes go beyond the fifth, eighth, or tenth grade.”^{xxx}

The opponents of reservation are worried only when there is pressure for equal distribution of the opportunities as the logical consequences of democracy. The anti-reservationists then fail to understand that this pressure is arising due to historical reasons. “People who have been kept in the dark of ignorance for centuries are finally coming out and raising their voice for their rights.”^{xxxi} The power of money, material strength and manipulation may have been with the socially dominant classes for centuries, but the power of numbers lies with the downtrodden and backward groups. “After all, on what logic can it be said that the people who have 15 per cent of the population should occupy 70 per cent of the facilities of the society? And where did these groups bring the society while enjoying all these facilities in so many years? Why is India still so backward compared to the developed world with these “people of qualified merit”? Who is responsible for the corruption and inefficiency that have prevented the development plans from being fully realised? And if so, the anti-reservation people are really supporters of justice and equality, so why have they not started any debate till date, leave aside the struggle against social and economic inequality?”^{xxxii}

Those groups will not engage in this debate because they do not have a rationale for it. Instead, they will resort to violence and extremism because they are capable of it. Such behavior of these groups is creating division in the society. By opposing the efforts to distribute justice among all, these groups are becoming an obstacle in social harmony. At the same time, due to social neglect, people whose potentials have not been explored till date, they are also becoming a hindrance in the all-round development of the society by keeping them in check.

In fact, the aggressiveness with which the anti-reservation campaign is being launched, and the sympathy with which the so-called “agitating” upper castes are being glorified in the media, exposes the prejudices of these communities towards the backward groups.^{xxxiii}

The sophistry of anti-reservation has reached so far that a backward, dalit or tribal doctor cannot be trusted. While “well-known sociologist Kancha Ilaiah says that the doctor who used heart transplant for the first time in South India belongs to the Scheduled Caste, who got a place through quota. Kancha Ilaiah also points to the fact that the experiment of reservation in South India has been very successful, and the system there is at least better than most of the North Indian states. That is, this fear is also baseless that if reservation comes, the whole system will collapse.”^{xxxiv}

UNDERREPRESENTATION OF OBCS IN SERVICES

“Despite all the positive steps including reservation, in our country even today in the ranks of people with higher education, the share of upper castes in proportion to the population is at least three times. Remember, this situation is at the level of general graduate. In areas of very high professions like medicine, engineering, management, etc., the proportion of upper castes is many times more than this.”^{xxxv}

The National University of Education, Planning and Administration clearly says that even if 27 per cent reservation for OBCs is implemented, not more than 15 per cent of the seats will be filled.^{xxxvi} The representation of people belonging to backward castes in various services of the Central Government is pathetic. This is clear from the following table:

Representation of People Belonging to Backward Castes in Various Services of the Central Government (in Per Cent)^{xxxvii}

Year	Group A	Group B	Group C	Group D	Total
1965	--	--	--	--	--
1995	--	--	--	--	--
2004	3.9	2.3	5.2	3.3	3.65
2011	6.9	7.3	15.3	17	

Source: Report of the National Commission for Religious and Linguistic Minorities, 2007; and Rajya Sabha Question Hour of 20-12-2012.

CONCLUSION

It is clear that merely providing for reservation is not enough. It is also necessary to enable the concerned sections to take advantage of this reservation.^{xxxviii} Those who are predicting the disintegration of the society after reservation, they are not looking at the fact that the society is

already divided. It is true that India was divided into two parts by the British, but, in the later period, we have created the two realities of rich and poor India, and there is a huge gap between these two Indias which is increasing.^{xxxix}

After facing subjugation and social degradation for centuries, India is now trying to emerge as a strong country. But this effort can be successful, or can achieve its full potential, only if all sections of the society and all people participate in it. This is the basic condition for social development, national prosperity and becoming a strong nation. Reservation is an initiative in this direction.

“Because there is no doubt that if there is greater participation of the larger society in higher education and private jobs, India will be able to face greater challenges.”^{xl} “Government services” have historically been regarded as a sign “of prestige and” authority in India. By facilitating the increased employment of people belonging to the OBCs in public services, the state can help them get a direct sense of involvement in the governing of this nation.^{xli} Though the conditions of OBCs have gradually improved, but some castes are still unable to receive “the benefits to which they are entitled.”^{xlii} The government should conduct a “caste-based census” as its first action because only then will we be able to determine the precise “number of socially and economically” disadvantaged classes in the country.^{xliii}

ENDNOTES

ⁱ Deepchandra Nirmohi, “Manu ke Boye Arakshan ke Beej”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 4.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid., pp. 7-8.

^{iv} Ibid., p. 8.

^v “Constitutional Provisions for Socially & Educationally Backward Classes (OBCs), Safeguards relating to Educational & Public Employment”, *Civildaily*, available at <https://www.civildaily.com//constitutional-provisions-for-socially-educationally-backward-classes-obcs-safeguards-relating-to-educational-public-employment/> (Accessed on 18-11-2022).

^{vi} Rajatkumar, “The Concept, Origin And Evaluation of Reservation Policy in India”, *Legal Service India.com*, available at <https://www.legalserviceindia.com//legal/article-6526-the-concept-origin-and-evaluationhttps://www.legalserviceindia.com/legal/article-8762-an-analysis-of-reservation-system-in-india.html> (Accessed on 18-11-2022).

^{vii} “Brochure on Reservation for SCs/STs and OBCs-reg”, Ministry of Heavy Industries & Public Enterprises, Government of India, 17th October, 2016, Chapter 1, p. 3. Available at https://dpe.gov.in/sites/default/files/Reservation_Brochure-2.pdf (Accessed on 18-11-2022).

^{viii} *The Constitution of India*, Ministry of Law and Justice, Government of India, May 2022, p. 7. Available at https://legislative.gov.in/sites/default/files/COI_English.pdf (Accessed on 18-11-2022). See also Abhay Singh Yadav, “OBC reservation”, Readers’ Blog, *The Times of India*, October 16, 2022, available at <https://timesofindia.indiatimes.com//readersblog/hardtruth/obc-reservation-45777/> (Accessed on 17-11-2022); “Constitutional Provisions for Socially & Educationally Backward Classes (OBCs), Safeguards relating to Educational & Public Employment”, op. cit.

^{ix} *The Constitution of India*, ibid. See also Abhay Singh Yadav, ibid.; “Constitutional Provisions for Socially & Educationally Backward Classes (OBCs), Safeguards relating to Educational & Public Employment”, ibid.

^x *The Constitution of India*, ibid. See also Abhay Singh Yadav, ibid.; “Constitutional Provisions for Socially & Educationally Backward Classes (OBCs), Safeguards relating to Educational & Public Employment”, ibid.

^{xi} *The Constitution of India*, ibid. See also Abhay Singh Yadav, ibid.; “Constitutional Provisions for Socially & Educationally Backward Classes (OBCs), Safeguards relating to Educational & Public Employment”, ibid.

^{xii} Satyendra Ranjan, “Loktantra ka Samajik Dayitva”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 11.

- ^{xiii} See Supreme Court of India decision in “Ashoka Kumar Thakur Versus Union of India and Others” [ALL SC 2008 April], Advocatetanmoy Law Library, 10-04-2018, available at <https://advocatetanmoy.com//2018/03/26/ashoka-kumar-thakur-versus-union-of-india-and-others/> (Accessed on 18-11-2022).
- ^{xiv} Surendra Mohan, “Pichhdepan ki Pahchan”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 39.
- ^{xv} Abhay Singh Yadav, op. cit. See also Suchitra Karthikeyan, “Explained: OBC reservation across India, its history and challenges”, *The Hindu*, May 14, 2022, available at <https://www.thehindu.com/news/national/obc-reservation-in-india-history-state-wise-quota-legal-challenges-tussle-for-local-body-polls/article65401989.ece> (Accessed on 17-11-2022).
- ^{xvi} Satyendra Ranjan, op. cit., p. 11.
- ^{xvii} Abhay Singh Yadav, “OBC reservation”, op. cit.
- ^{xviii} Ibid.
- ^{xix} Satyendra Ranjan, op. cit., p. 11.
- ^{xx} Ibid., p. 12.
- ^{xxi} Abhay Singh Yadav, op. cit.
- ^{xxii} Priyadarshan, “Arakshan kyon Zaroori hai”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 28.
- ^{xxiii} Mastram Kapoor, “Angrezi Shiksha bannam Arakshan”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 73.
- ^{xxiv} Priyadarshan, op. cit., p. 28.
- ^{xxv} Ibid., p. 29.
- ^{xxvi} Ibid., p. 29.
- ^{xxvii} Rajendra Sharma, “Abhijaat Vyavastha mein Arakshan”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 25.
- ^{xxviii} Ibid.
- ^{xxix} Satyendra Ranjan, op. cit., p. 12.
- ^{xxx} Apoorvanand, “Jati ka Vilop banaam Pratibha ki Jati”, *Parivesh*–50, Chandausi, April 2006–September 2006, p. 63.
- ^{xxxi} Satyendra Ranjan, op. cit., p. 13.
- ^{xxxii} Ibid., pp. 13-14.
- ^{xxxiii} Priyadarshan, op. cit., pp. 30-31.
- ^{xxxiv} Ibid., p. 31.
- ^{xxxv} Rajendra Sharma, op. cit., p. 23.
- ^{xxxvi} Ibid., p. 24.
- ^{xxxvii} Dinesh Narayan, “Rethinking the Rights of Birth”, *The Economic Times*, New Delhi, 20 October 2015, p. 14.
- ^{xxxviii} Rajendra Sharma, op. cit., p. 24-25.
- ^{xxxix} Priyadarshan, op. cit., p. 30.
- ^{xl} Ibid., p. 33.
- ^{xli} Abhay Singh Yadav, “OBC reservation”, op. cit.
- ^{xlii} Ibid.
- ^{xliii} Ibid.