

“The Union of Right to Equality & Reservations in India”

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INTRODUCTION

“We came equals into this world, and equals shall we go out of it.”

George Mason

All societies are unequal societies, but in the West, economic inequalities dominate over status inequalities. Individuals of whatever class are presumed to be socially equal as members of the society. However in the present scenario of India discrimination on the grounds of class are not classes but unfortunately caste. Here the important aspect is that the discrimination is positive that it includes certain privileges both on the economic and educational front. So the fight is not to eradicate discrimination but to put this discrimination on a profitable note by the government and for the people the fight is to add themselves and their caste as the part of these backward classes.

EQUALITY AND RESERVATION

Article 14 of the Indian Constitution,

Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

This article can be divided into two parts. First on being equality before law and second one is equal protection of law. Where the first part is taken from the British constitution that signifies the equal application of law for all .i.e. the law in existence should be equally expressed for both the government and the citizens. On the other hand the second part bares the discrimination by legislative law and opens door for the questioning of the same. This form of equality is taken by the US constitution that was introduced in their 14th Amendment¹. But the mechanical application of the law may lead to injustice as Article 14 does not mean that same laws should be applied to all but same laws should be applied to all those who are equals in a particular sense, the sense in which the law has been made.

That is the reason reasonable discrimination has been approved in many laws in India including the section 11 of the Indian Contracts Act² and section 5 of the Hindu Marriage Act³ that demarcates the parties competent to contract/marriage of the basis of age. The conditions for drawing a reasonable discrimination includes two- one is the presence of intellect in discriminating and second the presence of nexus between the classification and object

1 Adopted on 9th July 1868, as a Reconstruction Amendment.

2 1872

3 1955

of law subjected to such discrimination. The kind example of this is P.S. Nakara v. Union of India⁴ where the court held that the basis of classification is not having nexus with the purpose of the law i.e. to provide benefits to the pensioners and hence the challenge of the scheme was accepted.

An extension of this is Article 15(1) of the Indian Constitution which provides that no discrimination shall be made purely on the grounds of reservation or/and caste but can only be approved if combined with some other substantive ground like education, income, etc. The State of Uttar Pradesh case⁵ where separate electorates on the basis of caste were held to be unconstitutional by the apex court is a fine example of the same.

The contradicting articles⁶ that deals with positive discrimination are:

- Article 15(3) Nothing in this article shall prevent the State from making any special provision for women and children.
- Article 15(4) 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 or for the Scheduled Castes and the Scheduled Tribes.
- Article 16(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

The examples of Article 15(3) include the reservation of seats for women in services, colleges, etc like the 33% reservation provided by the Maharashtra government in services. The landmark example of Article 15(4) and Article 16 includes Mandal commission I & II.

THE OTHER SIDE

The resort to the Mandal⁷ strategy of reservations for the OBCs thus arises from the triple complexity of weak and elitist economic growth experience, reluctance to tackle social backwardness through public policy and the explosive possibilities of adult franchise which allows the numerically larger but socially deprived groups to demand redress. But to what extent these three complexities are being tackled by the reservation provided through the present system is a hot topic on all news channels and newspapers.

The conflicting views of the Mandal commission are further aggravated by the legal judgments that have been corrupted by many reasons other than the two conditions discussed before. The example of which is the

4 1983 1 SCC 305

5 Nain Sukh Das v. State of U.P., AIR 1953 SC 384

6 The Constitution of India

7 Mandal Commission was established in 1979 by the Janata Party government under Prime Minister Morarji Desai.

conflicting case of Meera Kanwaria v. Sunita⁸ that supports the orthodox behavior against inter caste marriages by providing acceptance by families a ground of reservation. One more such famous case was the P. A. Inamdar v. State of Maharashtra⁹ that shows the power of reservation in the country which can lead to the addition of articles in the constitution. As happens in this case wherein for extending reservation in private and government unaided educational institutions sub clause 5 to article 15¹⁰ was added by way of the 92nd Amendment.

The same rule of conflict applies to T. Devdasan v. Union of India¹¹ that raised the issue of more than 50% reservation due to the carrying forward of the seats from previous years providing 16 seats to general category against 30 seats to ST and SC candidates that defeats both the purpose and object of justice.

CONCLUSION

The following are the excerpts from various articles on the issue of reservation system in India.

- ❖ *“The authors (mathematics professors from Indian Institute of Technology Madras, India, and the U. of New Mexico, US) mathematically model bias in the Indian print media's coverage of the controversies over the reservation system for ‘Other Backward Castes/Classes’ in the Indian Institutes of Technology, the Indian Institutes of Management, and the All India Institute of Medical Sciences. They introduce new fuzzy models using supermatrices--the super column FRM model, super row FRM model, and the mixed super FRM model--and use them to study the role of the media coverage of the reservation system between April 2006 and March 2007 (when the Indian Supreme Court issued an injunction staying reservation).”¹²*
- ❖ *“When incumbent chief minister and leader of the Bahujan Samaj Party (BSP), Mayawati, announced her party's list of candidates before the 2012 Assembly elections in India's most populous state, Uttar Pradesh, she did not bother to name the individual contestants but instead chose to break up the party slate in terms of its caste (and religious) composition: 85 Scheduled Castes, 113 Other Backward Classes, 85 religious minorities (primarily Muslims), 117 upper castes of which 74 were Brahmins and 33 Thakurs. The BSP is a party that is identified with the Dalits (former untouchables) and lower castes and has its origins in the 1970s under Mayawati's mentor Kanshi Ram as first the Backward and Minority Classes Federation (BAMCEF) and later the Dalit Shoshit Samaj Sangharsh Samiti. The party slate, which now had more upper castes in the hope of replicating a successful experiment of a "rainbow"*

8 AIR 2006 SC 597

9 Appeal (civil) 5041 of 2005

10 The Constitution of India

11 AIR 1964 SC 179

12' Reservation for other backward classes in Indian central government institutions like IITs, IIMs and AIMMS; a study of the role of media using fuzzy super FRM models' by SciTech Book News (Mar. 2010)

coalition tried out in the 2007 elections, was an example of how caste, as a political construct, has evolved in modern India."¹³

- ❖ *"A religious sect, known as Ananda Margi, wanted to perform the Tandava dance with knives, skulls, live snakes, and tridents on the streets of Calcutta. The police commissioner granted them permission to do so but without the knives and other accessories. The Ananda Margis challenged the commissioner's order in the Calcutta High Court, which held that performing the Tandava dance in public carrying a skull, trident, etc. was an essential part of Ananda Margi faith, and therefore, the Commissioner of Police could not impose conditions on it. The state challenged the High Court order in the Supreme Court. The Supreme Court had to decide first whether the Ananda Margis were a religious group."*¹⁴

The above three instances have all different viewpoints of reservation dealing with a different environment but the one thing that is common in all of them is the disadvantageous or to be precise the misuse of caste for their greedy needs.

The caste certificate ghotals for admission in prestigious institutes is not new to our news channels. Nor the use of caste by politicians as a weapon for elections, the examples of which can be the Gurgar community protest in the past and the now Maratha community demand in Maharashtra which is somehow as reasonable as the use of snakes by the community in the above example. The irrationality of the law and its further irregular interpretation by the courts and its handy use by the politicians has made the condition further worse, the way convicted politicians are allowed to contest elections but convicted citizens are not allowed to vote¹⁵.

To determine the root solution we need to evaluate the roots of the issue. Reservation was introduced to the backward classes in the beginning to the backward class because they were the one literally socially backward. But now the scenario is not the social backwardness on the basis of caste but on the basis of economic stability that is lower in certain sections of both general and ST, SC OBC.

Furthermore the continuing of this system will stretch us apart more severely into castes rather than class as when the surname behind you walks before you as your identity the lines of discrimination may be helpful to you discriminates you with injustice.

Should our society be made to answer to the demands of stark and abstract commitments to ideals of social equality or to the patterns of our own concrete traditions and foundations? Should the citizen's relationship to his society be defined above all by the individual right of free choice or by a web of obligations and conventions not entirely of our own choosing? Are great public

13 'The persistence of caste in Indian politics' by Ronojoy Sen, published in Pacific Affairs. 85.2 (June 2012): p363.

14 'The substance of the constitution: engaging with foreign judgments in India, Sri Lanka, and South Africa' by Shylashri Shankar, published in Drexel Law Review. 2.2 (Spring 2010): p398.

15 The Representation of the People Act, 1951

*problems best addressed through institutions designed to apply the explicit technical knowledge of experts or by those designed to channel the implicit social knowledge of the community? Should we see each of our society's failings as one large problem to be addressed by building on what works tolerably well to address what does not?*¹⁶

The questions asked by the authors of the Great Debate answers the reservation issue in India that is creating controversy, burdening the government, staking merit on politics, benefitting the elite on the cost of poor and degrading the future of India.

16 The Great Debate: Edmund Burke, Thomas Paine, and the Birth of Left and Right, Yuval Levin, Basic Books, 296 pages