

Reservation In India : An overview Dr. Archana Srivastava

Introduction

India is still divided into many endogamous groups, caste or sub-caste, as a result of centuries of practicing a form of social hierarchy called the caste system. The traditional caste system as it is practiced had been leading to severe oppression and segregation of about 16.2 per cent of scheduled castes (scs), 8.2 per cent of scheduled tribes (sts) [according to 2001 census] and 36 per cent of other backward classes (obcs) [NSS, 1999-2000] of total population of India which is higher than the population of many countries around the world.

In India castes are linked to the hereditary occupation, whose degree of purity affects the member whether or not they are practicing that particular occupation. The caste system in India originated about two thousand and five hundred years ago. It is prevalent among not only Hindus but also Sikhs, Christians and Muslims. This system has hierarchy of low and high, touchable and untouchable ect., which has provided legitimations for the unequal access of resources, and to the exploitation and oppression of lower castes, besides the discrimination of lower caste from higher castes. Historically, this class distinction is not a sudden event, instead it had been seeded well before in the historical evolution of the social structure of India in the form of 'Varn-Vyavastha', according to which the whole society is stratified in to (a) Brahman (b) Kshatriya (c) Vaishya and (d) Shudras.

'Brahmans' were the learned persons whose work was to increase the wealth of knowledge. 'Kshatriyas' were the protector of wealth and also of foreign invasions. 'Vaishyas' were the producer and distributor of wealth, and 'Shudras' were those unfortunate persons who because of their own weaknesses and idleness were unable to get any respectable place in the 'Varna-Vyavastha' and they started serving the other three categories. Initially this 'Varna-Vyavastha' had been conceived with the intension of achieving social unity for example; the serenity of priest / teacher

(Brahmans), the heroism of a warrior (Kshatriya), the honesty of a business man (Vaishya) and the patience and energy of a worker (Shudras), so it was the venture for rendering equal status to all the sections of the society (Radhakrishnans, 1974). But this so called noble intention was absolutely abused when from this function based 'Chaturvarna' of ancient India, there sprang a heredity based social stratification that clipped higher value to the work of 'Brahmin' and lower value to those of 'Shudras' placing, thereby, the former at the apex and the later at the lowest rung of social strata. Thus, in the social hierarchy of the Indian caste-system, the scheduled castes were fated with the assignment of menial jobs for their survival depriving them from the intellectual, physical and monetary powers as these were reserved exclusively for the upper class. This has consequently made them stand socially the most suppressed and economically the most exploited throw outs. They have experienced through centuries, a large number of civil and religious disparities which are now legally prohibited but not entirely disappeared in practice.

During British rule in India, efforts were started with the aim of undoing centuries of oppression to the lower castes. The continuing suppression of lower castes and division of society on the basis of caste raised a revolt by 'Jotiraw Phooley' in 1873. He demanded representation for all classes of Hindus in all local bodies, the services and the institutions. His demand was supported by 'Maharaja of Kolhapur'. According to him-"we must have communal representation at least for ten years. It will teach us what our rights are, once we know them, communal representation can be dispensed with" (Ghurye, 1969). After this, in the year 1885, the Madras government made a provision of special facilities for the students of depressed class (Mishra, 2001). Under these conditions, it is recorded that the first government circular reserving certain posts in favor of backward castes was made on June, 1895 by the Mysore government (Chalam, 1988). In the same continuation in 1918, the Maharaja of Mysore

appointed a committee which recommended special facilities in education and recruitment in states services to the backward communities. With the Montague-Chelmsford Reforms of 1919, separate representation at all India level were provided to the scheduled castes (Mishra, 2001). Afterwards in the year 1921, Madras Presidency introduced reservation of 44% for non-Brahmins, 16% for Brahmins, 16% for Muslims, 16% for Anglo-Indians/Christians and 8% for scs (Chalam, 1988).

In the history of caste reservation, the policy of justice party in 1926 was supposed to be a pioneering venture which is given in table 1.1

Table 1.1 Justice Party's Policy of Reservation

S. No.	Posts	Caste	%
1	6	Non-Brahmin Hindus	43
2	2	Backward Hindus.	14
3	2	Brahmins	14
4	2	The Depressed Class	14
5	1	Anglo-Indians and Indian Christians	7
6	1	Muslim.	7
Total	14		100

Source: (Chalam, 1988).

It was for the first time that justice party had laid caste-wise reservation in the matter of public appointment. In the year 1935 Indian National Congress passed a resolution called 'Poona Pact' to allocate separate electoral constituencies for depressed classes. Here, the Gandhi ji conceded reservation of 148 seats for depressed classes for ten years. It was accepted that there should be a referendum at the end of ten years. The act of 1935 incorporates the agreement and guarantees reservation to the scheduled castes in various legislatures of India. It also provided some safeguard against any discrimination on the basis of caste, religion, race etc. (Shah, 2000).

Before this, in the year 1930, the Bombay government provided special facilities for three

categories of backward classes, namely, depressed class, aboriginal and hill tribes, and other backward classes. Later on Ambedkar had secured 8.3 percent reservations for untouchables in August 1942. In June 1946, this was raised to 12.5 per cent to correspond with their proportion in the population. In the year 1947, after getting independence the major task of Indian government was to prepare a constitution to run the country peacefully and to prohibits any type of discrimination based on religion, race, caste, gender and place of birth and for this, certain national values like justice, liberty, equality and fraternity have been included in the preamble to the Indian constitution. These values secure equality to all citizens but while sustaining these, the constitution also contains certain clauses to ensure reservation, "for the advancement of socially and educationally backward classes of citizens or scheduled castes and scheduled tribes." Separate constituencies are allocated to scs and sts to ensure their political representation for ten years.

After independence, it was the Jammu and Kashmir government who first resorted to large scale communal reservation policy in 1952. It was reported that this government has reserved 50 per cent of jobs for native Muslims, 40 per cent to Dogra Hindus of Jammu and 10 per cent was left to the Pandits (Chalam, 1988).

Till 1953 what ever step had been taken by the government with regard to reservation was confined only to the state level. The first national level effort to recommend reservation on the caste basis was prompted by Kaka Kaleker Commission in the year 1953. This commission was appointed by government of India to satisfy the conditions of article 15(4) and 340(1) of the Indian constitution. The commission was asked to "(a) determine the criteria to be adopted in considering whether or not any section of the people in the territory of India should be treated as socially and educationally backward classes; and in accordance with such criteria prepare a list of such classes, setting out their approximate numbers and their territorial distribution, (b) investigate the condition of all such socially and educationally backward classes and the difficulty under which they labor; and (c) make

recommendations (1) as to the step that has to be taken by the union or any state to remove such difficulties or to improve their conditions, and (2) as to the grants that should be made for the purpose by the union or any state and the condition subject to which such grant should be made; (d) investigate such matter as the president may hereafter refer to them; and (e) present to the president a report setting out the facts as found by them and making such recommendations as they think proper”(Backward class commission’s report, 1955).

The commission submitted its report to the government in 1955, but the criteria recommended by the government appeared to be vague and wide to be of much practical value. Hence, the state government has been authorized to give the assistance to the backward classes according to the list prepared by the state government themselves (Ghurey, 1969).

Thereafter, the Janta government in 1978, appointed the second All Indian Backward Class Commission under the chairmanship of late Bindhyaswara Prasad Mandal, which had submitted its report in 1980. This report remained unattended for nearly ten years. The Mandal Commission report based on 1931 census, has been implemented on August 7, 1990. The major flow of this report was that while implementing it the government ignored the changes related with social upward mobility that had taken place in many castes from 1931 to 1980 and from 1980 to 1990.

The commission recommended changes to the existing quotas increasing them from 22% to 49.5%. As in 2006 number of castes in backward class list went up to 2297 which is the increase of 60% from community list prepared by Mandal Commission. This report called for reserving 27% of all services and public sector undertakings under the central government and 27% of all admission to institution of higher education (except the state that reserved higher percentage) for other backward classes over and above the existing 22.5% reservation for scs and sts. The major points of Mandal commission report were-

1) The reservation contemplated in article 16(4) should not exceed 50%.

- 2) The rule of 50% should be applied to each year. It cannot be related to the total strength of the class and service or cadre.
- 3) The reservation of the post under article 16(4) is confined to initial appointment only and cannot be extended to providing reservation in the matter of promotion. If a reservation in promotion exists it shall continue for five years. But by the constitution (77 amendment) Act, 1995, the limitation of the time has been removed by inserting clause 4 A to enable it to continue reservation in promotion for scs and sts.

Following the recommendation of the commission the central government had reserved 27 per cent seats in all recruitments to be made from 9th September 1993 (Basu, 1997). In August 2005, the Supreme Court abolished all caste based reservation in unaided private collages. But on December 21, 2005 the Loksabha passed the 104th Constitution Amendment Act 2005, rolling back the Supreme Court judgment by introducing a new clause into article 15 to allow reservation for scs and sts as well as obcs in private unaided educational institutions. And in the year 2006, implementing the report of Mandal commission II, the central government introduced reservation for obcs in central government educational institutions.

As far as, the present data of reservation is concerned the quantum of reservation for scs, sts and obcs in direct recruitment on all India basis by open competition is 15 %, 7.5 % and 27 % respectively. In direct recruitment on all India bases other-wise than by open competition, the reservation is 16.66% for scs, 7.5% for sts and 25.84% for obcs. In case of promotion percentage of reservation for scs and sts are 15 and 7.5% respectively. There is no reservation for obcs in case of promotion. Three per cent vacancies are kept reserved for physically handicapped. Reservation is also available to ex-service man. (India 2003).

Recently, the Constitutional (**103rd Amendment**) Act of 2019 has provided 10% reservation in government jobs and educational institutions for the “economically backward” in the unreserved category. The Act **amends Articles 15 and 16** of the Constitution by adding clauses empowering

the government to provide reservation on the basis of economic backwardness. Besides, this 10% economic reservation is over and above the 50% reservation cap. (Economic Times)

Relevant constitutional provisions

The Indian constitution in 1950 set forth a no. Of provisions for the eradication of social inequalities, discrimination and the practice of untouchability with a view to improve the social and economic condition of scheduled castes and also to maintain an order of equality and liberty in society. "The government had provided some special reservations or in other words the protective discriminations" (Galanter 1984) especially in the field of education, occupation and political representation which aims at the elimination of social, economic and educational inequalities. To empower the weaker, socially and educationally deprived sections of the society and to safe guard their interest, the constitution had made certain provisions that will removed the discrimination that depressed class traditionally suffered from.

According to Basu 1997, the reservation given to the depressed community is mainly related to:

- (a) Political reservation: articles 330 and 332;
- (b) Reservation of seats in educational institutions: articles 15(4) and 29;
- (c) Reservation in government jobs: articles 16(4), 320(4), 333 and 335.

Besides article 19(5), 23, 25, 30, 46, 164, 275(1), 336, 373 and 338 also deals with especial provisions made for reserved category.

Political reservation

Article 330 and 332 deals with political reservation, which is as follows-

Article 330 is concerned with reservation of seats for scheduled caste and scheduled tribes in the House of the people. Its clause (1) states- Seats shall be reserved in the House of the people for-

- (a) The scheduled castes;
- (b) The scheduled tribes except the tribal areas of Assam, Nagaland, Meghalaya, Arunachal Pradesh and in Mizoram; and

- (c) The scheduled tribes in autonomous districts of Assam

Must engage in such career management Article 332 provides reservation of seats for Scheduled castes and Scheduled tribes in Legislative Assemblies of the states. Clause (1) indicates "seats shall be reserved for scs and sts except the tribal areas of Assam, Nagaland, Meghalaya in the Legislative assemblies of every state"

Clause (2) deals with the provision related to the reservation of seats in autonomous district in legislative assemblies of the state of Assam. According to clause (3) of the article the number of seats reserved for the scs and sts in the legislative assembly of any state under clause (1) shall bear, as nearly may be, the same proportion of total number of seats as the population of the scs in the state, or of the sts in the state, or part of the state, as the case may be in respect to which the seats are so reserved, bear to the total population of the state.

In the same continuation, The Constitution (108th Amendment) Bill, 2008, is passed in the Parliament of India which propose to amend the Constitution of India it seeks to reserve one-third of all seats for women in the Lok Sabha and the state legislative assemblies for women. (Google .com)

Reservation in educational institution

Constitutional provisions related to the reservation of seats in educational institution were confined in articles 15(4) and 29.

Article 15 deals with prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth. But clause (4) of this article states that "nothing in this article or in clause (2) of this article 29 shall prevent the state for making any special provision for the advancement of any socially and educationally backward classes of citizens or the scheduled caste and scheduled tribes"

Article 29 considers the protection of interest of minorities. Its clause (2) states that "no citizen shall be denied admission in to any educational institutions maintained by state or receiving aid out of state funds on grounds only of religion, caste, language or any of them.

Reservation in government jobs

Further constitution made certain provisions in various articles related to reservation in government jobs under the umbrella of protective discrimination article 16(4), 320(4), and 335 dealing with this aspect. (Singh 2003, Sharma & Sharma 2002, Aggarwal 1995).

Article 16 deals with equality of opportunity in matters of public employment and its clause (4) states “nothing in this article shall prevent the state for making any provision for the reservation of appointments of post in favor of any backward classes of citizens which, in the opinion of the state, is not adequately represented in the service under the state.

Article 335 provides” the claims of the members of schedule castes and scheduled tribes shall be taken in to consideration consistently with the maintenance of efficiency of administration, in the making of appointments to service and post in connection with the affairs of the Union or of a state.

Article 330 also deals with the reservations of government jobs at all levels in union government and public sector for the scheduled castes. Similar provisions, proportionate to the population of scs in the states are made by all states are made by all state governments by government orders. (Yadav, 2000)

Beside this reservation is accompanied by an array of other special provisions, designed to enhance the ability of preferred groups to compete successfully for government posts. This includes age concessions, fee concessions, reduction of minimum qualifying marks in examination and waiver to pass in viva-voice examination; specific safeguard against retrenchment; authorization for public service commission and appointing authorities to relax maximum standard, freedom for SC employees to register for better jobs while working for government; travel allowances to reach the interviewing centre and pre-examinations training etc. (Galanter, 1984).

Other provisions-

Along with the various provisions under different articles for safeguarding the educational, political and economic interests

like, while the provision of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen, in the case of scs and sts the government may prevent the alienation or fragmentation of their property under 19(5). By enacting the provisions of article 23, begging and forced labor are prohibited and, thus, it provides indirect safeguard to scs and sts against the discrimination and oppression. Article 25 provides the religious freedom and equality to the scs and sts. In order to secure the minority’s welfare article 30 clearly speaks about the right of minorities to establish and administer educational institution and in its clause (2) prohibits state to discriminate in granting aid to educational institution established and administered by a minority, whether based on religion or language.

Under article 46, educational and economic interests of scs, sts and other weaker sections of the society have been protected by making it mandatory for the state to do this. In the same continuation provision to article 164 lays down that in the state of Bihar, Madhya Pradesh and Orissa, there shall be a minister in charge of tribal welfare, who may also be in charge of the welfare of the SC’s & OBC’s (Basu 1997). In practice, such welfare departments have been set up not only in these three states as required by constitution but also in other states.

Some provisions were also made for reservation for Anglo-Indians in certain services of the union (Article 336) or for special educational grants (Article 337) which have already expired.

Along with these articles, article 338 deals with appointment of special officer for scheduled castes, Scheduled Tribes etc. Who was supposed to present the report upon the working of those safeguards at such intervals as the president may direct.

Above all, the financial aid for the implementation of these welfare schemes in provided for in article 275(1) which requires union to give grant in aid to the state for meeting the cost of schemes of welfare of ST’s and for raising the level of administration of the

scheduled areas in a state to that of the administration of areas of that state (Singh 1991).

Not only in India, rather in other countries also reservation in one or other form pertains like in Bosnia-Herzegovina, Women must represent at least 29% of all politicians, there by securing political reservation. In Brazil, some Brazilian University (State or Federal) have created system of preferred admission (quotas) for racial minorities (black and native Brazilian), the poor and the handicapped. There are quotas for the disabled in the civil public service- In china as well; there is a quota for minority representatives in the National Assembly in Beijing, as well as other realms of governments.

Greece has quotas setting a lower limit for women participation in election lists of political parties for most of the election processes. In Macedonia, minorities, most notably 'Albanians' are allocated quotas for access to state Universities as well as in civil Public Service. In New Zealand, individuals of 'Maori' or other Polynesian descent are offered preferential access to University courses and scholarships etc. (Wikipedia the free encyclopedia)

In short, it can be said that reservation is not only confined to Indian Society rather it prevails all over the world in one or other form.

Position, sports personality basis, Ex-Service Man quota, Repatriates etc.

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The period of reservation of seats for the Scheduled Castes and Scheduled Tribes and representation of the Anglo-Indians in the Lok Sabha and the State Legislative Assemblies has extended for another ten years, i.e. Up to 26 January 2020, by making an amendment in the year 2009 by The constitution (Ninety- fifth Amendment) Act, 2009.

Paying attention on the basic of giving reservation it comes out that it can be based on castes, religion, state of domicile, college of under graduation, Gender, physical handicap Looking towards the above mentioned discussion it can be said that In India it is supported by a form of assertive and affirmative law. The reservation policy in India seeks to ensure that a certain percentage of seats are reserved in public sector units, union and state civil services, union and state government departments and in all public and private educational institutions, (except in the religious / linguistic minority educational institutions) for the socially and educationally backward classes of citizens or the scheduled castes and scheduled tribes, who were, in the past inadequately represented in these services and institutions.

It has become the inbuilt system of our society which only needs to be implemented properly. The sole purpose is to ensure equity as well as equality in the Indian society. It should not be looked as the regulation meant to be imposed forcefully rather it should be taken as affirmative action.

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