

RIGHT TO EQUALITY IN INDIA VIS-À-VIS RESERVATION IN FAVOUR OF BACKWARD CLASSES

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ABSTRACT

A common debates in Indian is to equate affirmative action with the reservation of seats in academic institutions and the reservations of posts in public employment. This popular misunderstanding was entrenched in the 1990s with the intense media focus on the Mandal Commission's Recommendations. Marc Galanter's socio-legal study of affirmative action programmes in India – titled 'Competing Equalities' 3 – provides us with a broad typology of the nature of programmes being pursued to advance the interests of the lower and weaker castes. These programmes range, besides the current reservations model, from the preferential allotment of petrol bunks and other state assistance to scholarships and the construction of hostels for lower-caste students. Debates on affirmative action often ignore the reservation of seats in different levels of government for women and Scheduled Castes and Scheduled Tribes, which are arguably the most important programme currently in operation.

This paper analyzes the efforts of the Government of India, starting in the colonial period, to use a reservations policy to benefit the Scheduled Castes. The question to be answered is whether nearly seven decades of implementing reservations have paid off in terms of giving backward people a bigger stake in Indian society. The thrust also argument is that the origins of untouchability make reform difficult, that Dalits in many parts of India remain targets of discrimination and abuse, and that extensive government remedial efforts have often been inefficient and even corruptionprone, but that overall Dalits as a group have made significant progress.

Keywords: *Equate, Mandal Commission, Marc Galanter, Policy, Reservation,*

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Introduction

The fundamental rights are guaranteed to protect the basic human rights of all citizens of India and are put into effect by the courts, subject to some limitations. One of such fundamental rights is the Right to Equality. Right to Equality refers to the equality in the eyes of law, discarding any unfairness on grounds of caste, race, religion, place of birth sex. It also includes equality of prospects in matters of employment, abolition of untouchability and abolition of titles. Articles 14, 15, 16, 17 and 18 of the Constitution of India highlight the Right to Equality in detail. This fundamental right is the major foundation of all other rights and privileges granted to Indian citizens. It is one of the chief guarantees of the Constitution of India. Thus, it is imperative that every citizen of India has easy access to the courts to exercise his/her Right to Equality.

Various articles under the Right to Equality are explained as follows:

Equality before law

Equality before law is well defined under the Article 14 of the Constitution which ensures that every citizen shall be likewise protected by the laws of the country. It means that the State will not distinguish any of the Indian citizens on the basis of their gender, caste, creed, religion or even the place of birth. The state cannot refuse equality before the law and equal defense of the law to any person within the territory of India. In other words, this means that no person or groups of people can demand for any special privileges. This right not only applies to the citizens of India but also to all the people within the territory of India.

Article 14 mandates that the State shall not deny equality before law and equal protection of laws to any person within the territory of India. By incorporating in Article 14 the British doctrine of rule of law as propounded by Prof. Dicey and the "equal protection of law" clause of 14th Amendment of the U.S. Constitution, the framers of our Constitution had in their zeal infused extra vigour and vitality in the right to equality.

However, Parliament has repeatedly tried to curtail the scope and vigour of Article 14 in order to carry out the welfare programs. Apart from it, the Supreme Court had sapped some of the vigour of Article 14 by showing "fanatical reverence" to the theory of classification or the nexus tests".

Finally in 1974 the Supreme Court evolved the new doctrine that Article 14 is a guarantee against arbitrariness. Thus the Supreme Court has evolved two different and distinct doctrines for tackling attack on State action on the ground of violation of Article 14. An attempt is being made in this paper to analyze objectively the merits and demerits of the old and new doctrines. It is only understandable that our Supreme Court should have applied the theory of classification, evolved by the American Supreme Court for giving content and true meaning to right to equality. According to this doctrine "equal protection of laws" prohibits class legislation but permits reasonable classification of persons or things. By expressly incorporating in the second part of Article 14 the language of the 14th Amendment of the U.S. Constitution, the Constituent Assembly impliedly had approved the interpretation of that clause by the U.S. Supreme Court. Hence, from the very beginning the Indian Supreme Court has had no hesitation in applying the theory of classification while testing the Constitutional vires of legislations and State actions impugned on the basis of their being violative of Article 14. The classic nexus test was enunciated by S.R. Das, J. in the Anwar Ali Sarkar case.

Reservation

Reservation in India is the process of setting aside a certain percentage of seats (vacancies) in government institutions for members of backward and under-represented communities (defined primarily by caste and tribe). Reservation is a form of quota-based affirmative action. Reservation is governed by constitutional laws, statutory laws, and local rules and regulations. Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) are the primary beneficiaries of the reservation policies under the Constitution – with the object of ensuring a "level" playing field.

Background of caste based reservation

A common form of past discrimination in India was the practice of untouchability. Scheduled Castes (SCs) are the primary targets of the practice, which is outlawed by the Constitution of India. An untouchable person is considered "impure or a lowly human."

During the Vedic period, the varna system was used. However, it was possibly based on the profession one chose rather than based on the birth. Also, it was possibly not elitist during the vedic times. Implying, all castes were considered equals. The system consisted of four ranked varnas. A person's varna was defined by his or her socio-economic duties (broadly classified into four classes or Varnas). These duties were either voluntarily performed or were assigned by the local

administrator—one's varna was initially not defined by one's birth into any particular family. However, over the centuries, from the adi shankara (whose birth date is controversial but possibly before the Christian era, and who has re initiated Hindu as religion), the system has changed to caste based on the person born in the lineage than by his karma or profession.

The primary stated objective of the Indian reservation system is to increase the opportunities for enhanced social and educational status of the underprivileged communities and thus uplift their lifestyle to have their place in the mainstream of Indian society. The reservation system exists to provide opportunities for the members of the Scheduled Castes and Scheduled Tribes to increase their political representation in the State Legislatures, the Executive Organ of the Union (Centre) and States, the labour force, schools, colleges, and other public institutions.

The Constitution of India states in article 16(4): "Nothing in [article 16] 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 46 of the Constitution states that "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Today, out of 543 seats in India's parliament, 84 (18.42%) 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, vide provision contained in Article 330 of the Constitution of India read with Section 3 of the R. P. Act, 1950.

In 1982, the Constitution specified 15% and 7.5% of vacancies in public sector and government-aided educational institutes as a quota reserved for the SC and ST candidates respectively for a period of five years, after which the quota system would be reviewed. This period was routinely extended by the succeeding governments. The Supreme Court of India ruled that reservations could not exceed 50% (which it judged would violate equal access guaranteed by the Constitution) and put a cap on reservations.

However, there are state laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation stands at 69% and the same is applicable

to about 87% of the population in the State of Tamil Nadu. In 1990, Prime Minister V. P. Singh announced that 27% of government positions would be set aside for OBCs in addition to the 22.5% already set aside for the SCs and STs

Dr. Ambedkar who was the chair of the committee that formed the Indian constitution, has never mentioned that reservation should be vanished. He said that the political reservation should end in 10 years after the governance.

Right to equality versus reservation

Reservation in India is a form of affirmative action designed to improve the well-being of perceived backward and under-represented communities defined primarily by their caste, gender or even religion. Call it democratic character or a habit of having an opinion about everything.

Considering the history of the marginal groups in India, to a point, introduction of reservations was justified. The neglect and ill-treatment of these communities (or marginal groups) has made it extremely important to create alternatives for their improvement.

But today, as even statistics prove, several marginal groups, especially the backward classes have emerged strong and stand on with the so-called forward castes or the mainstream. Most students feel that there is a need to take a re-look at affirmative action and make necessary changes in the policy. Most of them who have become aware of caste and reservation policies for the first time when they got admitted into college (with which college they landed in decided by the reservation policy, among other things) felt that reservation should be given to only those who are economically backward and really need help. They find it difficult to understand that there can be social discrimination as well. This may be because of the urban setting in which they grew up or because of the school years, when caste or reservation was hardly an issue. They therefore favour an affirmative system based on classification done finely to exclude the economically well-off (the creamy layer).

However, nowadays it has become more of a political tool or a weapon, an integral part of what we term as 'vote bank' politics. It has divided India socially. More and more groups have started demanding it even as political parties propose their own agendas for their own selfish reasons. From a student's perspective, most of us in college believe that it is of no use unless it percolates to the grassroots. The objective of reservation becomes pointless when those coming from reserved

categories, who are economically and socially well-off, take advantage of it. Students feel that genuine candidates from marginalised groups should be encouraged.

Literature Review

The political economy of affirmative action is a comprehensively studied area in economics. The first set of studies provides the theoretical underpinning, such as the classic median voter model suggested by Hotelling in 1929, which states that in a democratic setting the outcome of the decision is the one most preferred by the median voter. In his eminent paper *A Theory of Bureaucracy*, Downs (1965) introduces the idea that bureaucratic officials are motivated by their own self-interest. Furthermore, since the vote motive provides re- Issues in Political Economy, 2013 59 election seeking politicians with strong incentives to respond to the demands of small, wellorganized elite groups, representative democracies frequently lead to a tyranny of the minority. Theoretical models introduced by Osborne and Slivinski (1996) called citizencandidate models predict that legislator identity influences policy determination. This model thus predicts that legislators elected to fill reserved seats will favor policies that benefit groups with the same identity. In a similar vein, Kalt and Zupan (1984) show that policy outcomes are significantly influenced by a candidate's personal ideology. The second set of studies consists of empirical papers that test the effects of reservation policies on various development outcomes, and argue that policy preferences differ by group. Duflo (2005) notes that even if the potential beneficiaries of reservations have different political preferences than the majority, this is not sufficient to ensure that reservations have any impact, as long as candidates can commit to a policy platform in advance. As Hotellings (1929) and Downs (1957) model predicts, the elected candidate would be the one who commits to the policy that the median voter prefers. In practice however, Duflo (2005) finds that there is a shift in the allocation of public expenditures in the direction of the members of the group who benefit from the reservation policy. Pande (2003) finds that mandated political reservation for SCs and STs in India has led to increased welfare transfers for them. Specifically, a 1-percent rise in SC reservation is associated with a 0.6 percent increase in job quotas for them. By mapping where public goods are located within Indian villages, Chattopadyay and Duflo (2004) found that out of all repair or construction of public goods in a given Panchayat village, the share going to SC hamlets is on average 11% larger when the village is located in a hamlet reserved for SC. Prakash (2009) finds that job reservations benefit SCs by decreasing the incidence of child labor and increasing household consumption expenditure,

children's school enrollment, and the probability of acquiring a salaried job. In another paper, Howard and Prakash (2010) find that employment reservation increases the probability of SCs choosing high-skill occupations. Cassan (2011) finds that reservation in the education system has no effect overall. However, the vital question left unanswered in all the empirical analyses is whether these beneficial effects of reservation policies, and changes in government redistribution programs towards targeted programs, improve the well-being of the minority groups. Using state-level panel data and the same methodology as Pande (2003), Prakash (2007) attempts an answer. Using the Head Count Ratio, Poverty Gap Index, and Squared Poverty Gap as measures of poverty, he finds that increasing ST reservation significantly reduces poverty in both urban and rural areas, while increasing SC reservation significantly reduces urban poverty but has no impact on rural poverty. Taken together, this literature suggests political reservation (and reservation policies in general) leads to positive development outcomes for minority groups and increases their influence in the political sphere. The literature on atrocities against SCs and STs is sparser and shows a gloomier picture. Giving a human rights perspective, Ajay (2010) notes that atrocities against dalits are rooted in the historical division of society, where caste disabilities were strictly enforced and severe punishments were imposed on those who deviated from their prescribed social conduct. Historically, Shudras, the lowest caste, were not allowed to own property or hold a position under the State. Thus, under the Hindu social order, Shudras and untouchables (SCs) were considered unworthy of any rights, and this backwardness has made them vulnerable to atrocities. This attitude has continued into modern times (Vakil 1985), despite the passing of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Acts (1989). Reservation Policy in India, Madhok 60 Joshi (1982) states that the data repeatedly suggest that the term "Untouchable" continues to be perceived as a hereditary category, causing dominant societal attitudes about their legitimacy as persons to be highly resistant to change. Chakraborty et al (2006) notes that although there is no religious sanction for untouchability, there is a widespread notion in society that dalits are born inferior, and any attempt by them to move away from their place will lead to social disharmony. But then social disharmony is expected, since officially Untouchability and the Caste system are outlawed, a policy aimed at empowering SCs and STs and mitigating their oppression. Political reservation policies are rooted in the same purpose, and the results have been positive (according to the abovementioned literature). But Chakraborty et al (2006) note that it is these virtuous policies that drive the atrocities against minorities since it leads to "dalit assertion", which provokes group response from non-dalits. Their empirical evidence suggests that violence is directed at relatively better off dalits, and to that extent, atrocities are a

response of society to dalit mobility. Ajay (2010) reinforces this point, noting that through education SCs and STs have become more aware of their rights, but any attempt to assert these rights is meted out with the might of the upper castes because assertion of their rights runs counter to the dominance of the upper class. Given these two strands of literature, there appears to be a disconnect between the motives underlying both political reservation and atrocities against SCs and STs. Though positive development outcomes and decreases in poverty have resulted from political reservation, the anecdotal evidence suggests that these results are what drive the atrocities. Chakraborty (2006) notes that Indian politicians support political reservation because they assume a reduction in violence against SCs and STs will be another positive outcome to add to those already shown to result from these policies. Because atrocities against SCs and STs and political reservation have yet to be studied in conjunction in the literature, this disconnect provides a unique opportunity to determine whether politicians' assumptions, or the anecdotal evidence, is correct. My results agree with the latter, showing a positive relationship between political reservation for SCs and STs and atrocities committed against them.

Methodology

The methodology in this research study is not one-dimensional. It is rather host of historical, theoretical and analytical. The data is being collected from primary as well as secondary sources. Book, Journals and Magazines available in various libraries be the main source.

Observation:

1. Make education mandatory and free for all till age of 15
2. Propose reservation based on economic status
3. Provide opportunity to students to earn while they study.

Instead of introducing reservations for these backward classes what is required is to bring about revolutionary changes in our education system at the grass-root level. When proper education is not provided to children belonging to such categories during the primary stage itself then on what basis are the reservations provided at a subsequent stage.

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. On one hand the preamble of our constitution states that we are a free, democratic and sovereign nation and on the other hand reservation system is chaining all these aspects into its clutches. It is creating disparity and differences amongst the people. The constitution lays down that every child has a right to education and nowhere expresses that any child belonging to a backward class has a little more of this right than the general category. 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.

Reservations on the basis of caste and not on the basis of condition are bad and unacceptable. Fair and just reservations to uplift the people with poor conditions of life, those who don't have meals to eat, clothes to wear and no home to live in. They shall be made on the basis of factors such as gender as women are more disadvantaged than men since primitive times, domicile, family education, family employment, family property, family income and if any disabilities and traumas. The process of reservation should be such that it filters the truly economically deprived individuals and bring them all to justice.

Thus reservations are anti-thesis of development and equality. We don't need reservations based on castes or religion but only to actually provide aid to those who have minimal resources; and merit should be given equal and due importance in admission procedures as well employment opportunities. This way we would be successful in removing caste discrimination and unite the economically rich together in helping the economically poor, irrespective of their castes.

Conclusion

Then what does equality essentially mean?

Equality does not mean making two individuals equal, it essentially mean providing equal opportunities to each individual so that they can flourish to their maximum.

If it is so, then we can provide equal opportunities to two individuals.

Giving equal opportunity means giving opportunity each individual based on his capability so that he too can one day compete with the normal counterparts. He can one day stand as one among them and declare that he does not need special treatment anymore. I am the same as you all are.

What is surprising is that our constitution clearly is a reservation-friendly constitution but nowhere in the constitution is the term 'backward classes defined. What actually constitutes a backward class? What are the determinants of a backward class? These questions remain unanswered and it is only with the help of judicial pronouncements that they have been given some meaning. Question arises how can reservations be made for something that has not been defined?

Today when a student applies for an admission in any university, the admission forms are filled with questions like 'Are you SC/ST or OBC or General Category?' How does it matter which category does he belong to, what matters is his merit. A category cannot decide whether he is eligible for admission or not. There many economically worse off children belonging to the forward classes but they cannot get the fruits of such reservation merely by virtue of belonging to the 'general' category. Sometimes these children belonging to the backward classes do not even deserve and still possess the necessary merit as against a child who studied very hard for months to get a seat, thereby snatching away that seat just because he comes from a particular religion or caste for which our government provides reservation.

Reservation should be purely made on the basis of the economical conditions of the applicant and nothing else. The kind of reservation policy that our government currently follows does nothing but divide the society into different sections.

When the then Ex-HRD minister Mr. Arjun Singh introduced 27.5% reservation for OBC in centrally funded educational institutes including IIMs and IITs a petition was moved to the President and the Prime Minister stating that such a reservation will take India back from where she is today. Further "everyone understands the need for all sections of the Indian Society to get an opportunity to be a part of this economy but reservation based on caste is not an answer to this. These policies have been in India since the last 50 years and they have failed to meet their objectives. The government should go into the reasons of the failure. Many students don't make it to the institutes because of the economic reasons and those who do not fall in the reservation criteria don not get a fair opportunity too".

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