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IS IT THE INDISPENSABLE TO ELIMINATE CREAMY LAYER AMONG SC's/ST's FROM QUOTA BENEFITS?

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ABSTRACT:

Reservation on the basis of caste is deeply established in India and cannot be eradicated. According to the Supreme Court of India's decision in *Indira Sawhney v. Union of India*, also known as the *Mandal Commission Case*, the quota cannot exceed 50%. The Hon'ble Court set the reservation criteria as follows: 27% for OBCs, 15% for SCs, and 7.5 percent for STs.

For OBC reservation, the court used the creamy layer rule, which states that children whose parents are gazette officers/first class officers/IAS/IPS/IFS etc. or have an annual income of more than 8 lakhs are not entitled to reservation in matters of public employment or admission in educational institutions, and that candidate must be considered as a general because he has already been uplifted and his parents have sufficient means to look after him.

The provision of a creamy layer in the case of reserve for SC and ST was not applied to them, resulting in a deterioration of the relevance of reservation. The true purpose of the reservation is to help the poor, not to grant special treatment to the wealthy.

As a result, the main focus of this research study is on the inclusion of the creamy layer provision in the reservation policy for SC/ST.



KEYWORDS: basis of caste , educational institutions , relevance of reservation.

INTRODUCTION

"It is against the fundamental principles of humanity, it is against the dictates of reason that a man should, by reason of birth, be denied or given extra privileges"

Mahatma Gandhi

We live in a free country and this freedom is a gift of democracy to us. Our constitution gives us the right to freedom and most importantly to exercise this freedom in an equitable manner. At the same time it is incumbent on the part of the state to ensure that equality prevails in all sections of the society. However in today's time one of the major roadblocks to this equality is the Reservation System.

In the social realm, our civilization is still plagued by the curse of the caste system based on birth, with its emphasis on high and poor social standing based only on the chance of birth in a specific caste. Despite current industrial and scientific advancements that have rendered vocational castes

obsolete, the caste system remains so firmly rooted that even educated people now advertise in matrimonial columns for suitable boys or girls based on caste.¹

India, being a developing country, is today confronted with numerous issues, one of which is the reservation system. The most pressing question is whether putting in place this reservation system has actually aided the oppressed. The current situation demonstrates that the 'lower' castes continue to face discrimination in their daily lives.

To eradicate casteism, we must combat the reservation system, which is the only way to achieve growth, competency, equality, and togetherness.

The reservation system has its roots in India's ancient caste structure. At its inception, the caste system was intended to divide people based on their occupations, such as teaching and preaching (Brahmins), kingship and war (Kshatriya), and finally business (vaish), but it quickly evolved into a tool for dividing society along caste lines, erecting various barriers between different sections of society. Today, we are largely divided into Hindus, Muslims, SC, ST, and OBCs, with further reservations emerging for Christians, Kashmiris, Jats, Kashmiri Pandits, and Tribals, among others.

To begin, we must recognise that the reservation system simply serves to divide society, resulting in discrimination and conflicts between different groups. It is oppressive and has nothing to do with casteism.

It is the polar opposite of communal living.²

Reservation on the basis of caste is deeply established in India and cannot be eradicated. According to the Supreme Court of India's verdict in **Indra Sawhney & Others v. Union of India**,³ also known as the Mandal Commission Case, held that reservation cannot exceed 50%. The Hon'ble Court set the reservation criteria as follows: 27 percent for OBC, 15 percent for SC, and 7.5 percent for ST.

For OBC reservation, the court used the creamy layer rule, which states that children whose parents (elite class) are gazette officer/first class officer/IAS/IPS/IFS etc. or have an annual income of more than presently 8 lakhs are not entitled to reservation in matters of employment or admission in educational institutions, and that child must be considered as general because he has already been uplifted and their parents have sufficient means to look after them.

In the case of reserve for SC and ST, the creamy layer clause was not applied to them, causing the importance of reservation system to deteriorate. The true purpose of the reservation is to help the poor, not to grant special treatment to the wealthy.

STATUTES UNDER CONSTITUTION OF INDIA FOR SC/ST

The Constitution prescribes the following measures for the welfare of Scheduled Castes and Scheduled Tribes:

- The Constitution prescribes the following measures for the welfare of Scheduled Castes and Scheduled Tribes: In addition, despite the right to equality, Article 15(4) provides that the state may make specific measures for the welfare of socially and educationally disadvantaged groups. As a result, any actions taken by the state in favour of certain castes and groups will not be challenged on the basis of the right to equality.
- Article 16(4) establishes a particular provision for the reservation of appointments or posts in favour of certain backward classes of citizens who, in the view of the state, are underrepresented in state-run services.
- In the interest of Scheduled Tribes, the state can place reasonable limits on people's freedom of travel and residence, as per Article 19.
- The State is required under Article 46 of the Constitution to preserve the educational interests of the weaker sections of society, particularly the Scheduled Castes and Scheduled Tribes.

¹Dr Subhas C. Kashyap, Constitution of India, Review & Reassessment, Universal Publication Co. p.66

²<http://www.youthkiawaaz.com> visited on October 11, 2021

³AIR 1993 SC 477

- Articles 330, 332, and 334 provide that seats in the Parliament and State Legislatures are reserved in proportion to the number of Scheduled Castes and Scheduled Tribes in the population, and Article 335 provides that the State shall consider the claim of members of SC/ST for making reservations in services, keeping in mind the efficiency of the administration.
- Article 335 states that the State must evaluate the claims of members of the SC/ST for service reservations while keeping the administration's efficiency in mind.
- Article 338 of the constitution (as amended by the 65th Amendment in 1990) establishes the National Commission for Scheduled Castes and Scheduled Tribes, which is charged with investigating and monitoring all matters relating to the constitutional safeguards for SC/ST, advising on the planning process of SC/ST development, and recommending suitable measures for the effective implementation of these safeguards.
- According to Article 339, after 10 years of the Constitution's inception, the President is authorised to form a Commission to report on the management of Scheduled Areas and the welfare of Scheduled Castes.
- The Government of India can also offer appropriate directions to states for the welfare of Scheduled Areas and Scheduled Tribes.
- The Union of India must pay funds to States for the implementation of welfare schemes in Scheduled Areas and for Scheduled Tribes, according to Article 275(1) of the Constitution.
- Special provisions for the administration and welfare of Scheduled Areas and Scheduled Tribes are made underneath the constitution's Fifth and Sixth Schedules (with reference to article 244).
- According to the Constitution, a separate Ministry would be established in a specific states, such as Jharkhand, Chhattisgarh, and Orissa, to be responsible for the welfare of Scheduled Castes in such areas.
- The 85th amendment to the Constitution restores reservations for members of Scheduled Castes and Scheduled Tribes in government jobs.⁴

CASTE CANNOT BE THE SOLE CRITERIA FOR THE IMPLEMENTATION OF RESERVATION SYSTEM

When a student applies for admission to a university today, the admissions papers include questions such as "Are you SC/ST, OBC, or General Category?" What matters is his accomplishments, not which group he belongs to. A classification cannot determine whether or not somebody is eligible for admission. Many economically disadvantaged children from the forward classes exist, but they are not entitled to the benefits of such reservations simply because they fall into the 'generic' category. Sometimes these children from the lower socioeconomic classes do not even deserve and still have the necessary merit in comparison to a child who studied diligently for months to obtain a seat, thereby snatching that seat just because he belongs to a religion or caste for which our government provides reservation.

Reservations should be made only on the basis of the applicant's financial circumstances and nothing else. Our government's present reservation policy merely divides society into distinct factions.

When the then-HRD minister, Mr. Arjun Singh, suggested a 27.5 percent reserve for OBCs in centrally financed educational establishments such as IIMs and IITs, a petition was sent to the President and Prime Minister, claiming that such a reservation would push India backwards from where it is now. 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 do not get a fair opportunity too"*.

⁴<http://ias.org.in> visited on October 12, 2021

To combat this scourge, it proposed the following:

- Make education compulsory and free for all children until they reach the age of 15;
- propose reservation based on economic condition; and provide students with the option to earn money while they learn.

Rather than instituting reservations for these underprivileged groups, radical improvements in our educational system must be implemented at the grassroots level. What basis are reservations offered at a later stage if sufficient education is not provided to children belonging to such categories during the elementary stage.

Reservations are nothing more than a method for politicians to increase their vote banks. In every way, they are impeding the country's growth, progress, and capability. On the one hand, our constitution's preamble declares that we are a free, democratic, and sovereign nation; on the other hand, the reservation system enslaves all of these characteristics. It is causing divisions and divisions among the population. The constitution states that every child has the right to an education, but nowhere does it state that any child from a lower socioeconomic level has a somewhat more entitlement than the general category. By reserving one group against another, a sense of division is created, which has now resulted in mayhem, with every minor segment of society requesting it.

Reservations made only on the basis of caste, rather than on the basis of need, are unjust and inappropriate. Fair and just reserves to help individuals in low living conditions, such as those who don't have enough to eat, clothes to wear, or a place to live. They will be based on characteristics such as gender (from ancient times, women have been more disadvantaged than men), domicile, family education, family employment, family property, family income, and any disabilities or traumas. The reservation process should be designed to filter out those who are legitimately economically disadvantaged and bring them all to justice.

As a result, reservations are the antithesis of progress and equality. We don't need reservations based on castes or religion; we only need them to help individuals with limited resources, and merit should be given equal weight in both admissions and employment prospects. We would be able to eliminate caste discrimination and bring the economically wealthy together in this manner.

Although the Indian Constitution allows for the reserve of seats for people from the SC/ST communities, it does not require that this reservation be made in all cases for government jobs or admittance to educational institutions.⁵

Even if the government truly wishes to lift a certain class or caste by providing reservation benefits to bring them up to level with the general category, the government should give reservation benefits to the truly poor or oppressed, rather than the creamy layer.⁶

EXCLUSION OF CREAMY LAYER FROM RESERVATION TO SC/ST

The phrase "Creamy Layer" is absent from the constitution. The Sattanathan Commission used the phrase "financially well-off people from OBC (Other Backward Classes) categories should not be accorded reservation" in 1971. The creamy layer clause does not apply to the SC/ST category. As a result of the Supreme Court's reservation decision, the government was forced to exclude the creamy layer from reservation protection.⁷

Creamy Layer effectively denies reservation protection to offspring of privileged individuals who belong to the OBC. People from the creamy layer are considered to be well-off.

Criteria to find out Creamy Layer

- Annual income above 8 lacs - professionals, agriculturists, landowners etc
- Top government posts - Group A/B employees (with few exceptions)
- Constitutional posts such President, Governors, Supreme Court judges etc.

⁵P.M. Bakshi, *The Constitution of India*, 10th Ed. 2010 pg. 31

⁶Supra note. 3

⁷Prof. Kailash Rai, *The Constitution of India*, 5th Ed. 2003, p. 136

The national government formed the Mandal commission in 1979 to identify those who were socially or educationally disadvantaged. It was also established to look into the issue of caste discrimination and seat reservations and quotas for persons. Backwardness was determined using social, economic, and educational variables. But, in today's world, are these reservations being used for the aforementioned reasons? The response is a resounding 'NO,' because the creamy layer is robbing the benefits.⁸

The court in **Balaji v. State of Mysore**⁹ concluded that art 15(4) did not justify the categorization of backward groups into more backward classes. The Supreme Court, in the case of **Indra Sawhney v. Union of India**, clarified that the classification of the backward into the more backward is constitutionally valid. Because the expression "backward class of citizen" in art 16(4) encompasses the SC/ST and other socially and educationally backward classes, this interpretation is equally applicable to cl. (4) of art 15. Thus, the viewpoint expressed in the instance of Balaji has been invalidated on this point. The Supreme Court's decision in Indra Sawhney v. Union of India is preferable. This classification is important in order to give the more backward classes with the advantage of the reservation. In the same way the real benefit of the reservation can be provided to the SC & ST by excluding the creamy layer.

The government can create specific arrangements for "advancement of any socially and educationally backward classes of citizens," including admission to aided or unassisted private educational institutions, under the 93rd Constitutional Amendment. This reservation strategy will be gradually implemented in private institutions and businesses as well. Non-reserved category students were outraged by the proposal, which cut seats for the General (non-reserved) category from 77.5 percent to less than 50.5 percent (since members of OBCs are also allowed to contest in the General category).

The government is empowered under Article 15(4) of our constitution to create specific arrangements for the advancement of backward classes. Similarly, in matters of employment or appointment to any job under the State, Article 16 guarantees equal opportunity.

"Clause 2 of article 16 lays down that no citizen on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them be discriminated in respect of any employment or office under the State."

Clause 4 of the same article, on the other hand, makes an exception by granting the government specific powers:

"It empowers the state to make special provision for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the state are not adequately represented in the services"

As a result, two requirements must be met:

- the citizens' class is backward; and
- The mentioned class is not adequately represented.

In the case of Balaji v/s State of Mysore, it was decided that "a person's caste cannot be the sole criterion for determining whether a caste is backward or not." Poverty, occupation, and location of residence may all be crucial considerations to consider. The court went on to say that just because a caste is regarded backward at one time does not indicate it would remain such at all subsequent times. The government should reassess the test and, if a class has progressed to the point where reservations are no longer necessary, that class should be removed off the list of backward classes.'

⁸Dr. J. N. Pandey "The Constitution of India" 47th Ed. 2010

⁹AIR 1963 SC649

There is no doubt that the framer of the Constitution assumed. That, like the special provision unlawfully provided under article 15(4), reservations made under article 16(4) beyond the permissible and appropriate bounds could be challenged as a constitutional fraud.¹⁰

CONCLUSION

The identification of the 'creamy layer' has proven to be a difficult task. The primary concern here is how rich or advanced a backward class part should be in order to request reservation exclusion. In the Indra Sawhney case, Justice Jeevan Reddy pondered "how and where to draw the boundary" between the deserving and the creamy layer among the backward classes. "The basis of exclusion should not solely be economic," he said, "unless, of course, economic growth is so great that it inevitably leads to social advancement."

The pitfalls of determining the creamy layer solely on the basis of cost were emphasised by Justice Reddy. In rural India, for example, an individual earning 36,000 per month may be considered prosperous. In a large metropolis, however, the same pay may not be worth much. "While a person's income can be used as a measure of his social advancement," Justice Reddy cautioned, "the limit to be established should not be such that it takes away with one hand what is provided with the other." The income restriction must be such that it denotes and signifies social progress."

People from the Scheduled Caste and Scheduled Tribes communities, as well as their families, who hold high positions or have achieved success in their fields, should be excluded from the quota system. Because of the presence of the creamy layer, the intended benefits of the reservation system were diluted, and only a few people could benefit from it. Should the children of Dalit politicians like State Minister for Minor Irrigation Govind M. Karjol, Union Minister for Labour M. Mallikarjun Kharge, and Congress Opposition Leader Motamma, for example, be included in the reservation system? No, because these leaders are already uplifted and can provide all of the necessary resources for their children to participate in the general category. Instead, people in the SC and ST communities who are oppressed should be identified in order to benefit from the reservation system.

Justice Rohinton F. Nariman commented about the necessity of using the creamy layer concept in his view in the 2018 Constitution Bench verdict in **Jarnail Singh versus Lachmi Narain Gupta**. Those who were truly deserving of reserve would not be able to get it until the creamy layer principle was implemented, according to Justice Nariman. The creamy layer idea, he remarked, was founded on the fundamental right to equality.

"Benefits are stolen away by the backward caste or class's top creamy layer, keeping the weakest among the weak always weak and leaving the lucky layers to swallow the entire cake," he wrote.

Finally, it can be concluded that until and unless creamy layer is not excluded from quota benefit among SC's & ST's real essence of reservation is being diluted and is of no use. Who should not be given benefit of reservation will be getting advantage of it, and who should get it they are being deprived off, ultimately, it will be injustice to those who really need reservation.

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¹⁰Dr. D. D. Basu, *Introduction to the Constitution of India*, 19th Ed. Reprint 2004, p.95

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