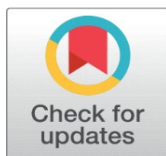
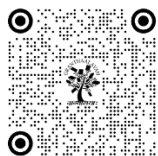


THE ORIGINAL PROVISION REGARDING RESERVATION IN THE INDIAN CONSTITUTION AND THE SUB-CLASSIFICATION OF RESERVED CLASS ISSUE: AN ANALYTICAL STUDY

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ABSTRACT

In all countries, some facilities are provided to the neglected, backward and deprived sections of the society to a greater or lesser extent. In order to come into the mainstream and contribute to the development of the society and the country, such facilities are needed to bring such sections of the society and to provide them justice. Alternatively, reservation has been provided for that. In India, constitutional provision has been made to provide reservation to certain sections of the society in the political, educational and service sectors for the upliftment of the deprived sections. The subject of reservation has always been controversial in India. Currently, various sections of the society are demanding reservation. Therefore, it is necessary to understand the original purpose behind the creation of reservation. In that regard, this research paper examines what reservation means? What is the original provision of reservation in the Indian Constitution? Subsequently, the decision given by the seven-judges Constitution Bench of the Supreme Court regarding the decision on sub-classification in reservation has created hope that the deprived sections will get equal justice. In this way, the effects of sub-classification of reservation have also been studied.

Keywords: Reservation, Sub-Classification, Constitution, Rights

1. INTRODUCTION

In all countries, some facilities are provided to the neglected, backward and deprived sections of the society to a greater or lesser extent. In order to come into the mainstream and contribute to the development of the society, such facilities are needed to bring such sections of the society to provide justice to them. Considering India, many schemes, facilities, economic development corporations, commissions, etc. have been established in India for the development of such various sections. In India, constitutional provisions have been made to provide reservations to certain sections of the society in political, educational and service sectors for the upliftment of the deprived sections. The subject of

reservation has always been controversial in India. Often, some people's opinions on this issue can be seen to be different in public and private life. Those who are in favor of reservation and those who are against it have their own opinions and thoughts on this. However people avoid to discuss on this subject publicly. Those who are individually opposed to reservation do not openly show this opposition in public life. The reason for this is that, in the current social life, opposing reservation has become like opposing the laws of gravity, because such people are immediately called casteists. However, there is no reason to think so, because the only Dalit woman in the Constituent Assembly, 'Dakshiyani Velayudhan', has also opposed reservation. Also, many leaders like Pandit Nehru, Sarojini Naidu etc. had opposed women's reservation. Therefore, while understanding this issue, it is necessary to understand it by 'putting aside our prejudices' and considering the current situation. Demands for reservation are currently being made by various sections of society. The Constitution has clearly mentioned reservation, and it needs to be understood once again. In this research paper, the original provision regarding reservation in the Indian Constitution and the issue of caste sub-categorization have been studied in detail.

1.1. OBJECTIVES OF THE STUDY

- 1) To study the basic provisions of the Indian Constitution regarding reservation.
- 2) To study sub-classification of reservation.

1.2. HYPOTHESES OF THE STUDY

- 1) Reservation is the main source of creating social justice.
- 2) Reservation can be brought into the mainstream of deprived castes through sub-classification of reservation.

2. STATEMENT OF THE PROBLEM

Considering the Indian society, initially there was a caste system. As the Varna system gave birth to the caste system, so, certain sections of the society has exploited for thousands of years. Due to such historical injustice, the concept of reservation was started to provide special facilities to certain social sections to bring them into the mainstream. Chhatrapati Rajshri Shahu Maharaj introduced a 50 percent reservation scheme in his Kolhapur state in 1902 AD. However, we can see that 'reservation, which was started as a means of social justice, has itself become an achievement'. The point of reservation is not to fight caste against caste; but to present the side of the weaker sections with strength. Some people completely oppose reservation, saying how much historical injustice can be dragged into the present. Therefore, reservation has become the main issue or subject of politics in the present situation. Therefore, it has become a problem. In that sense, it is very essential to understand the understanding and misunderstanding about reservation through research problems.

2.1. DATA COLLECTION

The researcher has used the secondary data collection method in the present research paper. For this, newspapers, books, magazines and online websites/links etc. have been used.

3. RESEARCH METHODOLOGY

The researcher has used sociological research method, as well as analytical, historical and descriptive research methods in this research paper.

What is Reservation?

Reservation is a system of affirmative action that gives preferential treatment to certain groups in education, employment and other fields. The principle of equal rights is behind reservation. The word reservation is used in the sense of "protective differentiation and positive discrimination". In simple terms, reservation means "reserving a place". Many social reformers have presented their opinions about reservation. Among them, social reformers like Mahatma Jyotiba Phule, Rajshri Shahu Maharaj, Dr. Babasaheb Ambedkar etc. have presented their opinions in detail. After

Mahatma Jyotiba Phule and Chhatrapati Shahu Maharaj, Dr. Babasaheb Ambedkar took the lead in the matter of reservation. Therefore, Dr. Babasaheb Ambedkar is called the savior of Dalits and backward classes.

3.1. DEFINITIONS OF RESERVATION

1) According to the Oxford Dictionary:

"Reservation is the act or fact of reserving for oneself or for another some right, power, privilege, etc., in a specific context."

2) According to Justice K. Radhaswamy:

"The fundamental right to equality cannot be realized without the recognition of the fundamental right to reservation."

3) "From the perspective of Indian society, reservation is a special concession given to a group of deprived, weak and exploited people."

From this, we can say that reservation means reserving certain seats in educational institutions, government jobs, legislatures, etc. for less privileged groups in the society." Thus, reservation is an ordinance.

4. HISTORICAL BACKGROUND OF INDIAN RESERVATION

The main reasons for giving reservation are the historical injustice done to a particular community and the representation of each community in the government. Considering Indian society, initially there was a varna system, but due to this caste system that was formed later, we see that injustice has been done to certain sections of the society for thousands of years. Due to such historical injustice, the concept of reservation was started to provide special facilities to certain social sections to bring them into the mainstream. However, we can see that, 'reservation started as a means of social justice has become an achievement in itself'. The caste-based reservation was first proposed by William Hunter and Jyotirao Phule in 1882. After that, the British government implemented the reservation elements by giving separate voters to some communities in the Government of India Act of 1909. Later, Shahu Maharaj implemented reservation in 1902, due to which reserved seats were kept for some castes in Kolhapur State. Moreover, reservation was started in Mysore in 1918, Madras in 1921 and Bombay Presidency in 1925. Hence, the British reserved some seats for Muslims under the Act 1909, while in 1919. Anglo-Indian Christians, Sikhs, etc. were added to it.² Further work, the Indian Constitution also makes provision for political reservation.

4.1. BASIC PROVISIONS REGARDING RESERVATION IN THE INDIAN CONSTITUTION

Various sections of society are currently demanding reservation. The Constitution has clearly mentioned reservation, and it needs to be understood once again. Some provisions of the Constitution provide for reservation; but certain conditions have also been laid down for it. Along with other provisions, Articles 15 and 16 of the Constitution should be kept in mind. Both these articles come under the third chapter of the Constitution, that is, fundamental rights. Every law gives rights to citizens against each other or vice versa. If a law is made by the Parliament that interferes with fundamental rights, the courts can also declare it unconstitutional. Sub-section 4 of Article 15 of the Constitution provides that if a section of society is socially or educationally backward, Scheduled Caste, Backward Class and a tribal, then special reservation can be given to them. This provision was also opposed by saying that if Article 14 of the Constitution has established equality, then will reservation be discriminatory or not? It is clear that equality means equal person. If some social classes are given unequal treatment or unequal opportunities, then first they should be brought at par with other groups. Therefore, the criteria set in this provision of this sub-section were social discrimination against Shudras, backward classes or tribals. They did not even have the facilities of education. Similarly, some castes and tribes living in remote areas were deprived of all these facilities. Sub-section 5 of Article 15 made a provision for them to be admitted to educational institutions without any discrimination. So, whether it is government-run institutions or aided or unaided institutions, reservation has been made in these institutions. Similarly, Article 16 of the Constitution is about providing equal opportunities. Those social classes or castes who are not sufficiently represented in jobs or at a socially advanced level. Reservation has been made in jobs for them. Similarly, reservation has been made in the case of backward classes and tribals on the assumption that they need such a provision. Therefore, reservation can be made under this

section while hiring or promoting in the job; but it should be kept in mind here that the criteria that are considered are social backwardness, educational backwardness or social discrimination.

Article 16 contains the concept of adequate opportunities. Similar provisions are also found in the four guiding principles of the Constitution. It contains provisions for equal opportunities in educational, social and even in politics, and in this regard, Article 38 says that the state should make provisions for social welfare and social justice should be established. Economic empowerment should be created and political representation should also be provided. Therefore, like other articles of the Constitution, there is a provision for reservation for Scheduled Castes, Scheduled Tribes and women in all places like Gram Panchayats, Panchayat Samiti, Municipalities, Legislative Assembly and Parliament. Our guiding principles also provide that everyone should be given the right to work and occupation. However, Article 3 is the fundamental rights. Then, Article 4 is the guiding principles. And therefore, if it is possible and as much as possible is done, then the guiding principles are enough. However, there is an obligation that what is said in the fundamental rights must be done.

There is some concession for the implementation of the guideline. Such a provision for Economically Backward Classes (EBC) has also been made earlier. However, the provisions of Articles 15 and 16 are different. Even before this, the demand for reservation has been going on since 1981. In 1992, a nine-judge Constitution Bench of the Supreme Court ordered the formation of a commission. The court said that the criteria and rules for who is backward should be determined, this should be studied in the states and it should be decided on the recommendation of such a commission whether to give reservation or continue it. Accordingly, the commission was formed. Even today, there is a Central Backward Classes Commission, and there is also a Maharashtra State Backward Classes Commission.

4.2. RESERVATION OR SUB-CLASSIFICATION OF RESERVED CLASS ISSUE:

Sub-classification of reserved class means to provide reservation to a community deprived of the benefits of reservation among Scheduled Castes and Scheduled Tribes. On August 1, 2024, a seven-judge Constitution Bench of the Supreme Court gave an important decision. This decision has created a stir in the social and political sectors and serious discussions have started on both sides, supporting and opposing the decision. This decision has allowed the state governments to sub-classify the reservation for Scheduled Castes. This decision has nullified by the Supreme Court in 2004 and the new decision has created a possibility of justice for the most backward and neglected sections of the Scheduled Castes. This decision has provided an opportunity to expand the principle of equality expected by the Constitution. As stated by the Supreme Court, the responsibility of sub-classification in the reservation for Scheduled Castes lies with the state governments and the Haryana state government has initiated to declare this decision.

The Supreme Court has given this decision by a seven-judge constitution bench by a margin of six to one. The six Judges of the Supreme Court stated their opinions on the following issues: Should the creamy layer be used in sub-classification for reservation as per the new decision? Is it necessary? This decision is basically revolutionary. Such a decision was needed to realize the purpose for which reservation was provided in the Constitution. If we understand the implementation of reservation and its effects since the implementation of the Constitution, it is clear that a large group, which is small in number, still cannot feel equality and does not get opportunities. This decision has given a ray of hope to numerous small groups. It is the basic principle of the Constitution that all Indian citizens should get equal opportunities, and the Scheduled Castes and Tribes face difficulties in implementing it. In order to provide equal opportunities to citizens who have been suffering from social neglect due to untouchability and caste discrimination for a long time, reservation was made in the Constitution by making positive discrimination. Various types of arrangements were made to extend this system to the marginalized sections of the Scheduled Castes. Yet a large group cannot avail this opportunity of equality. This has been continuously coming to the fore in the cases filed in various states. The Supreme Court has taken this important decision while giving its verdict in the case of *State of Punjab vs. Davinder Singh*. This decision will have a difference in the overall socio-political life and its nature will gradually become clear.

The Valmiki community in Punjab had protested saying that they were not getting the benefits of reservation. At the same time, they had demanded that the reservation should be categorized. Similar demands are being made by the Scheduled Caste community in other states. In Maharashtra, there was an old demand that the reservation should be categorized as A, B, C, D. In this context, the Supreme Court's verdict should be looked at. After the Supreme Court announced its decision, the decision has been welcomed and opposed. It is expected that the caste groups whose population is very small will benefit from this decision. Therefore, while it is being welcomed by such groups in large

numbers, the opposition is being raised that this decision is unconstitutional. Such groups need to understand that the responsibility of protecting the Constitution lies with the judiciary. If this is the case, what is the truth in the allegation that the court acted unconstitutionally?

Was it necessary that sub-classification in schedule caste ?And was it right? Is it in accordance with various articles of the Constitution? Questions are also being raised. In this regard, it can be said that our Constitution is not statist and verbatimist, but is a living document. The Constitution itself gives the freedom to make new laws, old laws/decisions over time without disturbing the basic framework of the Constitution. Therefore, we need to understand that the decision taken by the Supreme Court regarding the sub-classification of reservation for Scheduled Castes is not against the Constitution and this decision should be welcomed keeping in mind the wider social interest.

On this ground, two things need to be considered preferably. The first is whether the members of society who have benefited from reservation so far and whose circumstances have changed and who have become capable of competing are ready to move forward without reservation in the future? Although the Supreme Court has put forward the option of creamy layer, this option is based on economic criteria. Therefore, only time will tell what role various state governments will take on this issue while sub-classification. It cannot be ruled out that the demand for reservation on economic criteria based on creamy layer should once again become strong. Economic status cannot be the only criterion for benefiting from reservation, but a decision will have to be made after examining the status and momentum of the group that has been facing neglect, contempt and inequality for a long time. Therefore, once again, the demand for a caste-wise census can be made only from the Scheduled Castes. Earlier, the OBC group was agitating for this demand. We must keep in mind that all this will once again exacerbate caste identity and create an atmosphere of strife in social life.

5. SUMMARY AND CONCLUSION

The issue of reservation is not to fight caste against caste; but to present the side of the weaker sections with strength. The majority of castes like Marathas in Maharashtra, Patels in Gujarat, Jats in Haryana, who are from the upper castes, also have the same demand of reservation. Once a caste or category is called backward in the judicial criteria, it cannot be said that it should be considered backward forever. Therefore, their social, educational and economic upliftment will also have to be taken into account. However, today's reality seems to be that the leaders want to solve this issue on the streets by inciting the youth. Instead, the political circles should give this issue to the social and intellectual leadership. Such experts should collect the information and evidence required to fulfill the criteria and give it to the Maharashtra State Backward Class Commission. The commission is always ready to discuss and receive information. Such technically pure information should be given. However, according to our Constitution, religious reservation is unconstitutional; it should also be kept in mind that reservation can be given only from a social point of view.

Along with that, the Supreme Court's decision regarding reservation sub-classification will benefit the backward castes in the future. If equal opportunities provide government jobs, financial assistance for higher education, representation in various government and cooperative institutions, then will reservation alone be useful for providing these opportunities to castes that are numerically smaller? this should also be considered. Today, the number of government jobs is decreasing. Many works in various departments of the government are done through private companies and organizations. Job recruitment opportunities in the government sector are decreasing day by day and quality and skill are given priority in private companies and organizations. There is no reservation in this sector and there is no caste-based work philosophy. Prove the ability, quality and skills and get paid for it, this is the cash transaction going on in the private sector. Keeping this in mind, what should be considered while sub-categorizing the reservation for Scheduled Castes in the future, it should be done from now on. Primary education is available to everyone free of cost. But can the last group take advantage of it? Once upon a time, completing primary, higher secondary, and higher education was a guarantee of a job. That is not the case today. Today, skill development is important. Keeping this in mind, in order to provide equal opportunities, emphasis will have to be placed on skill development in the future. Although the availability of jobs is decreasing, skill-based opportunities are available in large numbers. They will also be available in the future. After the decision given by the Supreme Court, this issue will have to be kept in mind while sub-categorizing in the respective states. It will be the job of the leadership of that society to provide maximum opportunities for skill development through the government. Skill development opportunities are currently seen as an easy way to eliminate social distance and inequality.

Overall, when considering the issue of reservation in India, it can be said that the concept of reservation has created more questions than answers. However, this does not mean that reservation should be stopped, but it is necessary to bring more clarity and reforms in this system and implement it properly. While providing reserved seats, it is necessary to seriously consider providing free education and special facilities for skill development to the socially, educationally and economically disadvantaged sections of the country. Just increasing reservation and not reforming the current system will not achieve anything special. Since our goal is to bring about positive social changes and the welfare of the country, people need to think about other communities as well while thinking about themselves.

CONFLICT OF INTERESTS

None.

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