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NAIRJC JOURNAL PUBLICATION

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ISSN NO: 2454 - 2326

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RESERVATION BENEFITS FOR SCS AND STS IN INDIA

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ABSTRACT

Reservation is indeed the process of setting aside a certain percentage of seats vacancies in educational institutions, government institutions and legislative institutions for the members of weaker sections in a pluralistic society like India. At the national level, the reservation policy originated in the form of Montague-Chelmsford Reform (1919). In 1925 the British Government decided to earmark certain quota in Government jobs for minority communities. The Indian Government implemented reservation policy in 1950. The Supreme Court has favored the combination of social and economic criteria for extending the benefit of reservation to the weaker sections of India. There is a reservation of 15 per cent for the, scheduled castes and 7.5 per cent for the scheduled tribes in the matter of admission in all the educational institutions. The reservation of 12½ per cent for scheduled castes and 5 per cent for scheduled tribes continued after the coming into force of the Constitution of India. Reservations have also been provided in posts filled by promotion. The benefit of reservation in various posts and services under the Central or State Government has not been derived uniformly by all the SC/ST communities. Articles 330, 332 and 334 provide for reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha and the State Assemblies for a period of ten years after the commencement of the Constitution of India.

Subsequently, the time was extended to ensure the development of Dalits in the post independence era. The Government of India has also directed the state governments to conduct special drive to fill the backlog vacancies across the country. The scholars and advocates have strongly advocated the need for protective discrimination as well as affirmative action. The SC/ST welfare programmes are not effectively implemented in the post – independence era by the policy makers and bureaucrats who represent the dominant powers in India. There is a need for re-examination of reservation policy from the point of view of reversing the paradigm of development in the new millennium.

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INTRODUCTION

Reservation is indeed the process of setting aside a certain percentage of seats vacancies in educational institutions, government institutions and legislative institutions for the members of weaker sections in a pluralistic society like India. Reservation is a form of quota-based affirmative action. Reservation is governed by constitutional laws, statutory laws, and local rules and regulations. Scheduled Castes, Scheduled Tribes and Other Backward Classes and in some states Backward Classes among Muslims under a category called Backward Class (Muslim) are the primary beneficiaries of the reservation policies under the Constitution – with the object of ensuring a level playing field. Bhambhari (2005:01) notes: “The reservation benefits are extended to the weaker sections of the society to ensure their inclusive and integrated development in Indian society on the basis of humanitarian considerations. The champions of social and economic justice have strongly advocated the need for reservation in order to establish a welfare society in India”. In this paper, the utility of reservation policy is primarily examined on the basis of qualitative research.

HISTORICAL CONTEXT OF RESERVATION

The Indian rulers such as Sahu Maharaj of Maharashtra, Gaikwad Maharaj of Baroda and Nalvadi Krishnaraja Wodeyar of Mysore state were highly socially committed rulers. They implemented reservation policy in their provinces to ensure the inclusive development of weaker sections. The British Government gave a serious thought to the subject of reservation before independence. However, at the national level, the reservation policy originates in the form of Montague Chelmsford Reform (1919).

In 1925 the British Government decided to earmark certain quota in Government jobs for minority communities. The then Prime Minister of Britain, Ramsay Macdonald gave his 'award' known as the Communal Award. Accordingly, separate representation was provided for the Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans and Dalits. Ambedkar fought for separate electorate system for Dalits in India. This award was opposed by Mahatma Gandhi. The Poona Pact was signed in 1932 for a single Hindu electorate, with Dalits having seats reserved within it.

At the national level, the reservation policy originated in the form of Montague-Chelmsford Reform (1919). In 1925 the British Government decided to earmark certain quota in government jobs for minority communities. The Government in July, 1934 issued necessary instructions to reserve a definite percentage of vacancies for the depressed classes (described in the Government of India Act of 1935 as scheduled castes) but when the position was reviewed in 1942 it was found that in spite of various measures adopted to secure increased representation of scheduled castes in public services, the result, obtained were not substantial. The Government



issued orders in August, 1943, reserving 8½ per cent of vacancies for them and proposed to consider the question of raising this percentage as soon as a sufficient number of qualified candidates from the scheduled castes was found to be available. In June, 1946, however, the percentage of vacancies reserved in favour of scheduled castes was raised from 8½ per cent to 12½ per cent.

The Indian Government implemented reservation policy in 1950. The Union Government headed by V.P.Singh also provided reservation benefit to the backward sections according to the recommendations of Mandal Commission. 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, according to Sheth (1987:04).

RESERVATION POLICY IN THE POST INDEPENDENCE ERA

Reservation benefits were given to the Scheduled Castes and Scheduled Tribes population in India. Das (2000:02) states: “**The Kaka Sahaeb Kalelkar Commission was appointed in 1953 to explore the possibility of extending the benefit of reservation to other backward communities.** The Kalelkar Commission submitted its report to the government in 1955 but the central government did not accept caste as criteria for defining social and educational backwardness. Some state governments introduced the policy of job reservation for backward castes and communities across the country. In 1978, the Government of India appointed the Second Backward Classes Commission under the chairperson of B.P. Mandal. The Commission submitted its report in 1980 observed that backwardness is both social and educational. The Central Government headed by V.P.Singh implemented the reservation policy in August 1990”. The reservation contemplated in Article 16(4) should not exceed 50 per cent. The time limitation was extended in 1995 to promote the SCs and STs. The Supreme Court has favored the combination of social and economic criteria for extending the benefit of reservation to the weaker sections of India.

Caste-Based Reservation System of Union Government

Sl.No.	Category	Reservation %
1.	Scheduled Castes (SC)	15.0%
2.	Scheduled Tribes (ST)	7.5%
3.	<u>Other Backward Classes (OBC)</u>	27%
4.	Total constitutional reservation percentage	49.5%
5.	General (Open to all including SC/ST and OBC)	50.5%

EDUCATIONAL BENEFITS

In the field of education also, reservation has been provided to the weaker sections through the constitutional provisions. Clause 4 of Article 15 allowed the state for making any special provision for the advancement of any social and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes. Article 29 protects the cultural and educational interest of minorities. Article 46 instructs the state for promotion of educational and economic interest of scheduled caste, scheduled tribes and other weaker sections. There is a reservation of 15 per cent for the, scheduled castes and 7.5 per cent for the scheduled tribes in the matter of admission in all the educational institutions which come under the administrative control of the Ministry of Human Resource Development and other Central Ministries. Similar reservations have also been provided by the State Government and the Union Territories. Administrations. The Universities with the exception of a few have also followed suit.

Educational facilities like scholarships/stipends, books and stationery, uniforms, mid-day meals, hostels, special coaching etc. are also provided to the students from these communities. The Government of India also initiated a number of Centrally Sponsored Schemes/Non-Plan Schemes for the benefit of these students. There is no doubt that there has been considerable progress in the field of education. The literacy rate amongst the scheduled castes and scheduled tribes rose from 1.9 per cent and 0.7 per cent in 1931 to 37.41 per cent and 29.60 per cent, respectively in 1991. Also, while in 1944-45, only 114 students belonging to scheduled castes and 84 scheduled tribes in 1948-49 received post-metric scholarships, this number rose to 22.52 lakh in 1999-2000. Under this scheme of National Overseas Scholarships for higher studies abroad, 732 awards have been offered since 1954-55, out of which 532 awards have been availed of.

There is no doubt that there has been a steady increase in the literacy rates for the scheduled castes and scheduled tribes but still a large gap exists between the literacy rate among SCs/STs and that of the non-SCs/ STs population. It is not that the 37.41 per cent literates among the scheduled castes cover within themselves those large sections of people who just know how to write their names and can read a little. It also includes a large number of drop-outs who leave the school at the primary, middle and the secondary level. There is wide gap among the male and female education. There are 48 districts in the states of Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh where female literacy among the scheduled castes is below 2 per cent. Similar is the position in respect of scheduled tribes in whose case even the percentage of female literacy in some states is less than one per cent.

RESERVATION IN SERVICES

Article 335 of the Constitution lays down that 'the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in making of appointments to service and posts in connection with the affairs of the Union or of a state'. This provision requires the Union as well as State Governments to take steps to ensure that claims of the members of the scheduled castes and scheduled tribes are duly considered in making of appointments to services and posts under the Central as well as the State Governments. How best effect can be given to this provision in the Constitution is a matter of details to be decided by the Central or State Governments concerned. An indication is, however, given in Article 16 to one effective measure that can be adopted for this purpose, according to Kancha Ilaiah (2006:03).

This article empowers the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State is not adequately represented in the services under the State. Thus (Union as well as State Governments) may make a provision for the reservation of appointments or posts in favour of Scheduled Castes and Scheduled Tribes. Similarly, the State is empowered to make provision for reservation in matters of promotions to any; lass or classes of posts in the services under the State in favour of scheduled castes and scheduled tribes which, in the opinion of the State, are not adequately represented in the services under the State. The Government can no doubt adopt other measures, as well, to implement the provisions of Article 335, such as relaxations of age limits, reduction in examination fees for entry into government services, lowering down of educational and other qualifications, and provision of pre-examination coaching.

The reservation of 12½ per cent for scheduled castes and 5 per cent for scheduled tribes continued after the coming into force of the Constitution of India. These percentages were subsequently enhanced in 1970 to 15 per cent for scheduled castes and 7.5 per cent for the scheduled tribes. Presently, there is a reservation of 15 per cent for scheduled castes, 7.5 per cent for scheduled tribes and 27 per cent for other backward classes in all the posts under the control of Central Government and Central Public Undertakings. Similar reservations have also been provided in the posts and services under the State Governments/UT Administrations. The percentage of such reservations which has been kept in the proportion to the population of these communities varies from State to State.

Reservations have also been provided in posts filled by promotion. The reservation of more than 50 per cent of the vacancies as, they arise in any year or a 'carry forward' rule which has the same effect will be outside the provision of Article [16(4)]. As a result of the implementation of the reservation policy, there has been a

considerable increase in the representation of scheduled castes and scheduled tribes in various posts and services under the Central Government. In so far as the scheduled castes are concerned, their percentage of representation rose from 0.71, 2.01, 7.03 and 17.19 in Group A, B, C and D, respectively in 1957 to 10.15, 12.67, 16.15 and 21.26, respectively in 1995. The representation of scheduled tribes also raised from 0.10, 0.32, 0.62 and 2.44 in Group A, B, C, and D, respectively in 1957 to 2.89, 2.68, 5.69 and 6.48, respectively in 1995. In the IAS the percentage of Scheduled Castes and Scheduled Tribes increased from 1.63 and 0.09 respectively in 1954 to 15.8 and 7.9, respectively in 1995. Similarly in IPS, this percentage for scheduled castes and scheduled tribes rose from 1.19 and 0.51 in 1954 to 15.6 and 8.3 in 1995.

Sheth (1987:04) delineates: “In pursuance of the Constitutional provisions regarding reservation, the implementation of the policy of the job reservation has been in vogue for the last five decades. In addition to the Central Government, the State Governments have also enacted laws and issued orders providing for reservation for the Scheduled Castes and Scheduled Tribes in the services under their control. Though there has been some increase in the intake of SC/ST in various posts and services in the Central as well the State Governments since 1950, the scheduled castes and scheduled tribes have not been able to reach the prescribed percentage of reservation. There have been significant distortions in the implementation of the reservation policy and the progress has not been very satisfactory. This is not to deny the fact that this has brought considerable amount of socioeconomic change among the SCs and STs through all these years, still they have a long way to go before they could occupy all the positions reserved for them at the upper echelons of administration”.

Though there is a reservation of 15 per cent of the scheduled castes and 7.5 per cent for the scheduled tribes, but in order to avail of the opportunities of reservation, i.e., to be eligible for applying for different positions under the Central or State Government one needs to have some basic educational qualification. The difficulty is that when a large section of SC/ST population did not have- those basic qualifications for availing the benefit of reservation, how it can be expected that the quota of reservation for them in Group A, B and C services could be fulfilled.

The benefit of reservation in various posts and services under the Central or State Government has not been derived uniformly by all the SC/ST communities. There are 471 castes/sub-castes included in the list of scheduled castes and 548 tribes/sub-tribes in the list of the scheduled tribes but hardly 8-10 castes/communities from these groups derive maximum benefit whereas others have been left out. Even within the same groups only a few families have taken advantage of the reservation. For example Chamars amongst the Scheduled Castes and Meenas among the scheduled tribes have derived maximum advantage. The other left out castes among the scheduled castes are Pasi, Madiga, Mala, Adi-Dravida, Dusadh, Paraiyan, Balmiki, Mehtar, Namsudra, Mang,

Megh, Mahar, Adi Karnataka, Adi Andhra, Musahar etc. Similarly, among the scheduled tribes, Gond, Bhil, Santhat, Oraon, Munda, Khond, Kachari, Saora, Kol and Koris etc. have not taken the benefit of reservation to the desired extent.

Article 335 of the constitution lays down that “the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in making appointments to service and post in connection with the affairs of the Union or of a state”. This provision requires the union as well as state governments to take steps to ensure that claims of the members of the scheduled castes and scheduled tribes are duly considered in making of appointment. How best effect can be given to this provision in the constitution is a matter of details to be divided by the Central or State Governments concerned. An indication is, however, given in Article 16 to one effective measure that can be adopted for this purpose.

Singh (2000:05) asserts: “This article empowers the state to make any provision for the reservation of appointments or post in favours of any backward class of citizens which, in the opinion of the state is not adequately represented in the services under the state. Thus (Union as well as State Governments) may make a provision for the reservation of appointments or post in favour of scheduled castes and scheduled tribes. Similarly, the state is empowered to make provision for the reservation in matters of promotions to any class or classes of posts in the services under the state in favour of scheduled castes and scheduled tribes which, in the opinion of the state, are not adequately represented in the services under the state”.

The Government can no doubt adopt other measures, as well, to implement the provisions of Article 335, such as relaxations of age limits, reduction in examination fees for entry into Government Services, lowering down of educational and other qualifications, and provision of pre-examination coaching etc. Reservation in appointments, the percentages varies from time to time. Presently, there is a reservation of 15 per cent for scheduled castes, 7.5 per cent for scheduled tribes in all posts under the control of Central Government and Central Public Undertakings. Similar reservations have also been provided in the posts and services under the State Governments/UT Administrations. The percentage of such reservations which has been kept in the proportion to the population of these communities varies from State to State. Reservations have also been provided in posts filled by promotion. As a result of the implementation of the reservation policy, there has been a considerable increase in the representation of scheduled castes and scheduled tribes in various posts and services under the Central Government Representation of SC/STs in ABCD (Groups Services in 1957 and 1995).

POLITICAL SAFEGUARDS

Articles 330, 332 and 334 provide for reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha and the State Assemblies for a period of ten years after the commencement of the Constitution of India.

RESERVATION IN LOK SABHA AND STATE ASSEMBLIES

The number of seats reserved for scheduled castes and scheduled tribes, shall bear, the same proportion to the total number of seats allotted to that State or Union Territory in the House of People as the population of the scheduled castes and scheduled tribes in the State or Union Territory as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory based on the preceding census. In case of Assam, the number of seats reserved in the House of People for the scheduled tribes in the autonomous districts shall bear to the total number of seats allotted to that State a proportion not less than the population of the scheduled tribes in the said autonomous districts bears to the total population of the State.

Srivastava (2000:07) amplifies: “In pursuance of this Article, 106 out of 545 seats are reserved for the members of SC/ST communities. In the 11th Lok Sabha, there were 123 Members of Parliament belonging to SC/ST communities which include that besides the reserve constituencies SC/ST who are elected against unreserved Lok Sabha seats also. It is a healthy sign of social transformation. Source: Fourth Report (1996-97 - 1997-98) of the National Commission for SCs and STs”.

A similar reservation of seats for the scheduled castes and scheduled tribes has been provided in the State Assemblies under Article 332 of the Constitution. The effect of reservation of seats for the scheduled castes and scheduled tribes is to guarantee a minimum number of seats to the members of the scheduled castes and scheduled tribes. It does not deprive a member of a scheduled castes or scheduled tribes of his right to contest a general seat on the strength of the very nomination for a reserved seat.

If, in a two-member constituency, one seat is reserved for the scheduled castes, and besides the member returned to his reserved seat, another member of the Scheduled Caste secures the highest votes at the general election, there is nothing to prevent the second member of the Scheduled Castes from being elected to the second seat. The reservation of seats provided under Article 332 cannot be challenged on the ground of denial of right guaranteed under Article 14.



TIME LIMIT FOR RESERVATION

In Article 334 the reservation of seats for scheduled castes and scheduled tribes has been provided initially for a period of ten years from the commencement of the Constitution. The founding fathers of the Constitution were of the firm conviction that the educational, social and economic condition of the scheduled castes and scheduled tribes will improve and come at par with the rest of the population within a period of ten years. The period of ten years expired on the 25th January, 1960.

The educational, social and economic condition of the scheduled castes and scheduled tribes was reviewed and it was found that they have not yet reached to the level of non SC/ST population and they cannot be elected to the Parliament or State Assemblies from the general seats. It was therefore, decided to extend the period of reservation of seats for SC/ST in the Lok Sabha and State Assemblies for a further period of ten years by the Constitution (8th Amendment) Act, 1959. The same exercise was repeated again and again on the expiry of every ten years till 2000. The last amendment of Article 334 was made this year by substituting the word 'fifty' by 'sixty'.

Article 243-D provides that in accordance with the Constitution (Seventy-third Amendment) Act, 1992 seats in panchayats from village panchayats to zilla parishads will be reserved for SCs and STs in proportion to their population at respective level, in direct election. Out of the seats reserved for SCs and STs one third will be reserved for women of these communities. These reserved seats for SCs and STs shall be allotted by rotation to different constituencies in a panchayat at each level. Panchayat elections have been held/are being held in most of the States/UTs.

Similarly, in Article 243-T in accordance with the Constitution (Seventy-Fourth Amendment) Act, 1992, out of total seats to be filled by direct elections, seats shall be reserved for SCs/STs in proportion to their population in the Municipal Bodies at each level. Out of these reserved seats for SCs/ STs at least one third shall be reserved for SC/ST women. Elections to the Municipal Bodies have been held in all the States/UTs except Bihar and Pondicherry where the case is sub-judice.

RESERVATION AND JUDICIAL REVIEW

The reservation has been provided on the basis of Article 16(4). According to Article 335, “the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the union and the states, as far as may be consistent with the maintenance of efficiency of administration”. The Supreme Court, in General Manager vs. Rangachari’s case in 1962 held that while Article 16(4) is apparently without any limitation upon the power of reservation conferred by it, it has to be

read together with Article 335 which enjoins that in taking into consideration the claims of the members of the scheduled castes and scheduled tribes in the making of appointments in connection with the affairs of the union or a state, the policy of the state should be consistent with the maintenance of efficiency of administration.

Somanathan (2006:06) adds: “The limitation of time was removed by inserting Clause 4A to enable it to continue reservation in promotion for the SC and ST in 1995. The vacancies reserved for the scheduled castes (SCs) and the scheduled tribes (STs) which could not be filled up by direct recruitment on account of non-availability of the candidates belonging to the SCs or the STs were treated as ‘backlog vacancies’ in 1997. The Government of India has also directed the state governments to conduct special drive to fill the backlog vacancies across the country”. The public institutions have filled such vacancies to some extent till date by relaxing the qualification and experience criteria

CONCLUSION

The scholars and advocates have strongly advocated the need for protective discrimination as well as affirmative action. The Central and State Governments have also launched several welfare and developmental programs to fulfill the constitutional obligations in free India in order to make SC/ST communities catch up other sections of Indian society in the race for social, economic, political and cultural progress. There are a number of Centrally Sponsored Schemes which have been undertaken for the benefit of Scheduled Castes and Scheduled Tribes in the post-independence era. The SC/ST welfare programmes are not effectively implemented in the post – independence era by the policy makers and bureaucrats who represent the dominant powers in India. The representatives of Dalits in the legislature and bureaucracy are not asserting their rights and failed to live up to the expectations of marginalized sections of society. There is a need for re-examination of reservation policy from the point of view of reversing the paradigm of development in the new millennium.

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