



EVALUATION OF RESERVATIONS IN INDIA

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The evaluation of reservation system in higher education has become one of the challenges in India. The current scenario clearly depicts that the SC/ST and OBC castes are still discriminated in higher educational institutions. The reservation system finds its origin in the age-old caste system of India. The caste system at its birth was meant to divide people on the basis of their occupation like teaching and preaching (Brahmins), kingship and war (Kshatriya) and lastly business (vaish) etc., but soon it became an instrument to divide the society on the caste - basis, creating various walls between different sections of the society. Today we stand, divided widely into Hindu, Muslim, SC, ST & OBCs with newer reservations coming up for other different sections of the society like Christians, Kashmiris, Jats, Kashmiri Pandits, Tribals etc.

For the sake of reservations, the Mandal commission also was established in 1979 by the central government to identify the socially or educationally backward people. It was also set up to consider the question of seat reservations and quotas for people to redress caste discrimination. It used social, economic, and educational indicators to determine backwardness. The *93rd Constitutional Amendment* allows the government to make special provisions for “advancement of any socially and educationally backward classes of citizens”, including their admission in aided or unaided private educational institutions. Gradually this reservation policy is to be implemented in private institutions and companies as well.

DIVISION OF INDIAN SOCIETY ON SOCIAL HIERARCHY

Indian society is based on ‘Unity in Diversity Principle’ which means all the castes and communities are living together in the peaceful relationship. But still, the Indian society is facing different kinds of challenges in various dimensions in Higher education. The regional imbalances in higher education facilities arise due to natural clustering of institutions of higher education facilities arise due to natural clustering of institutions of higher education in and around metropolitan and urban areas. Such clustering is a global phenomenon. For instance, there are more than two hundred university level institutions in the Boston area in the United States. While new and large public institutions could foster economic development in the region where they are located, yet at times attempts to set up such institutions in remote and far-flung areas could backfire. There are cases of several public institutions that could not flourish due to their locations disadvantage. Thus, policies for the geographical spread of institutions have to be carefully crafted.



Anyway, the regional imbalances are a matter of concern, yet this imbalance is seen to be a world-wide phenomenon, with clustering of higher education institutions in some states or regions. With a greater student mobility at higher education level, students from states or regions with poor facilities tend to migrate to cities with better facilities. This is evident from the fact that students in large numbers from all over the country, particularly from the North-Eastern states and Bihar, flock to universities and colleges in Delhi. In case of professional education, student mobility is even greater. With most institutions for professional education, having hostel facilities, regional balance is a lesser concern.

RESERVATIONS AND CONSTITUTION OF INDIA

Reservation is a form of affirmative action whereby a percentage of seats are reserved in Parliament, State Legislative Assembly, Central and State Services, Public Sector Units and in all Public and Private Educational Institutions except in the Minority and Religious Educational Institutions for the socially and educationally backward classes of citizens. The Reservation policy in India is centered on the Constitutional framework for reservation. The Constitution of India provides three types of reservations, political, education and employment. The political reservation is provided in the Constitution by reservation of seats in proportion to the numbers for the SCs and the STs in the Lok Sabha (The Lower House) in its Article 330, and in the Vidhan Sabha (The Upper House) in Article 332. These provisions do not exist for the OBCs, which indicate that the principal categories for the affirmative action are the SCs and STs according to the Constitution. For the second, an implication exists in the constitutional provision - Article 15(4), which allows the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs. For the third, the constitutional provisions as modified and simplified from time to time are the Article 16(4), Article 16(4A), Article 16(4B), Article 335, and Article 320(4). These articles provide explicitly for reservation in educational institutions for the backward classes and the authority of the state to make any required changes with time, as required.

The Mandal Commission claimed that the OBCs were 52 per cent of India's population. This figure was based on back-of-the-envelope calculation by remainder method and has not been backed by any social scientific evidence. The NSS has put the figure at 36 per cent, but this is based on 'self-reporting' and likely to underestimate the OBC population. The most robust estimate is anywhere between 40 to 44 per cent. We can't have more precise information because the Census does not collect information about the OBC population. But this entire debate about their population size is irrelevant to the current reservation scheme. The figure of 27 per cent has nothing to do with their population estimate. This figure is dictated by the Supreme Court judgment that prohibited more than 50 per cent reservations. Since the SC and ST reservation already accounted for 22.5 per cent, the maximum permissible for any additional group was 27 percent. As long as everyone agrees, which they do, that the OBCs are more than 27 per cent of the population, the



dispute about their share of the population has no relevance for their reservation quota. (Yogender Yadav:2006)

SUPREME COURT ON MANDAL II (OBC RESERVATION)

The *jinn* that came out of the bottle with the announcement of reservation for OBC was kept in abeyance for some time on 29 March 2007 when the Supreme Court stayed the law providing for 27 per cent reservation for Other Backward Classes (OBCs) in higher education institutions such as the IITs and IIMs for 2007-2008. This landmark order of the Supreme Court of India founded on timeless elemental principles of equity, natural law, natural justice (which does not exclude social justice) will be welcomed by all the enlightened people of India committed to the noble cause of eradication of untouchability and other forms of cruel discrimination practised against the Scheduled Castes / Scheduled Tribes for centuries by all the other communities, definitely not excluding the so called 'Backward Classes' who are being converted into scapegoats in the dirty and murky world of caste-based votebank politics patented and perfected by various politicians.

By implication, the Supreme Court has made it abundantly clear to the Central government that they are not willing to buy the 'caste-based, caste-hatred' founded theory of the Mandal Commission that the vote-bank generated 'Backward Classes' can on no account be treated on par with the Scheduled Castes / Scheduled Tribes. The Supreme Court passed the interim order on petitions challenging the constitutional validity of the Central Educational Institutions (reservation in admission) Act 2006. The Supreme Court rejected the government argument that reservation was not anti-merit. The Court also summarily rejected the absurd, aboriginal and abominable argument of the government of India that in the absence of Caste Data after 1931, there was no alternative to projecting the population proportion of socially and educationally backward classes and OBCs from the next best source the latest available census of 1931.

According to the Supreme Court, the policy of reservation cannot and should not be intended to be permanent or perpetuate backwardness. To quote the historic words of the Supreme Court in this context: 'Nowhere in the world do castes come up, classes or communities queue up for the sake of gaining backward status. Nowhere else in the world is there competition to assert backwardness and then to claim we are more backward than you.' The Union Minister for Human Resource Minister Arjun Singh has as was to be expected, reacted to the Supreme Court judgement by saying that the government would exercise all legal and constitutional options to implement the 93rd Constitutional Amendment that extends reservation for Other Backward Classes (OBCs). He has also brazenly refused to term the verdict of the Supreme Court as a setback.

India was a country with a very rigid caste based hierarchal structure where the higher casts enjoyed most of the benefits while the lower castes were looked down upon by the higher castes. The majority of the population were backward



socially, economically, educationally, and politically. The backward classes were classified as the Scheduled castes (SC), Scheduled tribes (ST), and other backward classes. By 1947 India became an independent nation. It was at this point that the Constitution of India was framed and then the framers took forward the interest of the backward classes by having Article 46 in the Constitution.

Article 46 stated that the state shall promote with special care the educational and economic interest of the weaker section of the people, also protecting them from social injustice and all forms of exploitation. Article 46 was complimented by the inclusion of many other articles for the empowerment of the backward classes. Since they were the oppressed classes, this was thought to be the best mechanism to correct the mistake that was being practiced for many hundreds of years.

Although the reservation policy is an exception to the equality rule it is still considered an essential element of equality. As equality has many dimensions and one such dimension is the reservation policy for the backward classes. From the beginning with very few articles on reservation policies in the Constitution now the number of articles has gone up which I feel is reaching a stage where there will have serious backlashes. The general candidates are feeling the pressure all the time. From a simple reservation of about 15% for the SC's & ST's in educational institutions now the percentage has gone up and also the other backward classes (OBC's) have been brought within the fold of reservation by the suggestion of the Mandal Commission. But even after 68 years of independence the people still fall back on the reservation.

CONCLUDING REMARKS

India was a country with highly rigid caste-based hierarchal structure, with ascending order of privileges and descending order of disabilities, which operated for about 3000 years. There was an overwhelming majority in the nation that was still backward – socially, economically, educationally, and politically. These victims of entrenched backwardness comprise the present scheduled castes (SC), scheduled tribes (ST) and other backward classes (OBC). Even though, these classes are generically the "Backward Classes," the nature and magnitude of their backwardness are not the same. After achieving independence from the British in the late 1940s, India became a democratic and egalitarian nation. It was imperative at that point to establish a code for the political, economic, and social structure. The Constitution, established in 1950, strove to do the same. Therefore, special provisions were enacted in the Constitution to achieve a dynamic, democratic and egalitarian society. The policy the Constitution framers chose was of the Reservation. It is in this backdrop, we will understand the historical development of the policy of Reservation in India from its origin to the modern time

The debate on affirmative action in India is long and not always geared to the desired aim: creation of equality of opportunity. Just like Indian secularism,



reservation system in India has always a different political aim to make the system more unequal than what it is. Indian secularism, rather than making the state independent of religion, is intended to provide special privileges to certain religious groups. Similarly the Indian affirmative system is politically designed to provide restricted rights, not equal rights to some chosen people.

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