

Reservation – A tool for social justice

Parmila

Research Scholar, Bhagat Phool Singh Mahila Vishvidhalya (BPSMV), Sonapat, Haryana

Introduction

India is a country known for its diversity having many religions, thousands of castes and communities maintaining their own social setup through their own set of rules, whether it regarding marriage or occupation.

Indian society is basically governed by Manu's varna vyavastha which divides thousands of castes into only four varnas i.e., Brahmin, Kshatriya, Vaishya, and Sudra. According to their occupation, it establishes Brahmin on top, then Kshatriya who perform warship, then Vaishya who do old business and below all Sudra, who serve to upper varnas, many social reformists like Raja Ram Mohan Rai came before but could not break the orthodoxy so the position of lower group became worst.

Upper castes deprived of access to certain privileges and opportunities to grant them equal access along with the upper and middle castes, they even don't have access to wells or in public places so as they have nothing to have with education that can elite them. So when we got freedom political thinkers think about a tool which can reform the position of these weaker sections. Our Preamble which is the soul of our Constitution assures Social, Political and Economic Justice to all citizens. What is the Necessity to provide Constitutional protection and Safeguards.

It is an irrefutable fact that schedule castes and schedule tribes were oppressed and grossly mistreated by all sections of our society. Beside Social, Educational and Economic disabilities the schedule castes were traditionally treated as untouchables. They are segregated in their social interaction with all other caste groups and remain isolated due to untouchability. The objective of the Indian Constitution was to provide equal opportunity and adequate safeguard for them as they had been the worst victims in our society.

The Protection and safeguard for this section of society is also needed for the promotion of their educational and economic interest and removing the social disabilities. Hence, this section of the society deserves special consideration.

History of Reservation

Reservation became a tool to promote social justice. The concept of reservation begins with the name of Mahatma Jyotiba Rao Phule. Mr. Phule demanded reservation to Mr. Governor Hunter. Shaoji Maharaj provided 50% reservation to Schedule castes/ Backward Classes in his govt. on July 26, 1902.

A special feature of the political life in India under the British Empire was the existence of Communal electorates. Nationalist opinion was always opposed to it. Yet it continued and in course of time it established a pattern of Communal Politics unknown in any other Country. Accordingly, almost every religious minority in India- the Muslims, the Sikhs, The Indian Christian and others have a certain number of seats reserved for them in the legislatures. This privilege was extended to the Anglo-Indian and European also.

Under the Govt of India Act, 1935, the Schedule Castes were given reservation in Constituencies based upon joint electorates with other Hindus.

Constitutional Safeguards

For ensuring all development of SCs and STs and to protect them from all types of exploitation, a number of safeguards have been provided in the Constitution of India. Article-14 Guarantees equality before law and equal protection before law, Under Article-15 of the Constitution no citizen shall be discriminated on grounds of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liabilities restriction or condition with regard to :

- (a) access to shops, public restaurants, hotels and place of public entertainment.
- (b) the use of wells. Tanks, bathing ghats, roads and place of public resorts maintained wholly or partially out of state funds or dedicated to use of general public.

Untouchability stands abolished under Article-17 and its practice in any form is forbidden and punished under law. Traffic in human beings and forced labor are prohibited under Article-23 of the Indian Constitution. The founding father of the Indian Constitution mere well versed with the Inequalities prevailing at the time of Independence in our society. It was not possible for them to remove all those inequalities within a night or a day. Therefore they gave a directive to the state to protect the members of the Scheduled Castes and Scheduled Tribes and other Backward Classes.

Article-46 of the Constitution provide as follows:-

The state shall protect with special care the educational and economic interest of the weaker sections of the people and in particular of the Scheduled castes and Scheduled Tribes, and shall protect them from Social Injustice and all forms of the Exploitation". In order to give effect to these Constitutional Provisions, the following enactments have been made.

- 1) The untouchability (offences) Act, 1955, later amended and retitled as the Protection of Civil Rights Act, 1955.
- 2) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- 3) The Bonded Labor System (Abolition) Act, 1976

The untouchability (offences) Act, 1955 was enacted to give effect to the constitutional provision abolishing untouchability. The Act came into force on 01.06.1955. The Provision of the Act were not found to be stringent enough and it was felt that there was need to make the provisions stricter so that they could prove to be of greater deterrence. Protection of Civil Rights Act, 1955, also included (Under Sec-10) a provision that if a civil servant showed negligence in the investigation of offences and failed to render all the assistance in their power to discover or apprehend the offenders or suppressed material evidence of the Commission of such offences he would be punished as an abettor. Section 15-A of the Act requires the State Govt. to take measures to ensure that the rights arising from the abolition of untouchability are made available and are availed of by persons subjected to any disability arising out of untouchability.

The Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989.

In order to check and deter crimes against Scheduled castes and scheduled tribes by persons belonging to other communities the SC and ST s (prevention of Atrocities)Act ,1989 was brought in to force from 30.1.1990 the act defines certain categories of often castes against sc and st as atrocities for the purpose of act , comprehensive rules were also notified under the prevention Atrocities act 1955 which lay down among other things norms for relief and rehabilitation , the prevention of atrocities act prescribes punishments , which are higher than for corresponding of tences under the Indian penal code, Provision regarding special courts – for the purpose of speedy trial ,sec-14 of the scheduled castes and scheduled tribes (prevention of Atrocities) act requires the state government to specify with the concurrence of the respective high courts , a court of sessions for each district as a special court to try of tences under the act , all states /union territories (except for the predominantly tribal states of aruna chal Pradesh and Nagaland)have specified existing session courts for each district as special courts,

The bonded labour system (abolition act, 1976).

The provisions contained in bonded labour system (abolition) act , 1976 make it mandatory that the bonded labour shall stand freed from the commencement of this act , i-e october25,1975 ,the object of this act is to prevent the economic and political exploitation of the weaker section of the people ,in order to save them from exploitation ,any custom or tradition or any contract ,agreement or order instrument by virtues of which any person or any member of family or dependent of such person is service as bonded labour shall be void and inoperative, no suit or other proceeding can lie In any civil court or before any authority of the recovery of any bonded debt or any part there of this bonded labour (abolition)act , 1976 was passed to abolish the system of bonded labour in the light of spirit contained which specifically stipulates that traffic in human being s and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an of tence punishable in accordance with law.

Commission for scheduled castes and scheduled tribes;-

There had been a persistent demand by representative of scheduled castes and scheduled tribes in the parliament and elsewhere that instead of one single office to handle the entire responsibility, under art ,338, there should be a multi-member commission with adequate powers, the Govt of India decided to set up the commission for Scand ST s consisting of chairman and four members including the special officer appointed under art , 338, of the constitution .

Function of the commission;-

1. To investigate all matters relating to safeguards provided for scheduled castes and scheduled tribes are in practice implemented ,
2. To study the implementation of protection of civil right act, 1955, with particular reference to the object of removal of untouchability and discrimination arising there from within a period of five years,
3. To ascertain the socio-economic and other relevant circumstances accounting for the commission of offence against persons belonging to scheduled castes and scheduled tribes with a view to ensure the removal of impediments in remedial measure ,including measures to ensure prompt investigations into the offences,
4. To enquire into individual complaints regarding denial of any safeguards provided to any person claiming to belong to scheduled caste or scheduled tribes,

So as we see that constitution has provided much to establish equality in society so it becomes necessary to interpret the word equality in right sense, Interpretation of equality –words justice , equality and liberty are words of passion and power as they are used in preamble ,out to they throw any light on the provisions of the constitution ?the only one is justice ,social economic and political for art.38 and article 39 amplifies the ,concept of justice by providing that the state shall in particular direct its policy towards securing the objective i-e equality (from clauses as to) equality does not mean equality generally but equality of states ,and opportunity (emphasis added).equality has two aspects negative and positive by removing inequality .

In state of Kerala v,n,m Thomas regarding ;-

The issue, does article 16(4) indicate one of the methods of achieving equality embodied under article 16(1) ,it had been held that article 16(1) permitted reasonable classification and did not forbid the state from rendering social justice to backward classes article 16(4) indicated one of the methods of achieving equality embodied In preamble of constitution through article 16(1) of constitution.

Fist amendment -1951;-to achieve social states for backward classes in road was made by chanpakam dorairatan case in 1951, seats were reserved for backward classes in contravention of constitutional provisions but the government defended by purported to promote social justice ,the apex court turned down the reservation is state of madras and held that reservation is unconstitutional in fouour of backward classes after that decision art-150(4) was enacted by first amendment in the year1951 (state is empower to make special provision for backward classes and scheduled castes.

Criteria for identification of backwardness

When we talk about provisions for backward then question come who are backwards? who are scheduled caste and scheduled tribe ? who will identify and determine them?

Scheduled caste means such castes, races or tribes or part there of or groups with in such cases, races or tribes as are deemed under art -341to be the scheduled castes for the purpose of this constitution.

Scheduled tribes means such tribes or tribal communities or part there of or groups with in such tribe or tribal communities as are deemed under art-342 to be scheduled tribes for the purpose of this constitution .the backward class includes scheduled tribes schedule castes also.

The president may with respect to any state or union territory , and where it is a state after constitution with governor there of by public notification ,specify the castes ,races or tribes or part or groups with in castes ,races or constitution to be deemed to be scheduled castes in relation the state or union priory (art-341)

Once the president notifies the scheduled caste or scheduled tribes, the change in the list can be made only by the parliament by law.

Art15(4) enables the state to make special provisions for the advancement of socially and education only backward classes, there is no uniformity in the classification of socially and educationally backward classes ,there is no definition of socially backward classes, It is very difficult to deter mine them ,here president has power to specify these classes on the basis of report of the commission , it is up to the state to first identify which classes are socially and economically backward and

then ask the commission to investigate the difficulties they are suffering from and the methods to remove those difficulties . some of the backward classes commissions , which examine the matter , have adopted different criteria.

According to Gajendregadkar backward classes committee for the state of J & K the criteria for identification of backwardness are (1) specified traditional occupation (2) specified social castes (3) non –cultivators (4) low paid communities (5) residents in the cease-fire areas and (6) residents in hard pockets of the state standard according to the community in the society standard of education attained by the community ,representation in the government service will be the criteria for the identification of backwardness as said by Nagam Gowda committee, Karnataka (1950), Chinappa Raddy commission Karnataka.

Identify, backwardness with references to caste and community, and dividing then in to five categories according to population ranging from negligible to over ten lakhs, the size of the holding ,reproves –negation in assemblies and parliament .percentage of literacy , representation in different services and admissions to professional and postgraduate institutions were the factors to be applied to each of these groups to find out their backwardness.

Bakshi Commission

Gujrat says caste is the only identifying factor for backwardness ,but rane commission, Gujarat said caste should not be the identifying factor but the totality of the social circumstances in the social hierarchy including economic backwardness , should be taken into consideration ,according to hammer commission the main test was educational backwardness.

By venkataswamy commission ,seventeen indicators were for maculated to define backwardness they include ownership of land and house ,income level, habitation –rural or urban ,paccaor kacha house, educational level etc, the communities who secured rine or more indicators are backward kaka kalikar commission has for mulated following factors for backwardness,

- (1) Low social position in the traditional caste hierarchy,
- (2) Lack of general education advancement.
- (3) Inadequate or no-representation in government servies.
- (4) Inadequate representation intrude, commerce and industry .

As nagam gowda committee, Karnataka divided the backwards classes farther into backward and more, backward similarly kaka kalikar commission also divided the backward s as most backward and backward.

For purpose of article 16(4) in determining whether a section of the class is backward ,a test solely based on caste, community ,race ,religion , sex ,descent ,place of brith or residence cannot be adopted as it word be unconstitutional (trilokinath v state of j&k ,(1967) .

A caste can be class, provided it is wholly, solely and totally educationally backward (perikappen v state of Tamilnadu, (a,I,r .1977sc,2303), the mandal commission report applied following indicators and criteria for the identification of backwardness,

- (a) Social ;- castes or classes considered as socially backward by others
 - (2) castes or classes which mainly depend on manu all labour for their livelihood .
 - (3) castes or classes where at least 25% females and 10 percent males above the state ,average get ,married at 17 years in rural area and at least 105 females and 5% males do so in urban areas ,
 - (4) castes or classes where participation of females in works is at least 25% above the state average ,
- (b) educational ;-(1) castes or classes where the number or children in the age groups of 5-15 years who never attended school at least 25 percent above the state average,
 - (2) caste or classes where .the rate of student drop outs in the age groups of 5-15 years at least 25 percent above the state average ,
 - (3) caste or classes amongst whom the proportion of matriculates is at least 25 percent above the state average,
- (c) economic;- (1) castes or classes where the average value of family assests is at least 25 percent below the state average ,
 - (2) castes or classes when the number of families living in kacha houses is at least 25% above the state average,
 - (3) castes or classes where the some of drinking water is beyond half a kilometer for more then 50 percent of household .
 - (4) castes or classes where the number of household having taken consumption loan is at least 25 percent above the state average,

Classification of backward classes into backward and backward ;-

There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories (Indian sawhney v union of Indian aik .1993 sc.477)

The supreme court in k.s jayasree v, state of Kerala (1976 3 s.c.c .730) and k.c vasantha kumar v state of Karnataka (1985) supp.s.c.c .714 has realized that some member of the backward classes were highly advanced and of ten snatched away the benefits of reservations.

The Supreme Court further hold that those members of the backward class who are far too advanced socially which in this contest necessarily means economically and may also mean educationally should be excluded from the backward classes.

The member of the backward class who are far too advanced socially have been given the name 'creamy layer' so issued directions to the control govt, to specify the basis of exclusion of the creamy layer.

Problem in establishment of social justice or failure of reservation

Need to reevaluate the reservation policies, as it was made for lawyer s & extended further need but the problem of weaker section is as it is-

There should be exclusion of creamy layer for reservation

-the criteria for reservation should be class not the caste –because it caste confusion there are large population from schedule caste who have been established & there are large in general class who have nothing to survive i.e land or other employment source so voice has been raised to include several other castes in OBCs as recently jat has been included in OBC s when reservation has made tool for social justice then it should be in private sector too because of globalization most of service going privatize so than only reservation in public sector is totally unfruitful .

Role of judiciary in a changing society particularly like the Indian society , which has to clear a heavy social backlog , the role of law has to be normative & the mission of courts reformist .

Conclusion and Suggestions

- 1) the benefits of reservation policy should be enjoyed by all equally
- 2) their education should be supported by waiving of fess , provision of book grants and either a monthly allowance or hostel facilities, without education there cannot be awareness of their right it is seen that caste in which education spread they uplifted more reservation they apply to every post whether of administrative or of peon,
- 3) a new commission should be appointed to suggest practical ways and means for helping the backward classes ,this commission constantly to carry out sociological and economic studies from state to state and region to region for helping the backward classes, and in determining the backwardness the economic status of the family should be held as a sole criteria .
- 4) backwardness is great stigma on our national polity ,the best way to uplift the members of backward classes to give the best education abundance ,financial aid and other encouragement
- 5) the reservation required to be made in such a manner is not impairing the efficiency of the administration ,they should be taken into consideration consistently with the maintenance of efficiency of administration In the making of appointments to services and post in connection with the affairs of the union or of a state.
- 6) there should be a reasonable set off point for giving benefits to the weaker section ,
- 7) there should be no reservation in promotion if there is adequate representation of weaker section in services ,
- 8) there should be reservation In higher judicial services to render adequate representation of weaker sections ,because there is no adequate representation of backward classes in higher judicial services till today .

(a) and at last I will say that constitution has given much for social justice ,but it cannot be establish fully until upper castes of society doesn't have good will for lower caste. We running in 21 country but till today upper castes person call lower castes person by their caste name till today bhungs in village took garbage of savarna on their head, not only this Utter Pardesh and Haryana are shameful state because of atrocity given by their sawarna to the lower caste no –of rape cases notices in U.P where upper castes people take away lower caste girl , rape them and murder brutally, Mirchpur of Haryana

is other victim of these atrocity where people are living in tents in a form house and are not ready to go back to their village, so can we say that there is truly a social justice where one has ill will towards other.

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