



E-ISSN: 2789-8830
P-ISSN: 2789-8822
IJLLR 2023; 3(1): 48-52
Received: 04-01-2023
Accepted: 06-02-2023

Ramesh Sharanappa D
Department of P.G. Studies
and Research in Law,
Gulbarga University
Kalaburagi, Karnataka, India

Devidas G Male
Department of P.G. Studies
and Research in Law,
Gulbarga University
Kalaburagi, Karnataka, India

Correspondence Author;
Ramesh Sharanappa D
Department of P.G. Studies
and Research in Law,
Gulbarga University
Kalaburagi, Karnataka, India

International Journal of Civil Law and Legal Research

The issues of reservation policies in India

Ramesh Sharanappa D and Devidas G Male

Abstract

The object of the write-up is to find out the problems and to give some tentative solutions for the reservation policy in India. The writer has concentrated his study only on Articles 15 (4), 16 (4), 46, 340, 341, 342 of the Constitution of India, etc. to complete the project and to see whether The writer has adopted analytical and descriptive methodology for this paper and he is relying on books, articles, newspapers, online databases. The careful interpretation of Articles 15 (4), and 16 (4) of the constitution of India to see whether the reservation policy is satisfactory and fulfills its objectives. The write-up is limited to analyzing the provisions of Articles 15 (4), and 16 (4) of the Constitution of India. The writer has based his research on case law also. The writer has formulated the following questions and has tried to find out the answer-

- What is the concept of reservation policy in India and what is its purpose?
- Who are the weaker sections of society for which regarding reservation?
- What are the problems and solutions regarding reservations?.

Keywords: Reservation, constitution of India, solutions

Introduction

In the Indian context, reservations were introduced during the last decades of the 19th century at the time when the subcontinent could be broadly divided according to two main forms of governance, British India and 600 Princely states. Some of these states were progressive and eager to modernize through the promotion of education and industry and by maintaining unity among their people. South and Western India took considerable interest in awakening and advancement of the minorities and deprived sections of the society.

One of the aims and objectives of the Constitution is to secure for all citizens, equality of status and opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation¹. It is to be noted here that as the right to equality and prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth against any citizen were not enough to make the basic human right meaningful to the weaker sections, the framers made additional provisions, viz., Articles 41, 45 and 46 of the constitution requiring positive state action and permitted reservations in admissions to educational institutions³ and posts and appointments⁴ consistently with the maintenance of efficiency of the administration. Article 334 initially provided for the reservation of seats for the scheduled castes and the scheduled tribes in the House of the People and the legislative assemblies of the states for ten years. However, by the successive amendments in the constitution, this reservation has been extended from time to time up to 2010 AD. Article 340 provides for the appointment of a commission to investigate the conditions of socially and educationally backward classes and to make recommendations as to the steps that should be taken to improve their conditions. All these provisions are aimed at the speedy uplift of weaker sections to secure equality of status and of opportunity, which in turn will promote fraternity, unity and the integrity of the nation. In the constituent assembly debate, Dr. B.R. Ambedkar underlined the need to promote social and economic equality to make democracy meaningful and workable.⁵ Under the Indian Constitution; there are provisions in respect of the following types of reservation

1. Reservation in admissions to educational institutions,
2. Reservation in posts and appointments in public offices.

The majority of the population of India was socially, educationally and politically backward. The backward classes have been classified as Scheduled Castes, Scheduled Tribes and Other Backward Classes. The Government of India, through the law, has made a quota system whereby a percentage of posts are reserved for the Backward Classes in the employment in

Government and the public sector units, and in all public and private educational institutions but not in minority-run educational institutions. This system has been made to mitigate the backwardness of the socially and educationally backward communities and the scheduled castes and scheduled tribes who do not have adequate representation in government services and educational institutions. The reservation policy is also extended to the Scheduled Castes and Scheduled tribes for representation in the Parliament of India.

Historical aspect of reservation policy in India

Today's India has become permanent machinery to provide reservations to its people based on castes and religion and social and educational backwardness to get maximum votes. There are some historically important events regarding the reservation policy in India-

- When India was ruled by the Britishers, the reservation was there at that time.
- In 1882 Hunter Commission was appointed in which Mahatma Jyotiva Rao Phule demanded a free and compulsory education and government jobs for the people.
- In 1902 a notification made 50% reservation in services for backward people in the state of Kolhapur. This was the first notification providing for the reservation for the welfare of the backward people in India.
- In 1908 the castes and the communities which had some part in the administration of British rule, the reservation was introduced in that favor.
- In 1909 provisions were made in the Government of India Act, 1909 which was known as the Morley Minto Reforms.
- In 1919 the provisions for the reservation were made in the Government of India Act, 1919.
- In 1921 Madras Presidency made a GO providing 44% reservation to non-Brahmins, 16% reservation for Muslims, 16% reservation for Anglo-Indian Christians and 8% reservation for the Scheduled Castes.
- In 1935 provisions for the reservation in the Government of India Act, 1935.
- On 26th Jan 1950 our Constitution of India came into force.
- In 1951 In the case of State of Madras v. Smt. Champcam Dorairajan⁶ the court held that caste-based reservation violates Article 15 (1) of the constitution of India.
- The 1st Constitutional amendment was made to invalidate the above judgment and clause (4) was added in Article 15.
- In 1953 Kalelkar Commission was established to see the situation of the socially and educationally backward classes.
- In 1963 the SC put a 50% cap on the reservation in the case of Balaji v. Mysore⁷
- Rajasthan exceeds its limit giving 68% reservations while Tamil Nadu 69% (under the 9th Schedule)
- In 1979 the Mandal Commission was established to see the situation of socially and educationally backward classes. Submitting its report in 1980, the Commission recommended changes in the existing quota system.
- In 1990 the recommendation of the Mandal Commission was implemented by VishwanathPratap

Singh in Government jobs.

- In 1991 Narsimha Rao Government introduced a 10% special reservation for the poor
- In 1995 the Parliament by 77th Constitutional Amendment added clause (4) (A) In Article 16 providing reservation in promotions to SCs and STs.
- In 2005 the SC in P. A. Inamdar&Ors. v. State of Maharastra & Ors case held that the State cannot make the reservation on minority and unaided private colleges including private professional colleges.
- In 2005 the 93rd Constitution Amendment was brought to ensure the reservation policy.

Special provision for the advancement of backward classes

Article 15 (4) of the constitution of India makes provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and scheduled Tribes. This clause (4) has been added by the 1st Constitutional Amendment Act, 1951 as a result of the decision in the case of State of Madras v. Champakam Dorairajan⁸. In this case, the Madras Government had reserved seats in State medical and engineering colleges in different communities based on religion, race and caste. This was challenged before the court as it violates Article 15 (1) of the Constitution. The state defended the law on the ground that it was enacted to promote social justice for all sections of the community as required by Article 46 of the DPSP. The SC held the law reserving the seats on the ground of religion, race and caste as void because it classified the student on the ground of caste, religion, etc. and not on a merit basis. To modify the effect of the above ruling of the SC, Article 15 was amended and clause (4) was added to it. By this clause, the STATE is empowered to make special provisions for the advancement of socially and educationally backward classes of citizens or the scheduled castes and scheduled tribes. Article 15 (4) is only an enabling provision and does not impose any obligation on the state to take any special action under it. The state has the discretion to make a reservation if necessary.

For making a reservation under clause (4) of Article 15 two things are to be determined-

1. Who are socially and educationally backward classes?
2. What is the limit of reservation?

The Constitution of India nowhere defined the 'backward classes. Article 46 uses another expression 'the weaker sections of the people which has been interpreted by the SC to include all sections of the people rendered weaker due to reasons, including poverty and physical and natural handicaps⁹. Further Article 16 (4) uses the 'backward class of citizen'

First backward classes commission

Article 340, however, empowers the President to appoint a Commission to investigate conditions of socially and educationally backward classes. In pursuance of Article 340 of the constitution, the President of India appointed the 1st Backward Classes Commission in 1953 under the chairmanship of Kaka Kalelkar. The commission may recommend the steps that should be taken by the central and the state governments to remove the difficulties of the socially and educationally backward class's people. It was created for the following purposes-

For determining the criteria which shall be adopted in considering whether any section of the people in India in addition to SC and ST as socially and educationally backward classes.

- For investigating the conditions of such classes and the differences under which they work.
- For making recommendations to the Union or any state to take steps to remove the difficulties and to improve their economic conditions

The Commission adopted the following criteria for identifying socially and educationally backward classes:

The social position of Hindu society in the traditional caste.

1. The lower general educational advancement among the major section of a caste or community.
2. Inadequacy of representation in government services.
3. Inadequacy of representation in the field of trade, commerce and industry

The Kaka Kalelkar commission submitted its report on March 30, 1955. It had made a list of some of the recommendations of the commission as follows:

- Undertaking caste-wise record of the population in the census of 1961.
- Treating all women as a class is 'backward'.
- Reserving seats for backward classes @ 70% in all professional institutions.
- Reservation of vacancies in all government services and local bodies for OBC

Mr. Kaka Kalelkar, the chairman was not satisfied with the recommendation of the commission because the report was not free from ambiguity. By writing a letter to the President he opposed the recommendation of the commission. But the report of the commission was not accepted by the Central government on the ground that it had not applied any objective tests for identifying the Backward Class.

In *Balaji v. State of Mysore*, the 10th Mysore Government issued an order under Article 15 (4) reserving seats in the Medical and Engineering colleges in the state as follows:

1. Backward and More backward classes 50%
2. Scheduled castes 15%, and
3. Scheduled tribes 3%.

Thus a total of 68% of seats were reserved. The validity of the order was challenged by the candidate not getting admission. Court held that sub-classification made by order between backward and more backward was not justified under Article 15 (4). It was also held that the 'caste' shall not be the sole basis for determining backwardness. 'Backwardness' must be social and educational and not either social or educational.

Thus, the government concluded that further investigation was necessary with a device view of some workable criteria to specify the socially and educationally backward classes to assist them in all suitable ways.

Second Backward Classes Commission:

In 1979, the Janata Party Government (Morarji Desai, PM) decided to set up a second backward classes commission. The commission was popularly known as Mandal Commission and its chairman was Mr. B.P. Mandal.

The Commission adopted the following criteria for identifying the socially and educationally backward classes:

- Social criteria,
- Educational criteria, and
- Economic criteria.

The commission submitted its report in December 1980. It stated that the OBC population was around 52% of the total population of India including Hindus and non-Hindus. 27% reservation for the OBC was recommended by the commission. No action was taken based on the Mandal report for long after it was submitted. The commission and largely identified castes with backward classes and more or less entirely ignored the economic test¹¹. After the report of the backward class commission, the question of characterizing backward classes again came before the SC in the case of *Vasant Kumar*¹². All the judges of the SC agreed on the point that 'caste' shall not be the sole determinant of backwardness.

*Indira Sawhney v. UOI*¹³ popularly known as the Mandal Commission case is the significant pronouncement of the SC on the question of reservation of posts for the backward classes. In 1990 the V.P. Singh government at the center issued an official memorandum accepting the Mandal commission recommendation and announcing 27% reservation for the socially and educationally backward classes in vacancies in civil posts and the services under the government of India. The memorandum was challenged before the SC and it was considered by the 9 judges' bench. The main positive aspect of the SC can be highlighted here-

- Over-reservation is limited to a maximum of 50% in a year.
- The creamy layer should be excluded from the backward class.

What are the Scheduled Castes and Scheduled Tribes

The Scheduled Castes and Scheduled Tribes have been considered the most underprivileged class of Indian society. The constitution of India, for compensating them, provided special provisions in their favor. There are special provisions for SC/ST in services, and legislative bodies and special favor is given to them for preferential entry into the educational institution. Now the question is who comes under the SC/ST category. The constitution of India does not define who are the persons who belong to SC and ST. Article 341 and 342, however, empowers the President to draw up a list of these castes and tribes. Under Article 341 the President after consultation with the Governor concerning the State, specify the castes, races or tribes or of groups within castes, races, or tribes for their constitution. Any inclusion or exclusion from the presidential notification of any caste, race, or tribe can be done by Parliament by law.

Reservation in admissions

Under Article 15, reservations in an educational institution can be made for 'Women' under article 15 (3), 'Socially and educationally backward classes and the Scheduled castes and the Scheduled Tribes under Article 15 (4), and Other grounds not falling under Articles 15 (3) and 15 (4).

As a result of the decision in *State of Madras v. Champakam Dorairajan*, the 1st Constitutional Amendment Act, 1951 was made by the Parliament to remove the difficulties in the above case and clause (4) has been added in Article 15. In the above case, the State of Madras reserved the seats in the educational institution based on castes, religion race, etc. which was declared

unconstitutional as it violated Article 15 (1). Now the new clause (4) empowers the state to make special provisions for the socially and educationally backward classes of people. Now the State is free to reserve seats in educational institutes.

Whether State can reserve seats in privately run educational institutions:

In T. M. Pai Foundation case¹⁵, Islamic Academy case¹⁶, and P. A. Inamdar case¹⁷ the SC held that the State cannot make the reservation of seats in admissions in privately run educational institutions. To nullify the effect of all the above cases the Parliament added a new clause¹⁸ (5) in Article 15 and thereby empowered the State to fix the reservation in privately run educational institutions also. But this clause does not touch the institutions run by minorities under Article 30 (1) of the constitution of India. Now it has been clear that the State is free to make a reservation in private educational institutions also. Now the question is what would be the limit for the reservation, it has been cleared by the SC in the Balaji case. In this case, the SC held that the state can make a reservation for up to 50% of seats only.

Reservation in services

Article 16 (4) of the constitution of India makes provision for the reservation of appointments or posts in favor of any 'backward classes of citizens which, in the opinion of the State, is not adequately represented in the public services under the State. Here the term 'State' includes Central as well as State Governments and their instrumentalities. Article 16 (4) is applied only if two conditions are fulfilled:

1. The class of citizens is backward, and
2. The said class is not adequately represented in the services of the state.

Explaining the nature of Article 16 (4) the SC held²⁰ that it is an enabling provision conferring a discretionary power on the state for making any reservation of appointments or posts in favor of any backward class of citizens which in the opinion of the state, is not adequately represented in the services of the state. Article 16 (4) neither imposes any constitutional duty nor confers any fundamental rights on anyone for claiming reservation.

The scope of Article 16 (4) was considered by the SC in Devadasan v. UOI²². In this case, the constitutional validity of the 'carry forward rule' framed by the government to regulate the appointment of persons of backward classes in government services was involved. This rule provided that if a sufficient number of candidates belonging to SC/ST were not available for the appointment of reserved quota, the vacancies that remained unfilled would be treated as unreserved and filled by the fresh available candidates, but a corresponding number of posts would be reserved in the next year for SC/ST in addition to their reserved quota of the next year.

The court held the 'carry forward rule' as unconstitutional. But in the Mandal Commission case²³, the SC overruled the Devadasan case and held that the 'carry forward rule' is valid so long as it does not in a particular year exceed 50% of vacancies. In this case, the SC gave the following judgments-

1. The creamy layer must be excluded from the backward classes,
2. Unlike in the Balaji case Classification of backward

classes into backward and more backward is permissible, Reservation shall not exceed 50%

3. No reservation in promotion
4. To nullify the point of 'no reservation in promotion' the government enacted the Constitution 77th Amendment Act, 1995 and thereby new clause (4A)²⁴ has been added in Article 16.

Problems

1. The reservation policy in India shall never go.
2. The reservation in India is generally based on caste and religion²⁵.
3. There is no data available to identify who is getting the advantages of reservation.
4. The families who become rich also get reservation benefits.
5. The real needy people many times don't know their right to get reservation benefits.
6. There is a division in Indian society based on caste, religion and gender.
7. Well-qualified candidates are left from going to important administration places.
8. There is a lot of corruption in the name of reservation policy.
9. Reservation benefits are reached to the proper beneficiaries through the mediator; the mediators are misusing the scheme of Government very easily, and it is not the best way.
10. There is no proper observation of the reservation policy.
11. Reservation is given from the seats of the general one and not a new creation of seats for socially and educationally backward classes of people.

Solutions

1. First of all, a database must be maintained by the government that who are the persons getting the benefits from the reservation. Such a database should be accessible to the public generally.
2. Backlog provision must be deleted and the vacancies left must be fulfilled by qualified candidates in the same year.
3. Reservation shall not be based on castes basis. It must be on an economic, social and physical handicap basis.
4. Yearly observation of the reservation policy must be done and
5. The Government should create special and separate posts for the weaker section of society and not interfere with the general seats.
6. Reservation should be based on the collective salary of the family, i.e. salary of the husband and wife and the income coming from all other sources.
7. The reservation benefits to be given only a limited number of children in a family
8. The reservation should not be a matter of promotion, it should be one-time aid.
9. The creamy layer concept should be applied to SC/ST categories also.
10. Some economic aid must be given first before giving the reservation to the weaker section of society.

Conclusion

The writer now concludes his work by saying that the

backward classes cannot be allowed to remain backward forever. The Constitution of India does not permit it. The reservation policy is the first aid and not the permanent cure to the problem of backwardness. For the proper implementation of the reservation policy, the government should take steps to see whether needy people are getting the benefits. The concept of a creamy layer should be applied in the case of SC/ST also. The weaker sections should be given special economic aid first to survive in society and then reserve their seats. It must be kept in mind here that the reservation can be given only if the government has efficiency in the administration as Article 335 states that the claim of SC/ST shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to the services and posts in connection with the affairs of the Union and the States. There are some problems with the reservation policy in India which need to be removed soon. The writer has revealed the problem and also the tentative solutions. For the proper implementation of reservation, the government should relook at it and should take steps accordingly.

References

1. Arvind P Datar. Commentary on the constitution of India, Wadhwa and Co., Nagpur, Second Edition, 2007.
2. Basu, D.D. Commentary on the constitution of India, Wadhwa and Co., Nagpur, Eighth Edition, 2007, 2.
3. De DJ. The constitution of India, Asia Law House, Hyderabad, 2002.
4. Hidayatullah M. Constitutional law of India, Arnold-Heinemann, New Delhi, 2.
5. Jain MP. Indian constitutional law, LexisNexis Butterworths Wadhwa Nagpur, Sixth Edition, 2010.
6. Seervai HM. Constitutional law of India Universal Law Publishing Co. Pvt. Ltd., New Delhi, Fourth Edition, 1991, Reprint, 2008.
7. Singh MP, Shukla's VN. Constitution of India, Eastern Book Company, Lucknow, Second Edition, 2008.
8. Constituent Assembly Debate, 11.
9. Report of the Backward Classes Commission, Chapters IV, V and VII (1980).
10. Rao PP. Right to equality and the reservation policy, Journal of the I.L.I, 2000, 42.
11. [http:// www.lawkhoj.com](http://www.lawkhoj.com)
12. <http://www.google.com>
13. <http://www.jstor.org>
14. <http://www.legalsutra.org>
15. <http://www.manupatra.co.in>
16. <http://www.scholar.google.com>
17. <http://www.westlaw.com>