

RESERVATION IN A PRIVATE UNAIDED INSTITUTION

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ABSTRACT

"Reservation" refers to the legally enforced policy of setting aside a certain percentage of available places for historically marginalized groups. The Indian government instituted this method to solve the wide class difference before and after independence from British colonial authority. India still implements its reservation system due to its socioeconomic disparity. Clause (5) was added to Article 15 by the Constitution (Ninety-third Amendment) Act, 2005, enabling the government to render special provisions, by law, for the benefit of socially backward classes of citizens or for the progression of scheduled castes or scheduled tribes, inasmuch as such special provisions associated to their admission in educational institutions, which include private educational institutions, aided or unaided by the State. Since private schools began, the question of whether they must provide reasonable accommodations for disabled students has been hotly debated. Private schools charge extra because they offer a better education. The reservation system was intended as a temporary reparatory tool to help discriminate backward classes, but it has grown into a major operation with its own infrastructure, program, and supporters. The world has realized higher education must be merit-based. Because India adopted these treaties, it must follow this norm.

Keywords: Reservation, Private colleges, Ninety-third Amendment, Education, Rights.

INTRODUCTION

"Reservation," also called "affirmative action" or "positive discrimination," favors some (typically under-represented) groups over others. Our Constitution prohibits discrimination based on religion, ethnicity, caste, sex, or place of birth. The Constitution was quickly amended. The first amendment was a Constitutional compromise. Incorporating reservation in the Indian constitution was meant to promote social fairness, i.e. no backwardness-based discrimination and equal opportunity for all. The constitution's framers never meant to incorporate anti-poverty clauses. In 1951, Article 15 was amended to allow the state to establish

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specific provisions "for the advancement of socially and educationally backward segments of citizens or for the Scheduled Castes and Tribes." Today's reservation policy covers local government, civil service, and educational institutions. In 1978, after the first backward classes commission submitted its report, the president issued an order under Article 340 to set up the Mandal Commission. This report was a rehash of the first backward classes commission report rejected by the government because it categorized backward classes by caste. In 1993, the 73rd and 74th Amendments to the Constitution mandated greater representation of SC and ST people in local administrations.

Although parliament had not yet made the Right to Education a basic right under Article 21 of the Constitution, the Honorable Supreme Court ruled in the famous 'Capitation fee case' *Miss Mohini Jain versus State of Karnataka and Ors*¹ that it is. After almost a decade, parliament finally ratified a constitutional amendment recognizing the "Right to Education" as a fundamental human right. In 2002, lawmakers addressed this issue by approving Amendment 86. Among the changes made by this amendment to the Constitution is the addition of Article 21-A, which makes it the responsibility of each state to provide free public education to all children between the ages of six and fourteen, as required by federal law.

By virtue of the Constitution (Ninety-third Amendment) Act of 2005, Article 15(5) of the Constitution now permits the State to make special provisions, by law, for the advancement of any socially backward classes of citizens or for the scheduled castes and scheduled tribes, insofar as such special provisions related to their admission in educational institutions, including private educational institutions, whether aided or unaided by the State. While the rest of Article 30 did apply, the new subsection didn't affect schools serving minorities as stated in paragraph 1.

RESERVATION SCENARIO IN AN UNAIDED PRIVATE INSTITUTION

The original Constitution did not include any provisions for the reservation of classroom seats. Policies at the state level informed governments' approaches to reservations. A Madras government order (G.O.) from 1951 that gave preference to certain castes in the admissions process for state-run medical and engineering schools was struck down by the Supreme Court.² This ruling was overturned in 1951 when clause (4) was inserted into Article 15 of the

¹ 1992 AIR 1858

² State of Madras vs. Champakaran Dorairajan, 1951.

constitution, allowing the government to prioritize the development of socially and educationally disadvantaged groups of citizens (known as SCs and STs). To take advantage of this provision, educational institutions (both public and private) made reservations.

The Supreme Court of India established quotas for reserved seats at 50% of the total and the creamy layer for reservations of people from economically disadvantaged groups in *Indira Sawhney v. Union of India*³(the "Mandal Case"). For distant locations, the court upheld reservations of more than 50%. Up until 2003, governments routinely set aside seats in private schools. The Supreme Court of India held in 2003 in *T.M. Pai Foundation v. Union of India*⁴ that the government may not impose quotas on privately operated schools.

This position was reiterated by the court in 2005 in *P.A. Inamdar v. State of Maharashtra*⁵. To overturn these decisions, Parliament in 2005 added clause (5) in Article 15 of the 93rd Amendment.

"Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the state from making any special provision by law, for the advancement of socially and educationally backward classes of citizens or for the scheduled castes or scheduled tribes in so far as such special provisions relate to their admissions to educational institutions including private educational institutions; whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of article 30."

To the extent that such special provisions relating to admission to educational institutions, which include private educational institutions, whether aided or unaided by the State, apart from the minority educational institutions mentioned in clause (1) of Article 30, this clause allows the governments to enact any special provision, by law, for the progression of any socially and educationally backward classes of citizens or the Scheduled Castes or the Scheduled Tribes. The validity of this amendment was upheld by the honorable Supreme Court in *Ashok Kumar Thakur v. Union of India*.⁶

The Persons with Disability Act of 2016 (Section 32) requires all publicly funded schools to set aside a certain percentage of their available seats for students with "benchmark disabilities."

³ AIR 1993 SC 477

⁴ 1994 AIR 2372

⁵ (2005) 6 SCC 537

⁶ (2007) 4 SCC 361.

A minimum of 5% of available seats must be reserved for this purpose. The only condition for reservations up until 2019 was a social and educational disadvantage. However, the 103rd Amendment allowed states to set aside seats for the poor. The Constitution (124th Amendment) Act, 2019, which includes a provision for quota for the economically poor in higher education institutions and government positions, was approved by the Lok Sabha and the Rajya Sabha last week.

Rather than eliminating reservations and working toward a more meritocratic society, Indian politicians of all stripes are busy stoking the politics of backwardness as the country enters the highly skilled, disruptive digital era. Due to the fact that this economic reservation, like social ones, applies to all private institutions, whether aided or unaided, but does not include the minority educational institutions, it would exacerbate cleavages in society, this time along with economic inequality.

EDUCATION RESERVATION VIOLATES INTERNATIONAL PRINCIPLES.

Respect for international law and treaty responsibilities is something India must "encourage" according to Article 51 of the Indian Constitution. The state has a duty to comply with international agreements to the greatest extent possible. "Everyone has the right to education,"⁷ as stated in Article 26 of the UDHR. All children should be able to get a free public school education. Attending primary school is a legal requirement. Access to higher education should be based on academic merit, and the same goes for technical and professional training.

Entrance to higher education should indeed be based on merit, capacity, efforts, perseverance, and devotion, and can happen at any point with due respect to previously acquired skills, as stated in Article 4⁸ of the UNESCO Convention Against Discrimination in Education. According to the Convention, all individuals should be afforded the opportunity to pursue higher education based solely on their individual merits, regardless of their race, gender, language, religion, social situation, or culture.

Article 13(2)(b) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁹. states, "Secondary education shall be made universally accessible and readily

⁷ The Universal Declaration of Human Rights.

⁸ Adopted in 1960.

⁹ Adopted in 1966.

available to all by all available means, in particular by the incremental introduction of free education." A secondary institution that is "generally available" welcomes students of all skill levels.

ICESCR 13(2)(c) addresses the "right to higher education." According to clause 13(2)(c), higher education is not to be "generally available," but exclusively based on merit. The world community has recognized that merit should not be compromised and that higher education should be accessible to all based on merit. India must observe this international rule because has accepted these accords. However... India continues its age-old, unfixed reservation policy. Policy needs rethinking.

RESERVATION VIOLATES OTHER RIGHTS

To be clear, the term "reservation" does not appear in Article 15(5). The state's ability to legislate "specific provisions" for entry into "educational institutions" is only permissive. There is no particular discussion of higher education or professional training programs. Schools are another type of educational institution. As an added note, "extraordinary steps" could signify more than "reservation."

A class/caste may be backward now, but it may not be in the future because, of socialization and job opportunities, the Supreme Court decided in *Ajay Kumar Singh v. State of Bihar and other*¹⁰ cases. Castes that are educationally and socially excluded from mainstream society cannot continue to be on the margins indefinitely. Reviews at regular intervals." There has been no effort to assess their economic and social conditions on a regular basis. A student can only be considered SC/ST if they have a certificate from the government recognizing their status. In order to gain access to the reserved seating section, some students create false SC/ST certificates. As a result, we have seen phony candidacies, high-caste converts to SC, SC/ST adoptions, etc. Many groups in India hope to gain SC/ST status. *K.C. Basanth Kumar v. State of Karnataka*¹¹ predates *Indra Sawhney*, and it was already noted there that the reservation system posed a threat to a degenerating national character. Nowhere else do different social classes or castes fall in line to regress?

¹⁰ (1994) 4 SCC 401.

¹¹ AIR 1985 SC 1495.

The right to equality guaranteed by Article 14¹² is being violated by reservations. Reservations have created a class system in India that separates the country into general and ST, SC, OBC, and EWS. It's not fair to treat everyone the same. Each and every member of this country must be afforded the same protections under the law, and it is the responsibility of the government to aid the most disadvantaged of its inhabitants and neighborhoods, as outlined in this article. All people in the "generic group" are presumed to have stable incomes. However, there are members of society in general whose circumstances are worse than those of people who receive reservations, and for whom the latter just make things worse. Since EWS never conducts a survey, the information it provides is always the same.

"Everyone has the right to education. Technical and professional education should be widely available, and higher education should be merit-based. Social justice in the Preamble indicates greater good for more people without depriving legal rights.

Class 1 must be set aside with a 25% reserve for economically poorer and disadvantaged groups in accordance with Section 12 of the "Right of Children to Free and Compulsory Education Act." Many non-governmental organizations (NGOs) are now part of the reservation dialogue. If they provide a better service than government organizations do even with federal funding, mandatory reservation could affect their bottom line.

CONCLUSION

In order to advance, social groups that are relatively powerless or lagging behind need extra help from the rest of society. It is impossible for society to progress without some groups remaining stagnant. In terms of advancing underprivileged communities, reservations aren't the sole option, especially when it comes to top-notch academic opportunities. There appears to be no end in sight for the reserve policy. There have been no concrete measures taken sixty years after India's independence to determine the extent of reservation.

The quality of higher education is diminished by quotas of any kind. Under the stipulations of the policy, schools will establish "cut-off marks" for admissions. Low cutoffs are more common among students with learning disabilities. However, those from marginalized groups suffer when passing requirements are lowered. The result is less competition. When talented

¹² Article 14 The Constitution of India 1949.

students are held back by quotas, everyone loses. This slows development and costs the country money.

The 21st century is too late for education and national growth to be damaged by a preference for mediocrity over meritocracy. It is a Constitutional farce to provide quotas for historically marginalized groups. Now that the Constitution has been in place for 60 years, it is time to modify the reservation system to ensure that the best and brightest students, regardless of their social status, have equal access to higher education.

