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THE ROLE OF THE INDIAN CONSTITUTION IN ENSURING SOCIAL JUSTICE: THE CASE OF RESERVATION POLICY

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ABSTRACT

The Indian Constitution is a legal document that plays a very important role in promoting social justice, equality, and liberty. From various provisions of reservation policies, as during the time of independence, there were disadvantaged communities such as scheduled castes, scheduled Tribes, and other backward classes. This research paper basically examines the constitutional provisions that import that deal with the directive principle of State Policy and uplift the backward classes. This research paper basically examines the constitutional provisions that import that deal with the directive principle of State Policy and uplift the backward classes through this research paper. This paper tries to examine the evolution of reservation policies from the colonial period to the modern period post-independence.

There are various constitutional amendments such as the introduction of the OBC reservation. The Mandal Commission report from which the various OBC reservations and backward classes' dependency on the reservation policy are derived from this structure of the committee. It helped in shaping the present structure of citizens; there is equal access to justice for all the citizens of our country. There is a landmark case including *Indra Sawhney*¹ which introduced the concept of the creamy layer. Through this case, it reflects the Judiciary's role in helping the reservation policies for the welfare of the citizen. The research paper explores the impact of reservation on social issues and representation in education, public employment, and politics while the reservation has come during the independence of our country. Only reservation was for a certain time of not more than 10 years because at that time backward classes were very poor and uneducated. We will discuss about the criticism about the economic-based reservation, caste-based reservation, and lines on meritocracy. The role of the Judiciary is also very important in interpermeating and saving reservation policies through various judgements of constitutional provisions which help the welfare they are in need and to help them to demonstrate the judicial rule in refining the scope

¹ *Indra Sawhney Etc. Etc vs Union of India and Others, Etc. Etc AIR1993SC477*

and application of reservation.

KEYWORDS- Social Justice, Indian Constitution, reservation Policies, Directive principle of state policy (DPSP), Mandal Commission

INTRODUCTION

Social justice means the equal and fair, equal justice to all and rights of among all the members of the society. Social justice plays a vital role for safeguarding the individual's rights, fundamental duties. In India, the concept of Social Justice is important because of the deep-rooted social inequalities that have existed from the past Independence days when the constitution was made constituent assembly especially for those lower cast like schedule caste (SC) and schedule tribes (ST) faces several discrimination and exclusion. They were not treated equally in the society they are not able to enjoy their rights to live they were denied access to education employment and other basic rights to develop their mankind and for they are future welfare the concept of Social Justice is very important as it is deep rooted for the citizens of our country to develop their livelihood during the time of Independence backward classes were not equally treated in the society and they were not getting any type of rights freedom ,rights of vote , right to life with a personal liberty.

Role of the constitution- Constitution play a very significant role for that development of a country and a welfare for the citizens the Indian constitution which came into force on 26 January 1950 is a remarkable document that aims equal society for all among the members of the country. Our constitution provides equality justice Liberty for all its citizens to enjoy and leave the life with dignity from the constitution only we get to know about our fundamental rights. Duties are one of the major goals is to eliminate the social equality that existed for centuries particularly for backward classes and during that time there were very discrimination among all the members of society during that duration of time rich people get richer and poor people get poorer. The basic doctrine of the constitution is to strengthen the country in a single way and provide equal opportunity and justice to all the citizens DR. BR Ambedkar the father of the constitution and he was strong advocate for the rights of the oppressed and he ensure that communities like SC, ST and other backward class OBC had equal opportunity to participate in society the constitution includes specific provision to uplift this groups and reservation policies are one such mechanism to promote Social Justice at that time when constitution was made reservation policies were for the backward classes to enhance them and come them in a

upper level in wealth and education to develop their ability power to participate in society activities .

Significance of reservation policies

In year 2024 also reservation policies are there in India in this reservation policies provides a certain percentage of seats in education institution government jobs and political position for historically backward classes of SC, ST and OBC .This system is a way to correct the injustice of the past and create equal opportunity for the backward class people by ensuring².these communities have access to education employment and political participation reservation policies to promote social Justice and resume reduce backwardness among all the society of members of society.

CONSTITUTIONAL PROVISION FOR SOCIAL JUSTICE

Fundamental rights part 3 of the constitution- Fundamental Rights in article 12 to 35 is the basic backbone of the Indian Constitution constitution ensures human rights for all citizens and to enjoy they are rights freedom with liberty. our constitution basic human rights are equal to all respective of caste reason gender or economic status. There are several articles focus on communities all the provisions that are mention in constitution is a basic right of the individual of the society and helps in access to justice to all the citizens.

Article 14 right to Equality- Article 14 talks about equality before the law and equal protection of the law for all the citizenship this means that every person who ever is a citizen of India or *NRI* should be treated equally by the state. It deals with equal protection because it has been seen that every individual has the right to enjoy their life with fulfilment of their needs and equal opportunity in law. Equal protection this article deals with legal best for the reservation policy as they need special support to achieve equality³.

Article 15 prohibition of discrimination article 15 deals with discrimination on the basis of religion race, sex, place of birth. It talks about social Justice as it allows the state to make a special provision for the advancement of socially and educationally backward classes as well as SC and ST to help them in equal opportunity this deals with the reservation seats in

² Bakshi, P.M. (2018). The Constitution of India. Universal Law Publishing

³ Sukhadeo Thorat, Social Justice and reservation in India, in Social Exclusion and Justice in India 125, 134-38 (C. K. Chandramohan ed., 2018).

educational institution political parties government jobs in during, they have access to education from which they can get social and economic upliftment and they will get equal opportunity to live a good and wealthy life.

Article 16-Equality of opportunity in public employment article 16 basically deals with a guarantees equal opportunity for all citizen in matter of public employment it talks about him the employment of backward classes for the government jobs and reservation policy this article is critical is during that SC, ST and OBC have fear representation in government jobs which has historically be nominated by upper caste groups but now from this article backward classes can also get equal opportunity in jobs and to leave their life with wealth.

Article 46 -Promotion of educational and economic interest of SC ST and weaker section article 46 is found in the directive principle of state policy which are guideline for the state to follow in governance it is a type of rule that state may follow this article deletes the state to promote the education and economic interest for the SC ST and vehicle section of the society through they can get social justice. DPSP are not none just able they serve as guiding principle for the government event framing policy related to education employment and social welfare article 46 is the moral implementation reservation policy in education and government employment for the backward classes to enrich their live hood. The government provides special scholarship and help in education institution to ensure that children from this community can access equality education which is the option out of their rich due to financial crisis.

Special provisions for SC, ST and OBC- Political reservation article 330 and 332- The political reservation in this article shows that dear must be reserve seat in Parliament, Lok Sabha and state legislative assembly for ST SC and backward classes people article 330 talks about reservation seats for in Lok Sabha based on their proportion and in the population. article 332 reserve seat for SC and ST in the state legislature assembly for the same reason this provision ensure that community have a voice in the legislative process and able to influence law and policy that affect them.

HISTORICAL CONTEXT- British era early efforts for social upliftment the concept of reservation was also from the British colonial. In India, In the early 20th century the British introduced the policy to provide representation for backward classes in government jobs and legislative council these policies were given by the British government to different

communities to help some backward groups and gain votes in their administration. The Poone pact of 1932 this is an agreement between DR BR Ambedkar and Mahatma Gandhi it talks about that Dalits known as depressed classes were given reserve seats in Legislative board is a but within the General electorates rather than through separate electorates, BR Ambedkar place a very important role as an architect of the Indian Constitution. They believe in the need for action in upliftment for marginalized classes Ambedkar put the reservation system as a temporary but necessary to help schedule caste SC schedule tribes ST and other socially backward classes to overcome through discrimination, include specific provisions for social educational and political advancement of marginalized classes.

Post independence era- Constitutional provision for reservation

After India got independence in 1947 the famous of the Indian Constitution recognize the need to address the historical crisis of SC, ST and other backward classes. DR. B.R Ambedkar the chief architect of the Indian Constitution for provision that would promote social justice and equality for all the community and provide access to justice. The constitution of India which came into effect 95 provisions were there to uplift the socially and education backward classes and foundation for the reservation policy that followed⁴.

Reservation in education 93rd amendment in 2005 was passed enhancing that the government to provide reservation for OBC in funded education institution including institution like IIT and IIM that from this amendment all the educational places must provide unlimited seat for OBC backward classes this amendment lead to the introduction of the central education institution reservation in admission Act 2006 which reserve 27% of seats for OBC in higher education institution this was significant important step in promoting access to education for OBC and other backward classes.

Recent developments economically weaker section EWS reservation in 2019 that government introduced the third Constitution Amendment Act with provides for at 10% reservation in government jobs and education institution for economically weaker sex and EWS for the general category this was amazing policy as it was the first time that economic crisis rare than cast of community were used as the basis for reservation the EWS reservation was introduced to address the concern of an economically backward classes individuals or non-reserved

⁴ V.N. Shukla, The Constitution of India (M.P. Singh ed., 13th ed. 2017)

category is who did not benefit from exist caste based reservation this amendment was for those who were in position of a backward classes in general category. however, The Indra Sawhney case looked at many parts of the reservation rules in India, especially the 50% limit on reservations set by the Supreme Court. This limit was put in place to keep a balance between social fairness and merit. It has been challenged many times in court, with changes made to rules and practices. Even with these challenges, the reservation system is still an important way to support social equality, liberty, and to follow the Directive Principles of State Policy and Fundamental Duties stated in the Constitution. The legal changes show how India is adapting its methods to reach social justice.

Role of the judiciary in shaping reservation policies

The judiciary in India has played a key role in saving and refining reservation process over the years has played integrated constitution professional policy of Social Justice maintaining balances with other principles like equality and process of employment, there are several order that define the scope of nature and immigration which have the citizens to improve their lifetime with the reservation policies the keychains concepts of 50% on the creamy layer has salt to balance of met action with Merit and equality in contact for then education and employment needs, The court has ordered various conclusions on the principle for scheduled castes(SC) scheduled tribes(ST) in different contexts. The court has ruled that reservations cannot applied in promotion, ideas from backward groups are brought to an equal footing.

KEY SUPREME COURT JUDGEMENTS ON RESERVATION POLICIES

1. Indra Sawhney v. Union of India (1992)-The mandal Commission Case⁵

The Indra Sawhney Case, Commonly Referred to as the mandal commission case, is one of the most important judgements in the history of reservation policy in India. In 1990 the government led by prime minister V.P Singh, decided to implement the recommendations of the mandal commission, which called force 27% reservation for other backward classes OBC in public employment, this decision let to the national white protest and Matter was brought before the supreme court online judge bench on the supreme court made on judgement which late down several important principle regarding reservation Continuity of OBC reservation for OBC stating that the work permissible under article 16 of the Constitution this article allows the state

⁵ Indra Sawhney v. Union of India (1992 1992 AIR SCW 3682

to make provision for the reservation of appointment in public service that is not proper manner. 50% on the most important aspect of judgement was the 50% reservation the court stated that reservation public employment and education should not exist 50% of the total available seats such of this is the main judgement of the judiciary in this reservation policy is always your reservation do not compromise the right to equality and merit on the basis of caste sex religion. Creamy layer concept the judgement introduced the concept of creamy layer which refers to the economically advanced individual within the OBC category which are not eligible for reservation benefits the court held that the benefits of reservation should only go to the generally this advantage section within the busy group this concept was very helpful for the OBC category to enhance in their capability of different institution.

Ashoka Kumar Thakur v. Union of India{2008⁶} - The Ashoka Kumar Thakur case was a challenge to the constitutional amendment, which allowed for reservation for OBC in Central education institution like IIT and IIM the amendment later to the enhancement of the central education Institution and which provided 27% reservation for OBC in higher education and job employment in its judgement the supreme court stated that amendment at the act but is importance of excluding the creamy layer from OBC reservation sahitya Pramod Social Justice they must not be extended to economically advanced individual within the OBC category the code also rest in the 50% cap on reservation maintain that this limit must be respected in education to ensure fairness and equality

The Concept of Creamy Layer- One of the most important contribution of judiciary in reservation system is the introduction of the creamy layer the idea was first introduced in Indra case where the supreme court held that economically advanced individuals within the OBC category should not be eligible for reservation benefits the creamy layer concept to ensure that the benefits of reservation go to really backward classes in OBC the creamy layer exclusion on your reservation to OBC but not for AC and ST as the court recognise that SC and ST face social discrimination that economic status the introduction of the creamy layer concept was the step toward making reservation more equitable by excluding those who do not need them.

Balancing Reservations And Merits- the judiciary has played a very important balancing the need of reservation according to merits the court have held that in points of reservation to uplift

⁶ Ashoka Kumar Thakur v. Union of India {2008}

communities they also established the need to maintain merit best opportunity in public employment and education the introduction of the creamy layer concept and reservation are example of how the judiciary and educational institution the judiciary role in saving reservation policy it insurance data all that citizens of country will get equal fare balance and constitutional rights.

Impact of reservation policies

Social Justice refer to the fair and distribution of resources opportunity ,society this concept is tired to the historical realities of a caste based discrimination and economic best discrimination for the centuries the system of list certain community SC schedule cast ,schedule tribe ST, and other backward classes OBC limited there access to education employment and political participation .they are not able to get equal participation in any type of activities like in education politics and in job employment⁷.

In India the reservation policy is positive and the negative term, these policies have a strengthen in receiving the landscape of education employment and political representation particularly for community such as SC ST and OBC.

POSITIVE IMPACT

Increased representation in education- One of the most notable impacts of the resolution has been important increase in the endowment of SC, ST and OBC student in education Institution. Before the implementation of this policies many individuals from these committees were accurate form formal education especially higher education reservation in university college and other education. institution has allowed a greater number of students from disable background to access different opportunity according to their interest in field of education and jobs. this reservation policy held the cycle of illiteracy and provided upward social mobility for backward classes.

Employment opportunity- Reservation in public sector jobs has open doors for SC, ST and OBC many of them had not customarily excluded for such employment in the past. The representation of this groups in government jobs increased over the years that communities are the part of country and mysteries and for decision making process, to up held the SC, ST and

⁷ Justice and constitution in India by Sukhadeo Thorat – Offer an in-depth analysis of social justice and affirmative action in India.

OBC classes there are fixed number of seats for these communities this shift has not only provided economically stability to individual but also impound entire communities.

CHALLENGES AND CRITICISMS

Merit vs Affirmative Action- One of the main criticism of the reservation policy is the debate between the Eligible student and reservation based students there is a argue that reservation compromise the equality of education and Employment by giving opportunity based on caste rather than merit it is stated that deserving candidates from non-reserved category of less qualified in visual to get a higher marks to get a job or education this debate is obtained friend as contract between fairness to individual and fairness to historically background classes. Growing demand of reservation- in the recent year there has been a growing demand for reservation including that they are not in SC ST or OBC various communities jaats, Patel and Marathas they all are arguing to get reservation under the OBC category they two phase economic backward and social issue. The increasing demand for reservation from different groups have led to social tension and a complicated the policy landscape for which the reservation was made during the establishment of constitution.

CONTEMPORARY DEBATES ON RESERVATION

The reservation policy in India debate over the year new development and changes in society have led to discussion about them. How relevant and effective resolution policy today reservation policy is important but some of the lower backward classes, who are in a good economic position they are also enjoying the reservation policy this type of debate the cover various expected from the introduction of new types of reservation to argument for and again system.

EWS reservation 103 Constitutional Amendment Act 2019

In 2019 are most important change was made to the reservation system with the introduction of 103 constitutional Amendment Act this amendment. Are 10% reservation for economically weaker section unlike other reservation which were based on caste this reservation was aim to particularly and individual who are economically backward at the general category. This new EWS reservation applied to people who do not fall under category of SC ST and OBC but still face financial hardships⁸. To qualify for EWS benefits individual must meet certain income

⁸ The Constitution of India by P.M. Bakshi – Provides detailed explanations of constitutional amendments and landmark judgments on reservation on policies

criteria for example less than 3 lakh per year and not his own substantial properties⁹, this amendment among the shift in India's reservation policy as its reservation for economic inequality exist even among general categories. Several communities have begun demanding for the reservation system this demand have led to large scale protests and political movement with some state governments even attempting to granted reservation to those groups who are not eligible for it according to Indian Constitution it limits that total percentage of reservation to 50%. The supreme court held that constitutional validity of the EWS reservation in a landmark judgement recognising data economic backwardness.

CONCLUSION

To summarize, the Indian Constitution is an instrument of social justice, equality and liberty through the provision of reservation policies for the historically marginalized sections of the SC, ST and OBC. There is an attempt to bring these communities up and give them chances in the fields of education, job and politics. The transformation of reservation policies has undergone a long and tortuous path from the colonial period to present times which underwent several constitutional amendments and landmark case laws. It has also been observed that the judiciary is very crucial in the delimiting boundaries of reservations and merit and how reservations are meant to be applied in practice. Although reservation policies have encountered criticism, their implementation has enhanced the representation of marginalised communities in educational institutions and workplaces. However, the culture around affirmative action especially in the context of increasing calls for reservations, the relevance of reservation in modern times are some of deadlocked areas in India at the moment. The latest addition of EWS reservation in 2019 has brought about a radical change in the structure and conception of reservation as it addresses economic issues within the general category. The mechanics of the judiciary in implementing reservation policy while upholding fairness and equality to its citizens is key in the ongoing debates on reservation in India.

⁹ Ministry of Social Justice and Empowerment (2020). Annual Report. Government of India.