

Social Justice in Reservation: An Analysis

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Abstract

Reservation is one of the mechanisms of protective discrimination for eradicating the present institutionalized effects of past discriminations, through positive governmental steps awarding preferential treatment in favour of certain weaker sections of the society. Reservation is applied only in graded societies, where certain groups enjoyed more powers and privileges, while the other sections have been wholly or partially neglected. It involves encouragement sharing in favour of certain weaker sections of the society. It involves encouragement sharing of opportunities in the executive, legislative bodies, in educational institutions and in public services. Demand by the unprivileged classes to enjoy the same opportunities of the privileged class resulted in social conflict in the earlier stages. In course of time, the unprivileged section came to enjoy social, political and economic and other privileges on par with others. As per the Constitution of India, it is a temporary phenomenon used for some special achievement. In course of time, the unprivileged section came to enjoy social, political and economic and other privileges. Thus, everybody in the beneficiary categories Viz., Other Backward Classes in all India level, Backward Classes and Most Backward Classes in Tamil Nadu, Scheduled Castes and Scheduled Tribes did not enjoy the same status in the society. Due to the reservation policy, there are tremendous transformations in the social structure. It is evident that, there are noteworthy rich people among the backward and depressed castes. Similarly there are poor people in the forward castes as well. Not only that as per the Constitution of India, it is a temporary phenomenon used for some special achievement. In this research paper, an attempt has been made to examine and compare the concepts of exclusive reservation and creamy layer and to study the changing trends in the reservation policy towards social justice.

Introduction

The phenomenon reservation evolved during the British rule in India and emerged as a Constitutional provision in independent India. This Constitutional provision is based on caste and made to compensate the cumulative loss suffered for ages by the weaker sections of our society due to the various socio-cultural disabilities. The policy of caste based reservation is based on the concept of social justice. It is aimed to eradicate the institutionalized effects of the past discriminations, through positive governmental steps awarding preferential treatment in favour of certain weaker sections of the society. Reservation is applied only in graded societies, where certain groups enjoyed more powers and privileges, while the other sections have been wholly or partially neglected. It involves encouragement sharing of opportunities in legislative bodies, educational institutions and public services. The demand by the unprivileged classes to enjoy the same opportunities of the privileged class resulted in social conflict in the earlier stages. It has two hundred years history. From the time of First Communal G.O. in Tamil Nadu, it has had crossed one century. Since independence, the policy has been put into effect more than

seven decades. In course of time, the unprivileged section came to enjoy social, political and economic and other privileges. Thus, everybody in the beneficiary categories Viz., Other Backward Classes in all India level, Backward Classes and Most Backward Classes in Tamil Nadu, Scheduled Castes and Scheduled Tribes did not enjoy the same status in the society. Due to the reservation policy, there are tremendous transformations in the social structure. It is evident that, there are noteworthy rich people among the backward and depressed castes. Similarly there are poor people in the forward castes as well. Not only that as per the Constitution of India, it is a temporary phenomenon used for some special achievement. In this research paper, an attempt has been made to examine and compare the concepts of exclusive reservation and creamy layer and to study the changing trends in the reservation policy towards social justice in Tamil Nadu.

Constitutional Provisions for Communal Reservation in India

After independence, Constitutional steps were undertaken to eradicate all kinds of social evils. The new Indian Constitution serves as mechanism of governing the country and a potential instrument for social transformation. The concept of social justice was the main intention of the Constitution. In that context, the Indian Constitution aims at the reduction of disparities between the high and low status people and the establishment of an egalitarian form of social structure.

The Preamble of our Constitution, has guaranteed social, economic and political justice. Ex-Criminal Tribes, Scheduled Castes (SCs) and Scheduled Tribes (STs) together constituted one-fourth of the total population of India. These groups were the most backward sections of the total population. It became the bounden duty of the state to raise their standard on par with the rest of the society. The policy of preferential treatment otherwise known as protective discrimination in favour of the weaker sections enables them to get relief from the age-old inequalities. It refers to the reservations and special privileges to be provided to socially disabled castes in the fields of education, government employment opportunities and political representation under Constitutional sanctions by the Government of India. It is mainly evolved to improve the socio-economic and cultural conditions of the weaker sections.

Besides reservation, provisions are made to remove social disabilities and to promote their welfare and interests. Among all the upliftment measures, reservation of seats plays a dominant role and overriding technique. Clause (4) of Arts 15 and 16 empower the State Governments to make reservation in the educational institutions and employment opportunities in favour of the backward communities. Art. 46 again facilitate the promotion of education and economic interests of SCs, STs and other weaker sections. Further, Art. 330 provides facility for reservation to SCs/STs in the House of the People and the Art. 332 provides facility for reservation in the Legislative Assembly of the States. Reservation has been marked in Art. 331, it ensures the representation of the Anglo-Indian Community in the House of the People and Art. 333 provide reservation in the Legislative Assembly of the States. The Arts. 340, 341 and 342 empower the President for considering the elevation of weaker sections of the population. Along with the reservation of seats in the educational institutions, public employment opportunities and Legislative bodies, provisions are enshrined in the Constitution to achieve social justice. Equality before law (Art.14), prohibition of discrimination on grounds of religion, race, caste, sex, place of birth (Arts. 15 and 16), abolition of untouchability (Art. 17), protection of life and personal liberty (Art.21), prohibition of traffic in human beings and forced labour (Art.23), protection of interests of minorities (Art.29), state to secure a social order for the promotion of welfare of the people (Art.38), certain principles to secure equal economic opportunities by the State (Art.39), equal justice and free legal aid

(Art.39A), right to work, to education, and to public assistance in certain cases (Art.41), reservation of seats and special representation to cease after thirty years (Art.334), claims of SCs/STs to services and posts (Art.335), special provision with respect to educational grants for the benefit of Anglo-Indian community (Art.337), Special Officer for SCs/STs, etc. (Art.338), control of the union over the administration of Scheduled Areas and the welfare of STs (Art.339) and the people of SCs/STs (Art.366) are enshrined in the Constitution to achieve social justice. Among all privileges, reservation has been considered as the major factor for advancement. It is considered to be a means to an end.

Efforts to Identify the OBCS

From 1870 onwards, the description of 'Backward Classes' was commonly applied to various sections of the population which included SCs, STs, Excriminal Tribes and other SEBCs. Before independence, the question of SCs was roughly settled down within the Executive and without the participation of the courts. But the question of BCs would be the post-independent problem. The terms SCs/STs were clearly defined in the Constitution. According to the Indian Constitution, the backward categories of the population were divided in to three segments Viz., SCs/STs and OBCs. There was no concrete principle regarding the question of identification of OBCs.

Since backwardness was due to lack of adequate opportunity, self, development, in economic life and in matters of health, housing and education, it was measured in terms of low levels of income, the extent of illiteracy and the low standard of life revealed by living conditions. Art. 340 of the Constitution empower the President of India to appoint a commission to determine the criteria for identifying the OBCs, to investigate their conditions and to recommend measures for uplifting them. To identify the OBCs in all India level, the Government of India appointed the first Backward Classes Commission on 29th January, 1953, under the Chairmanship of Kaka Saheb Kalelkar and nine other members. But the Commission failed in its mission. So, the task was left to the State Governments.

Mandal Commission and Its Recommendations

After 22 years, all India second Backward Classes Commission was appointed under the Chairmanship of B.P.Mandal on 20 December, 1978 during the time of Morarji Desai to identify the Socially and Educationally Backward Classes (SEBCs). The Commission circulated questionnaires among the general public, two-third of the respondents favoured caste as criteria and stressed the increase in the quota and demanded more educational concessions, to the children of OBCs along with welfare measures for them. From the Survey, the Commission framed 11 indicators under three heads Viz., social, educational and economic, to identify the OBCs or SEBCs. The Report was submitted on 31 December 1980 in 7 Volumes and 2 Parts. 10 years it was in cold storage.

On 7th August, 1990, V.P. Singh, the then Prime Minister, implemented the Mandal recommendations. By which 27% of seats were reserved for OBCs in central public employment opportunities and 22.5% of reservation for SCs/STs continued. Agitations and struggles were there in North India. But, the then P.M. was not ready to give up. Many cases were filed. Supreme Court transferred all the related cases to deal by itself. On 11th September, 1990, Supreme Court ordered the Government not to take any further step regarding the implementation of the Mandal recommendations.

The Supreme Court was forced to involve in the reservation issue in the famous Indira Sawhney Vs Union of India or popularly known as the Mandal Case. The judgment was delivered on 16th November, 1992. Mandal recommendations were accepted but subject to the exclusion of the Creamy Layer of the

eligible castes from reservation benefits. There comes the concept Creamy Layer into the practice. Creamy Layer was interpreted by the court as 'socially advanced persons and sections from Other Backward Classes'.

Aim behind the Introduction of the Concept of Creamy Layer

Some members of the OBCs are socially, economically and educationally advanced. They do not allow the benefits of reservation to reach the truly backward members of that class. By no means such advanced could not be treated as backward. The concept of Creamy Layer is to treat them advanced among the OBCs. It is applied to the individual not to the community as a whole. Income is fixed as the criteria. The cardinal aim of Creamy Layer is, benefits of communal reservation should reach the really needy or backward.

Creamy Layer - Identification Criteria

To identify the Creamy Layer, an expert committee was appointed by the Central Government under the Chairmanship of Ram Nandan Prasad, a former judge of the Patna High Court, which had as its members M.L. Sahare, former Chairman of the UPSC, P.S. Krishnan, former Union Welfare Secretary, and R.L. Majitha, former Chairman of the Rajasthan Revenue Board. The Committee was formed on 23rd February. It submitted its report on 16th March, 1993, in the Parliament and on the same day, it was accepted. The Committee specified certain positions to qualify the rule of exclusion on the basis of income.

The children of the following positions are excluded from the benefits of reservation in all India level employment opportunities.

1. The Constitutional posts Viz. President, Vice-President, Judges of the Supreme Court and High Court, Chairman and Members of the UPSC, State Public Service Commission, Chief Election Commissioner, Controller and Auditor General of India, Governors, Ministers and Members of Legislatures,
2. Under Service Category, it covers Class I/II officers of Central and State services under direct recruitments, employment in Public Sector Undertakings includes banks, insurance organisations, Universities, etc. and equivalent positions in private employment,
3. Armed Forces - either parent of whom is at the level of colonel or above in army or at equivalent posts in Navy or Air-Force or the Para- military forces,
4. Professional classes include Doctors, Lawyers, Chartered Accountants, Income Tax, Financial or Management Consultants, Dental Surgeons, Engineers, Architects, Computer Specialists, Film Artists, Media Professionals, Film Professionals, who engaged in trade, business or industry here it will apply according to the criterion of wealth/income.
5. Property owners - owners of the irrigated lands to the extent of which is equal to or more than 85% of the statutory ceiling are

-Owners of plantations like coffee, tea, rubber, etc.

-Owners of vacant land or buildings in urban areas.

Their children will be excluded according to the criterion of wealth/income. At the beginning i.e., in March 1993, the income ceiling was fixed at Rs. One lakh and in September 1993, it was increased to Rs. 2.5 lakhs. At present, the income ceiling is fixed at Rs. 6 lakhs. If they hold the positions for three consecutive years or the income limit is Rs. 6 lakhs, then they would be considered as creamy layer and

excluded from enjoying the benefits of caste based reservation.

According to the report of the Ram Nandan Pasad Committee, the Mandal recommendations were implemented excluding the Creamy layer among OBCs. There is a strong element of economic criterion in the guidelines formulated by the Committee. There arose the question as to whether economic advancement ensures social advancement. In one of the Supreme Court verdicts, it is pointed out that "the basis of exclusion should not be merely economic, unless, of course, the economic advancement is so high that it necessarily means social advancement". Because of the absence of the guidelines for evaluating social backwardness, the Committee evolved the guidelines on the basis of economic and occupational backwardness. The main aim of Creamy Layer is caste based reservation should reach the poorest among the backward castes. Subject to the Creamy Layer criteria, Mandal Commission recommendations were implemented. Accordingly 27% of all India level employment opportunities are reserved for OBCs.

Reservation in Tamil Nadu after the First Amendment

As soon as the insertion of the Clause 4 of Arts.15 and 16 which paved the way for the formulation of new reservation scheme in Tamil Nadu. According to the revised policy, 15 per cent of seats were reserved for SCs and STs, 25 percent for BCs and 60 for others.³⁵ After the Re-organisation of States in 1956, on the basis of language, the reservation policy was again revised in proportion to the population of SCs and STs. Accordingly, 16 per cent of seats were reserved for the SCs and STs, the existing 25 per cent was maintained for the Backward Classes and for the open category, it was reduced to 59 per cent.

First Backward Classes Commission in Tamil Nadu and Reservation

In 1969, a Commission was constituted under the Chairmanship of A.N. Sattanathan to improve the condition of the Backward Classes. The report of the Commission was submitted in 1970. As per the recommendations of the Commission a new reservation system was implemented on 7 June, 1971. Accordingly, 18 per cent of seats were reserved for SCs and STs, for the BCs, it was raised from 25 per cent to 31 per cent and for the open category it was reduced from 59 to 51 per cent.

Exclusive Reservation to MBCs in Tamil Nadu

In February 1980, the AIADMK Government of Tamil Nadu increased the reservation of seats from 31 to 50 percentage. Thus, the total reservation was increased to 68 per cent (18% to SCs & STs and 50% to BCs). After the 1988 Presidential rule, the DMK Party won the election. After assuming power, the DMK Government fulfilled the demands of Vanniars. It granted 20 per cent exclusive reservation to MBCs and Denotified Communities within the 50 per cent reserved seats of OBCs. They thought that their community would be treated better due to the fixation of 20 per cent of exclusive reservation set apart for them. According to a judicial verdict of 1990; one percent of seats was reserved for STs exclusively. So, the opportunities of open category were reduced from 32 to 31 per cent.

Exclusive Reservation to Arunthathiyars (SC (A)) in Tamil Nadu

For the past two decades, scenario has been changing in the reservation policy of Tamil Nadu. In Tamil Nadu, since 1921 this policy has been in practice to achieve the egalitarian form of society. Hence, from 1921 onwards general criteria have been fixed to uplift the depressed and backward section of the society. But for the recent two decades, that trend has been changing in the reservation scheme in Tamil

Nadu since developments have occurred among the beneficiaries of reservation scheme. Government has started studying the beneficiaries of the scheme section wise. Such kind of analysis paved the way to identify the most backward groups within the broad categories. One such attempt was made and Arunthathiyars among the Scheduled Castes were identified as non-beneficiaries of the reservation scheme. Accordingly, the then Government of Tamil Nadu enacted an Act, which is called the Tamil Nadu Arunthathiyars Act, 2009 or Tamil Nadu Act 4 of 2009. Subsequently a G.O. was passed with modified roster to enforce the said Act. As per the Act reservation to Arunthathiyars on preferential basis within the reservation available for Scheduled Castes and the said Act came into force with effect from 29th April, 2009. Here the Arunthathiyars category include the castes Arunthathiyar, Madari, Madiga, Pagadai, Thoti and Adi Andhra within the list of 76 Scheduled Castes notified by the President of India under Article 341 of the Constitution of India by the Constitution (Scheduled Castes) Order, 1950 as amended from time to time. In the 100 points roster 18 per cent seats are reserved for SCs. Among the 18 per cent, exclusively 3 per cent seats are reserved for the Arunthathiyars alone. That too, they are given first preference in the roster. It shall be offered in the rotation of 2, 32 and 66. This reservation is implemented in Educational Institutions including Private Educational Institutions and of appointments or posts in the Services under the State within the Reservation for the Scheduled Castes. It is a welcome move done by the Government of Tamil Nadu. This shows a radical change in the implementation of the reservation policy in Tamil Nadu. The same strategy should be adopted to study and filter the highly benefited section of each category.

Exclusive Reservation in Tamil Nadu State Employment Opportunities to Persons Studied in Tamil Medium

Another drastic change in the reservation scheme was candidates studied in Tamil Medium are given preference for direct recruitments made under the Tamil Nadu State Government by passing a G.O. on 30th November, 2010. Accordingly, 20 per cent of the seats are allotted in the direct recruitments for Persons Studied in Tamil Medium (PSTM) in the respective reserved category. For which the Government released the roster along with the G.O. Subsequently an Act was enacted and it is known as Act No. 40 of 2010. In 2014, the then Governor of Tamil Nadu made the amendments to recruit the Persons Studied in Tamil Medium on preferential basis and it was given effect thereby in the services under the State of Persons Studied in Tamil Medium.

Exclusive Reservation to Students Studied in Tamil Medium Government Schools

Another similar change was preferential treatment has been applied in the professional education also. A G.O. was passed in 2020 to reserve 7.5 per cent seats on preferential basis, to the students who have studied from sixth to twelfth standard in the State Government schools, in the admission to M.B.B.S., B.D.S., B.S.M.S., B.A.M.S., B.U.M.S. and B.H.M.S. courses provided they qualified in the National Eligibility-cum-Entrance Test (NEET). This shall be provided in each category of vertical reservation followed in the State of Tamil Nadu within the 69% reservation from the academic year 2020-2021. In the subsequent year, an Act was passed to provide for preference in admission to undergraduate professional courses in Universities, Government colleges and Private colleges for the students who studied in Government schools. Accordingly, 7.5 per cent of the seats are reserved for them in all undergraduate professional courses in Tamil Nadu in their respective category.

Conclusion

The cardinal aim of reservation policy is to break the caste rules and regulations and to bring all people together for social intercourse in all walks of life. It enables the downtrodden sections to get their due share in the educational institutions, public employment opportunities and legislative bodies. It has been helping the suppressed people to have a standard life and make their livelihood. Definitely reservation policy played a vital role along with allied schemes in Tamil Nadu. More than 2000 years old rigid caste institution became a flexible one. In Tamil Nadu, as analysed above now and then beneficiary groups have been studied and exclusive reservation has been introduced in existing reserved groups. This shows that instead of filtering the benefited groups in the reserved category, the State Government identified the backward among the reserved category by adopting various strategies and criteria. It is a great transformation in the caste based reservation policy and a boost towards the aim to achieve social justice. Since this caste based reservation plays a vital role, political parties also sided with the castes in order to utilize the vote banks of each caste. Hence, in Tamil Nadu, instead of identifying the creamy layer, the government has been applying the criteria like sub-classification of the existing beneficiary groups of reservation, importance to Tamil language, etc. In all India level also, Caste based reservation has been applied more than seven decades after independence. But the benefits of reservation have gone mostly to the few top castes among the reserved respective categories. So, automatically the layer of upper crust has been increasing in each caste benefited out of it. In order to prevent exploitation among the beneficiaries, the concept called Creamy Layer was introduced in central government opportunities. The income criterion is considered as one of the parameters to identify the socially, educationally and economically advanced among the SEBCs. It helps to give the privilege to the really backward. It is applied only in employment and educational opportunities of OBCs. Permanent income holders' children are affected in utilising the employment opportunities by this concept called Creamy Layer whereas the children of merchants, landlords, and business people escaped from this rule. They easily show their changed income according to the ceiling fixed by the Government. It has also to be checked. Creamy Layer is meant for the welfare of poor sections of the SEBCs. The concepts of Exclusive reservation or sub-classification of the existing categories and creamy layer are mainly aiming for social justice.

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