

RESERVATION- A NEED OR A MERE TRADITION**BY- RACHIT SHUKLA****ABSTRACT**

According to one of the definitions given by google, reservation means the act of reserving something or someone. According to indian context when there is any such person who is not parallel to the others in the society then there arises a need of reservation. Accordingly there is a reservation system in india to uplift those persons who were not considered a part of society. In india reservation is given to schedule castes, schedule tribes and the other backward classes. These reservation has been made available to them because before independence there were no such incidences where it was found that these people were socially and educationally uplifted. Also there arose a need for reserving the women because they were not allowed to work by the society. Reservation is an inseparable part of our indian constitution because even the basic doctrine structure supports reservation. Reservation helps those persons who were not considered a part of the society to be a part of the society and bring them to the level of those persons who are socially uplifted. But after the introduction of reservation in the india, as per the current scenario it has been a tool to a vote bank politics and rather than emphasizing on those persons who actually need it has been seen that it is given to those persons who are actually uplifted in certain instances. Thus reservation has been a tool which can bring every person to an equal cap, but the political scenario in the present governance is such that the actual motive of the reservation seems to fade.

HISTORY

The sources of the Hinduism says that the Hindu society is divided into four varnas or classes and one of the most important sources of them is the rig veda wherein the classes of the people are defined where the highest class belongs to the Brahmins followed by kshatriyas followed by the vaishyas and then the lowest class is the shudras. According to the ancient sources it is seen that the top three class of people had respectable work to do and the lowest category had the most inappropriate work to perform. There were several incidences where it was seen that they were not accepted by the society, even there were several charges of

crimes against them. In many incidences it was seen that they were forced to work against their will. Also it was seen that the work was defined by the caste they belong to. The Brahmins were considered to be the purest while the shudras were considered to be the most polluted. According to American economist Thomas sowell he has also written in one of his books that an untouchable girl had her ears cut off for drawing water from the upper caste well.

After the world war I, the british government in india needed the support of the Indians and so made efforts in that direction and so a simon commission was appointed wherein all the members of the panel were whites. They took a trip around the country to find out about what was the actual problem pertaining to india and in one of its report it was found that it needed to safeguard the minorities and the disadvantaged people in the society because the report made it clear that it was not a problem of caste but a political issue.

In the second round table conference ambedkar and srinivasan joined also mr. Gandhi joined the conference where ambedkar supported the depressed classes while Gandhi represented the harijans. There was a conflict of views between them and at the third round table conference it was also accepted by Gandhi that separate electorates shall be given to those depressed class.

While the constitution was being framed it was seen that every person shall not only be given equality of law but also be deprived of equal protection of law. Here to bring equality was not an easy task after the independence because there was a vast difference in the people scattered over the country. To bring equality first everyone has to be brought to the same level and that was only possible with the system of reservation. Because without reservation the depressed class would remain at the same juncture as in the past and so even in the constitution it has been guaranteed that there shall be a reservation in the same context.

CONSTITUTIONAL VALIDITY

In the indian constitution article 15 states that there shall be no discrimination on the basis of caste, sex, race, religion or place of birth which clearly states that every person is equal in the eyes of law and shall have no discrimination on the same.

Article 15(4) states that Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

which clearly states that there a reservation made in context of the schedule caste and the schedule tribes and also when the mandal commission submitted its report in the year 1991 it was made to amended that there shall be a reservation for the other backward classes which shall be 27% and the reservation which was given was 12.5% to the schedule caste and 7% to the schedule tribes. Because it was held by the supreme court that the reservation shall not exceed 50% because it would violate article 14 of the constitution

Also provisions are made in article 16,23,29,30,335,338,340,341 and 342. All these provisions of the constitution relate to reservation, protection and safeguards in public employment in respect of the persons belonging to the schedule caste, schedule tribe and the other backward classes.

POSITION UNDER INDIAN LAW

After the independence when the idea of reservation was brought to picture it was brought with the intention to upheld those persons who were not given equal opportunities and the reservation was to be there only till the period of 10 years and subsequently the reservation was to be removed but later on it became a medium of vote bank politics and so instead of removing the reservation policy the government started favouring it and thus there were many judicial decisions made in the context the first of the judgement was (State of Madras Vs. Smt. Champakam Dorairanjan AIR 1951 SC 226)

Wherein the court held that caste based reservations as per communal award violates article 15(1). Afterwards the judgement related to as to what shall be the extent of reservations and in the judgement of M R Balaji v Mysore AIR 1963 SC 649 it was stated that Almost all states except Tamil Nadu (69%, Under 9th schedule) and Rajasthan (68% quota including 14% for forward castes, post gujjar violence 2008) has not exceeded 50% limit. Tamil Nadu exceeded limit in 1980. Andhra Pradesh tried to exceed limit in 2005 which was again stalled by high court. And the most important case of indira sawhney vs union of india AIR 1993 SC 477

The 9-judges constitution bench of the supreme court by 6-3 majority gave the following judgements :-

1. Backward class of citizen in article 16(4) can be identified on the basis of the caste system and not only on economic basis
2. Article 16(4) is not an exception of article 16(1). It is an instance of the classification. Reservation can be made under article 16(1).
3. Backward classes in article 16(4) were not similar to as socially and educationally backward in article 15(4).
4. Creamy layer must be excluded from the backward classes.
5. Article 16(4) permits classification of backward classes into backward and more backward classes.
6. A backward class of citizens cannot be identified only and exclusively with reference to economic criteria.
7. Reservation shall not exceed 50%.
8. Reservation can be made by the “EXECUTIVE ORDER”.
9. No reservation in promotion.
10. Permanent statutory body to examine complains of over-inclusion/under-inclusion.
11. Majority held that there is no need to express any opinion on the correctness or the adequacy of the exercise done by the MONDAL COMMISSION.
12. Disputes regarding new criteria can be raised only in the supreme court.

ANALYSIS

After the indira sawhney judgement it was clear that the reservation shall not exceed 50% and reservation shall only be given on the basis of social and educational backwardness as the 9 bench court have found out that social backwardness has to be seen and also if the person is educationally or economically backward than that backwardness shall arise from social backwardness. The view behind mandal commission providing 27% reservation to the OBC category was that there were many caste which were not covered under the schedule caste and schedule tribes and so the OBC shall get advantage but according to the current scenario there is generally a lot of persons wanting for reservations and these has led to the backwardness of people from general category and due to vote bank politics this is found in those groups who are found in dominating position in that particular state. The patels in

Gujarat ,the jats in Haryana, the gurjars in rajasthan. And the state of tamil nadu has a reservation of 69% but there is a population of 87% who are SC,ST or OBC.

But according to the present situation of the country there are many people who still enjoys reservation even though he is socially, educationally or economically uplifted. The reservation was brought to uplift the persons who were not recognized by the society but still there are so many people who still avail the benefit even though they are not in need of the reservation. And thus such measures shall be taken wherein those persons who are not in need of the reservation shall not be given reservation in that place those who actually need shall be reserved. Accordingly if measures shall be taken then a committee shall be made which shall not have political influence and that committee shall conduct a survey where those persons shall be found out who comes under the SC/ST category or the OBC category and if there are such persons who is socially, educationally or economically uplifted then in place of such persons the persons who are in need of the reservation shall be reserved.

The system was brought after independence and the concept was to uplift those persons who were not considered a part of the society and the system was to adopted for a period of 10 years and slowly and gradually it was to be shut down but instead due to politics it went over for the benefits and votes of the politicians and thus even nowadays these system divides everyone into two classes i.e the higher class and the lower class. Reservations shall be there as it is in our constitution and by removing reservation even the basic doctrine of the constitution also affects and thus reservations shall be given but on the basic of economical backwardness rather than social or educational backwardness because at the time of bringing the criteria socially and educationally backwardness the intention was that it was assumed that if the person is socially or educationally backward then he shall also be economically backward but after the 21st century the scenario has changed even the ideologies of the people have changed. Nowadays if any person has economically sound background then even comes under any category he shall be awarded respect. And amendments shall be brought to the laws where even the judgements of the shall be kept in mind. The reservation quota shall not exceed 50% but EBC shall be included where a certain amount of reservation gets cancelled from the SC/ST and the OBC category because to bring uniformity every caste shall be equal no discrimination shall take on the basis of caste and those in need of reservation to upbringing themselves to the society shall also be benefitted through these.

But the system is misused many a times because a socially uplifted gets reservation and the needy general category does not get any benefits and thus this makes the reserved people more special or higher than the general category. And thus the system of reservation turns out to be a positive discrimination to uplift those individuals who are in need of the reservation but many a times it fails to benefit neither the general person nor any backward person because they are unaware about how to avail the benefit of reservation.

CONCLUSION

According to Dr. Ambedkar the system of reservation is that system which shall uplift those person who are not recognized by the society and make them a part of the society but instead these have turned on to those persons of the creamy layer who avail the benefit and even the government support those persons for the purpose of vote bank politics. But reservation has been brought to the democracy of india so as to make every person equal in the society but sometimes due to bad influences these makes the system a curse rather than a boon. But even as per our country's growth the growth shall also sustain but many a times the benefits are not availed due to scarcity in that particular field. The main fault lies with the government because nearly 33% of the SC/ST votes in the election and if changes are made than the vote bank collapses and government shall even fall and thus every person shall not enjoy his rights even in the country of largest democracy.

JUS IMPERATOR