Reservation in Services

Karnjit Kaur
Assistant professor
Dept. of Law, Rayat & Bahra University (Mohali Campus)

ABSTRACT- Indian Constitution is always described as one of the most rights based Constitution in the world. It has clear cut provisions for social justice. The preamble makes explicit an in bold letters, the resolve of the system to constitute India into a "socialist, secular democratic & republic", with a view to securing social, economic, and political justice, equality & liberty and above all the dignity of the individual. Translating these (provisions) general principles into concrete legal proposition, part III of the Constitution guarantees certain fundamental rights to the individuals. Among these rights, there is right to equality in its various aspects, including the authorization of the state to make provisions for benefit of the downtrodden under privileged sections of the society, most commonly backward classes, schedule castes and schedule tribes, collectively, these provisions are called the constitutional policy of 'reservation'.

Keywords: Reservation

Introduction- When an injustice has been committed to group reparation must be made to that group. Group rights to compensation are not rights against wrongdoers but against the society as a whole. The obligation to offer such benefits to the group as a whole is an obligation that falls on society in general, not on any particular person. For it is the society that through its established social practice brought upon itself the obligation. __ American Philosopher Paul W. Taylor

The Indian Constitution is always described as one of the most rights based Constitution in the world. It has clear cut provisions for social justice. The preamble makes explicit an in bold letters, the resolve of the system to constitute India into a "socialist, secular democratic & republic", with a view to securing social, economic, and political justice, equality & liberty and above all the dignity of the individual. Translating these (provisions) general principles into concrete legal proposition, part III of the Constitution guarantees certain fundamental rights to the individuals. Among these rights, there is right to equality in its various aspects, including the authorization of the state to make provisions for benefit of the downtrodden under privileged sections of the society, most commonly backward classes, schedule castes and schedule tribes, collectively, these provisions are called the constitutional policy of 'reservation'.

Meaning and objective of 'Reservation'

Reservation is the policy of a carrying out corrective, ameliorative measures and strategies for removing the cumulative disadvantage of socially, educationally economically disadvantaged groups of population and bringing them at par with the rest of the population.

The basic object of reservation seeks to compensate people unfavorably located in scheme of resource endowment for the loss incurred on account of their exploitation and stagnation. It seeks to right past wrongs as it is wedded to the task of reducing the weight of the past to facilitate appropriation of the benefits of the present. In other words, the object of reservation is to speed up the establishment of a representative and unprejudiced workforce in addition to assist those who were in the past derived by unfair discrimination to fulfill their highest potential.

Constitutional policy of 'Reservation in services'

Constitutional policy of 'Reservation' is a method to achieve social equality in the country. Recognizing and acknowledging the fact that persons belonging to schedule castes & schedule tribes have suffered intense and extensive social and economic discrimination because of the caste system and the women being victims of irrational prejudices and on account of this they have labored under and suffered from severe handicaps particularly in the field of employment, the framers of Indian Constitution have incorporated into the constitution itself special provision for their upliftment and equal participation in services. This was done by providing for reservation for these classes in matter of public employment/services. For better understanding, we can divide it into following categories:

(a) Reservation in services in favour of women: Article 15(3)

(b) Reservation in services in favour of socially and educationally backward classes or schedule tribes: Article 15(4).

(c) Reservation in appointment or posts in favour of Backward classes not adequately represented in service under the state: Article 16(4).

(d) Reservation in matters of Promotion: Article 16(4) A
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(e) Reservation- 'carrying forward' of reserved Vacancies: Article 16(4)B.

(a) Reservation in services in favour of women: Article 15(3) "Historically discloses the fact that woman have always been dependent on man. He established his control at the outset by superior physical strength and this control in various forms, with diminishing intensity has continued to the present. Education was long denied to her and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and consequent increase of capacity for business affairs (services/employment) it is still true that in the struggle for subsistence she is not an equal competitor to her brother. She will still be where some legislation to protect her seems necessary to secure a real equality or right.

In our country, the constitution makers while drafting the Indian Constitution were aware of the problems faced by women in favour of women to make up for their backwardness which has been their age old destiny.

Article 15(3) of the constitution specially provides that nothing in this Article shall prevent the State from making any special provision for women and children.

This Article recognizes the fact that women in India have been socially and economically handicapped for centuries and as a result thereof, they can't fully participate in socio-economic activities of the nation on a footing of equality. The purpose of this Article is to eliminate socio-economic backwardness of women and to empower them in such a manner as to being about effective equality between men and women. The scope of this Article is wide enough to cover the entire range of state activity including that of service matters.

Case Law:

Indra Sawhney v. Union of India, In this case the Supreme Court favoured the approach of keeping certain quota of jobs for women in each respective category of reservation. Justice P.B. Sawant observed that: “Women are vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. Hence, reservation for them on that ground would be fully justifiable and it will be protected under Article 15 (3) of the Constitution.”

(b) Reservation in services in favour of socially and educationally backward classes or schedule castes and schedule tribes: Article 15(4) caste has divided this country for ages. It has hampered its growth. To have a casteless society will be a realization of a noble dream, It is significant that Constitution does not specifically prescribe a casteless society nor tribes to abolish caste. But barring discrimination in the name of caste and by providing for reservation, it seeks to remove the difference in status among castes. When this difference will be removed, all castes will become equal.

The Constitution of India, which is premised on this ideology sets the society open and assures equality of opportunity in services. By way of reservation in services for backward classes, schedule castes and schedule tribes, the constitution has tried to liberate them so that they can climb up the ladder of economic equality and stake their claim to higher status and accompanying privileges.

Article 15(4) of the Constitution specifically provides 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 or educationally backward classes of citizens or for the schedule castes and schedule tribes.

To tide over the difficulties created by decisions not allowing provisions beneficial to these classes on the ground of Article 15(1) this Article was added in 1951 by constitution (1st Amendment) Act 1951. However, this is only an enabling provision. It merely confers discretion on the state to make such provisions.

Case Laws:

M. R. Balaji Vs. State of Mysore, In this case the Supreme Court held that backwardness under Article 15 (4) must be socially and educationally. The caste of a group can't be the sole or even predominant basis to ascertain whether that class should be taken to be backward for the purpose of Article 15 (4). As regards the social backwardness the determining factor would be the result of poverty. One's occupation and place of habitation could be other relevant factor.

Indra Sawhney v. Union of India, In this case the Supreme Court dealt with the matter of reservation very exhaustively and observed that reservations can be provided under Article 15(4) in educational institutions as well as in other walks of life like appointments/posts in services etc. But overall reservation in a year should not be more than 50% and creamy layer should be excluded while granting benefit under Article 15 (4) and classification should not be on the basis of caste but on the ground that the castes is found to be a backward class both socially as well as educationally.

(c) Reservation in appointments or posts in favour of backward classes not adequately represented in services under the state: Article 16(4) of the constitution provides that nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.
Although Article 16(4) has an overriding flavour as it starts with non-obstante clause but it is only an enabling provision. Reservation for backward classes in services is not a mandate rather it is the prerogative of the state. It confers no right on citizens to claim reservation. Article 16 (4) has been held to be not mandatory.

Case Laws:

Janki Prasad Parimoo v. State of J&K. In this case, the Court observed that the term 'backward class' as used in Article 16 (4) takes within its fold schedule castes and schedule tribes and to qualify for being called a backward class citizen under Article 16(4), one must be a member of socially and educationally backward class.

Indra Sawhney v. Union of India. In this case the supreme Court observed that since Article 16 (4) do not contain qualifying world 'socially' and educationally as does Article 15(4), it is not correct to say that backward class of citizens under Article 16(4) are the same as the socially and educationally backward classes under Article 15(4). The Court further observed that a backward class can be identified on the basis of occupation cum income without any reference to caste.

Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association. In this case the Constitution Bench of the Supreme Court has observed that in single post cadre, reservation at any point of time on account of rotation or roster is bound to bring about a situation which such single post in the cadre will be kept reserved exclusively for the members of the backward classes is not permitted within the Constitutional framework.

Ajit Singh v. State of Punjab. In this case the Supreme Court laid down that it is by now a proposition well settled, that at the super specialty level in particular and even at the Post-Graduate level reservations of the kind known as 'protective discrimination' in favour of those considered to be backward should be avoided as bring not permissible.

(d) Reservation in matters of Promotion: Article 16 (4A)

Article 16(4A) was added by 77th Amendment to the Constitution in 1995 & later on amended in the year 2001 by 85th Amendment. The Article as it stands today is : Nothing in this article shall prevent the state from making any reservation in matters of promotion, with consequential seniority to any class or classes of posts in the services under the state.

Thus by amending the Constitution the Parliament has removed the base as interpreted by S.C in Indra Sawhney's Case that the 'appointment' does not include 'promotion'. Therefore it revives the earlier interpretation that reservation can be given in promotion also. It will however be noted that Article 16(4A) permits reservation in promotional posts for schedule Castes & schedule tribes only not for other backward classes.

Case laws:

M. Nagraj &others v. Union of India. In this case Supreme Court upheld the validity of Article 16(4A) and concluded that Article 16(4A) does not alter the structure of Article 16(4A). It retains the controlling factors namely backwardness and inadequacy of representation which enables the state to provide for reservations. Court further observed that the provisions does not lead to excessiveness so as to breach the ceiling limit of 50% of obliterate the creamy layer or extend the reservation indefinitely.

PGIMER v. Faculty Association. In this case the Court emphasized that Article 16(4A) ought to be applied for in such a manner that a balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes as well as for other members of the society.

(e) Reservation-'Carry Forward' of Reserved Vacancies: Article 16 (4B)- Art. was inserted in the Constitution by 81st Amendment in the year 2000 and provides that nothing in this Article shall prevent the state from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% reservation on total number of vacancies of that year.

This new clause enables the state to carry forward the unfilled reserved vacancies to be filled in any subsequent year so as to remove the backlog notwithstanding the rule of 50% ceiling.

Case law:

Union Public Service Commission v. Sanjeev Kumar. In this case held that Article 16(4B) permits carrying forward of unfilled vacancies & such vacancies are outside the scope of ceiling of 50%. The Court further observed that: "We are of the view, while interpreting the said provision that the first part of the said Article 16(4B) relates to the year for which the vacancy has fallen due, that may be for example taken up as the year 2000 and second part of the said Article refers to the year in which the vacancies are filled or sought to be filled, taking for example the year 2002. Our understanding of Article 16(4B) is that when the reserved vacancies for the year 2000 are being filled up even though in 2002, such vacancies should not be considered in the reserved quota while counting the number of vacancies which are being filled in the year 2002.
Reservation in Services - An Evaluation

For the economic development of a nation as a whole, it is necessary that the vulnerable sections of the society be given some special benefits in order to bring them at par with the remaining society. For this purpose, Indian Constitution has the policy of reservation in services as discussed above. This policy has special significance to the oppressed sections of the society as it aspires to graduate the disabled and disadvantaged at the bottom of the stratification system from their present state of full citizenship. Significant strides have been made in lying the infrastructure to sponsor upward mobility of the historically disadvantaged through the reservation in services. Therefore, Reservation in services for less advantaged sections is a collective expression of regret, a long overdue gesture of historical reconciliation, a form of loyalty and an attempt to take away the moral sting out of the past as well as to leave the succeeding generations a better society. Notwithstanding its achievements, it seems to have caused differentiation among the erstwhile homogenous communities such sections as are more developed than others avail more opportunities than the truly deserving sections. The weakest, in spite of being deserving remain untouched from the benefits as it remains stuck up at the top in the intra community hierarchy. Poor sections among the excluded communities find themselves twice deprived.

Each caste seeks larger share in areas where it is under represented without allowing accommodation to those who are compelled to maintain a marginal presence. It is maintained that the real underprivileged do not benefit much as in its implementation it seems to serve the interests water thin affluent upper crust among the middle range castes who tends to perpetuate backwardness to avail benefits in their externally imposed inferiority. Such aspirations oriented to serve the selfish interests in spite of being a universal phenomenon in all reformist remedies deserve concern as it vitiates the quest for fraternity and gives this noble policy/ concept a bad odour.

Further this concept of reservation in services is criticized as opposed to the pursuit of excellence as lowered standards in recruitment lead to lowered standards of efficiency. Roster of castes in the bureaucracy and professions of distinctions has been criticized as it is opposed to the norms of merit and impartiality. Reservation for forward category of these communities i.e., the creamy layers is said to have laid the foundation of a society in which caste and backwardness replace merit and effort.

Case Laws

State of Kerala v. N.M. Thomas, In this case, Justice Krishna Iyer brought out evils of reservation is following words:

"In the light of experience, have and elsewhere the danger of reservation, it seems to me, is threefold. Its benefits, by and large, are snatched away by the top creamy layer of the backward caste or class. Thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is overplayed extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the 'weaker sections' tag as a means to score over their near-equals formally categorised as the upper brackets. Lastly, a lasting solution to the problem comes only from improvement of social environment added educational facilities and cross fertilization of castes by inter-caste and inter-class marriages.

Akhil Bhartiya Shoshit Karamchari Sangh (Railway) v. Union of India, The Supreme Court observed that: "The success of state action under Article 16(4) consists in the spread with which result oriented reservation withers away as, no longer a need, not in ever widening and everlasting operation of an exception [Article 16(4) as if it were a super fundamental right to continue backward all the time. to lend immorality to the concept of reservation is to defeat the 'raison de'etre', to politicise this provision for communal support and party ends is to subvert the solemn undertaking of Article 16(1)."

Ashoka Kumar Thakur v. Union of India, In this case Justice R.V. Raveendram observed that: "The immediate effect of caste based reservation has been rather unfortunate. In the pre-reservation era people wanted to get rid of the 'backward' tag either social or economical. But post reservation, there is a tendency even among those who are considered as forward to seek 'backward' tag in the hope of enjoying the benefits of reservation. When more and more people aspire for back wardness instead of forwardness the country itself stagnates. Be that as it may, reservation is required only for a limited period to bring forward the socially and educationally backward classes by giving them a gentle supportive push. But if there is no review after reasonable period and if reservation is continued, the country will become a caste divided society permanently. Instead of developing an united society with diversity, we will end up as a fractured society for ever suspicious of each other."

Similar are the view of the senior Advocate of Supreme Court Mr. Harish Salve who expressed his concern regarding excessive reservation in a recent case which has been referred to a large Bench of the supreme Court. He said: " I want to say that for 60 years 'poor people' have suffered. We are battling for scarce resources. One or the other caste will suffer. Imagine, numerous
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candidate will suffer heartburns because they are not in the reserved category.

But despite all this, reservation in services should not be discontinued. Its continuation needs to be stressed to enable the oppressed sections to find location in the power structure. Regarding this the observation of B. K. Roy Burman is noteworthy: "efficiency in public services particularly in a welfare state, is to be considered not only in terms of individual capacity but also in terms of system's efficiency. Broad based participation of different segments is likely to augment system's efficiency in a certain sense."

However cautions have to be taken to prevent its manipulation and distinction so that it remains wedded to the purpose for which it was initiated.

**Conclusion** - In the end, we can say that 'reservation in services' seems to be an unavoidable evil. We, however, need to have a fresh look at the provisions for reservation to come out of the tangled skin that afflicts it on account of its expanding scope and structure. Exclusion of those already benefitted in necessary to facilitate the inclusion of the lowest and uncared. Entry of repeat group is to be strengthened to discourage its ultimate spread. While concept of 'reservation in services' is a road to equality, care should be taken that the road does not become a rut in which the vehicle of progress gets entrenched and struck. Any provision for 'reservation in services' is a temporary crutch and such crutch by unnecessary prolonged time, should not become a permanent liability. The policy of 'reservation in services' seeks to remove the differences in status among castes. When these differences will be removed, all castes will become equal. That will be the beginning of a casteless egalitarian society.

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