



Analytical study of the constitutionally valid parameters for the determination of social backwardness as a base for identification of the backward classes and for application of the reservation policy for them in educational institutions and government employment

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Abstract

Certain sections of the Indian society have been historically discriminated and deprived of all kinds of rights by the rest of the society. The philosophy of the social reforms, some efforts of the Britishers and finally the provisions made by the Constituent Assembly in the Constitution paved the way for the social justice and upliftment of the Schedule Castes & Schedule Tribes (hereinafter to be called as the SC & ST) and other socially backward classes of the Indian society. Various measures planned and implemented by the Governments after commencement of the Constitution as a part of affirmative actions in order to fulfill said purpose have been streamlined by Indian higher judiciary by laying down specific principles in consonance with the Constitutional provisions.

Keywords: constitutional provisions– social justice– social backwardness– identification of the backward classes– the reservation policy

Introduction

At the end of the 19th century the social reforms movement was started in India which in the 20th century became integral part of the national movement of freedom struggle. Apart from the women the epicenter of the social reforms movement was to give social recognition and the upliftment of socially backward classes of the Indian citizens. With the end of the era of Mahatma Jyotiba Fule and Rajashri Shahu Maharaj who toiled hard for the said sublime mission Dr. Babasaheb Ambedkar became leader of the depressed and socially backward classes of the Indian society. He represented these classes before the Simon Commission and later on at the roundtable conferences held in England with the objectives of the initiation of the political & social reforms in British India. The crux of the problem of SC and ST as the socially backward classes of the Indian society was that since thousands of years they were deprived of any kind of social identity. Moreover their status over those years has always been considered inferior to animals as well. It had resulted into serious kind of discrimination depriving them from all the facets of human rights. The necessary evil consequence of the same was their social, economical, political and educational backwardness. The position and the problems of these depressed and socially backward classes of the Indian society (SC & ST) in ancient, mediaeval and early modern period of the Indian history subject to a few exceptions has always remained the same.

Dr. Babasaheb Ambedkar and the leaders of the Indian national Congress inclusive of Mahatma Gandhi were committed for the social justice and the upliftment of these classes by giving them social identity, recognition and dignity. Therefore Constituent Assembly has made clear and conscious provisions under Indian Constitution to achieve the said objective. Under Indian Constitution the SC and ST have been identified and recognized as the depressed classes

suffering from grievous social backwardness apart from educational, financial and political backwardness. The provisions under Indian Constitution regarding elimination of the untouchability, assurance of the social justice and incorporation of the right to equality have been playing pivotal role for the upliftment of these depressed socially backward classes of the Indian society. The affirmative actions undertaken by the Governments have been streamlined by the Indian higher judiciary in the light of these provisions of the Constitution. While doing so higher judiciary has also led down the constitutionally valid parameters of the social backwardness as a base of identification of backward classes of the society for providing social justice to them.

Article 14 of the Constitution

“The state shall not deny any person equality before law and equal protection of law within the territory of India”, the concept of equality has been adopted under Indian Constitution at the instance of above mentioned wording. Indian higher judiciary has made the dynamic interpretation of this wording. Accordingly now it is well settled that the ‘equality before the law’ includes Prof. A.V. Dicey’s concept of ‘rule of law’ which is mandate against state arbitrariness and absence of privilege in favour of any particular class of the citizens. The term ‘equal protection of law’ casts mandatory obligation on the state to identify disadvantages, downtrodden, backward classes of the Indian society and to undertake affirmative actions for their development. The right to equality assures people of India that they will be equally treated by the state. It does not forbid the state from formation of the classes in society in order to implement the object of social justice. Article 14 precludes existence of any privilege in favour of particular class of the citizens at the same time it permits reasonable classification by state in order to achieve sublime purposes

like implementation of the policy of social justice etc. It has enabled the state to form the independent classes of the SC, ST and other socially and educationally backward classes in Indian society and to adopt the schemes of the affirmative actions and the policy of reservation in their favour in educational institutions and Government employment. While identifying the backward classes process and procedure laid down under relevant Articles namely 340, 341 & 342 is mandatory to be followed which confers objectivity and precision on it. The object of affirmative actions inclusive of the policy of reservation is to secular social justice, educational, economic and political development in their favour apart from conferring the equal social dignity and respect on them.

In the Indian context the concept of equality under Article 14 of the Constitution has been further explained, from Article 15 to Article 18 of the Constitution.

Article 15 of the Constitution

Article 15(1)

“The state shall not discriminate against any citizen on grounds ‘only of’ religion, race, caste, sex, place of birth or any of them.”

The word ‘only’ used in Article 15(1) indicates that discrimination cannot be made merely on the ground that one belongs to a particular caste, sex etc. In other words if other qualifications are equal caste, religion, sex etc should not be a ground for exemption or disability. Discrimination on grounds other than the religion, race, caste, sex or place of birth is not prohibited. It means that discrimination not based on any of these grounds but on other grounds is not hit by article 15(1). In the *DP Joshi vs State of MB* ^[1] it was held that law which discriminates on the ground of residence does not violate article 15(1).

Article 15 clause (1) is important because it specifies the general rule of the nondiscrimination by state and creates the background of social justice in favour of SC, ST and other socially & educationally backward classes.

Article 15(4)

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 schedule castes and scheduled tribes.

The judgments of the higher judiciary laying down the jurisprudence of identification of the backward classes entitled for the benefit of the affirmative actions inclusive of policy of the reservation in educational institutions and government employment:

Article 15(4) is an exception to the general philosophy of equality under Article 14 and Article 15(1). It was inserted by the First Constitutional Amendment Act 1951 as a result of the decision in the:

1. *Madras vs Champakam Doraierajan* ^[2]. In this case Madras Government had reserved seats in state medical and engineering colleges for different communities in certain proportions on the basis of religion, race and caste. This policy was violative of constitutional philosophy that provision of the social justice and affirmative action is meant for SC, ST and other socially & educationally backward classes of the society only. On being challenged the state Government

before Supreme Court defended the said law on the ground that it was enacted with a view to promote the social justice for all sections of the people as required by Article 46 of the directive principles of state policy. The Supreme Court held the law void because it classified the students on the basis of caste and religion only irrespective of merit. Court held that the directive principles of state policy cannot override the fundamental rights.

2. In *Balaji vs State of Mysore* ^[3] the Mysore Government issued an order under Article 15 for reserving seats in the medical and engineering colleges in the state as follows: backward classes 28%, more backward classes 20%, SC & ST 18%. Thus 68% of the seats available in the college were reserved and only 32% was made available to the merit pool.
 - (a) The court held that sub classification made by the order between backward classes and more backward classes was not justified under article 15(4).
 - (b) Backwardness envisaged by Article 15(4) must be both social and educational and not either social or educational.
 - (c) Though the caste may be a relevant factor in determining backwardness but it cannot be the sole test for ascertaining whether particular class is the backward class or not. Poverty, occupation, place of habitation are the other relevant factors to be taken into consideration.
 - (d) Article 15(4) does not speak of castes but only speaks of classes, caste and class are not synonymous. The impinged order however process only on the basis of caste without regard to other relevant factors hence invalid.
 - (e) The court said that special provision of the reservation should be less than 50% how much less than 50% depend upon the relevant prevailing circumstances in which case.
3. In *Periakaruppan vs. State of TamilNadu* ^[4] Supreme Court held that classification of backward classes on basis of castes is well within the purview of Article 15(4) provided those castes are shown to be socially and educationally backward. Government should always keep under review of the question of reservation of seats and not only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation.
4. In *K.S. Jayasree vs. State of Kerala* ^[5] Supreme Court concluded that the poverty is not the sole test of the backwardness but it is relevant factor in the context of the social backwardness (caste). Thus both caste and poverty is relevant in determining the backwardness of citizens.
5. In *State of UP vs. Pradeep Tandon* ^[6] Supreme Court held that the reservation in favour of candidates coming from rural areas was unconstitutional but the reservation in favour of the candidates coming from hilly areas of Utrakhand of UP are valid.

Article 15 (5) of the Constitution

Nothing in this Article or in sub clause (g) of Article 19 shall prevent the state from making any special provision by law, for advancement of any socially and educationally backward classes of citizen or for the schedule castes or scheduled tribes in so far as a special provisions relate to their admission 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.

This Article was inserted by the 93rd Constitutional Amendment Act 2005 in order to nullify the judgement of the Supreme Court laid down particularly in *P.A. Inamdar vs. State of Maharashtra* ^[7] wherein the reservation in favour of SC, ST and socially & educationally backward classes of the Indian citizen was discarded in private and unaided educational institutions imparting higher education. Wording of Article 15 (5) is crystal-clear wherein provision of the reservation in favour of the SC, ST and socially & educationally backward classes of the Indian citizen only has been made.

Article 16 of the Constitution

The gist of the Article 16 clause (1), (2) & (3) is that constitutional guarantee of the right to equal opportunity of the public employment by the state to the candidates from the society has been given. However there could be an exception that Parliament may make a law specifying residence as essential eligibility for selection on the merit basis on certain posts/ office. Thus on the basis of the caste (social backwardness) discrimination by the state has been forbidden.

Article 16 (4)

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 citizen which, in the opinion of the state, is not adequately represented in the services under the state.

Article 16 (4A)

added by 77th Constitutional Amendment Act 1995 speaks that, "Nothing in this Article shall prevent the state from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the state in favour of the schedule castes and scheduled tribes which in the opinion of the state are not adequately represented in the services under the state."

Indra Sawhney v. Union of India ^[8], known as the Mandal Commission case, is a very significant pronouncement of the nine judges bench of the Supreme Court on the question of reservation in favour of the newly created backward category namely 'other backward category' (hereinafter to be called as the OBC) in educational institutions and Government employment. Supreme Court in this case upheld the constitutional validity of the OBC reservation and led down following ratio.

1. Making interpretation of the expression 'backward class of citizens' used in Art. 16(4) in order to identify backward classes Supreme Court held that the accent of Art. 16(4) is on social backwardness. From a review of the previous case-law in the area, the Court has concluded that the judicial opinions emphasize the integral connection between caste, occupation, poverty and social backwardness. Social, educational and economic backwardness are closely intertwined in the Indian context. As regards identification of backward classes, caste may be used as a criterion because caste often is a social class in India. But caste cannot be the sole criterion for reservation. "Besides castes (whether found among the Hindus or others) there may be other

communities, groups, classes and denominations which may qualify as backward class of citizens. Reddy, J. has observed in this connection: "the classification is not on the basis of the caste but on the ground that that caste is found to be a backward class not adequately represented in the services of the State." Among the non-Hindus, there are several occupational groups, sects and denominations which, for historical reasons, are socially backward. They too represent backward social collectivities for the purposes of Art. 16(4). There are classes among non-Hindus, Muslims, Christian and Sikhas and if they are backward socially they are entitled for reservation under Article 16(4). A backward class of citizens cannot be identified only and exclusively with reference to economic criteria. The Article 16(4) is designed to give due share in the state power to those who have remained out of it mainly on account of their social and therefore educational and economic backwardness.

2. Backward classes in Article 16 (4) are not similar to as 'socially and educationally backward' in Article 15(4). It is not necessary for a class to be designated as a backward that it is situated similarly to the SC and ST. Certain classes may not qualify for article 15(4) but they may qualify for Article 16 (4).
3. Creamy layer must be excluded from backward classes. Thus Article 16(4) permits classification of backward classes in backward and more backward classes.
4. Reservations should not exceed than 50%. However in extraordinary situation it may be relaxed in favour of people living in far-flung and remote areas of the country who because of their peculiar conditions and characteristics need a different treatment. But in doing so extreme caution is to be exercised and a special case is necessary to be made out. The court relied on the speech of Dr. Ambedkar in the Constituent Assembly where he said that the Reservation must be confined to a minorities.
5. Article 16(4) speaks of adequate representation not proportionate representation. (vi) No reservation in promotion in favour of the backward classes contemplated under Article 16(4). (vii) Permanent statutory body to examine complaints of over inclusion under inclusion by Union Government, State Governments and Union Territories.
6. The Court has divided the total reservation of 50% into 'vertical' and 'horizontal' reservations. The reservation in favour of S/C, S/T and other backward classes (OBC) under Article 16(4) may be called vertical reservation whereas reservation made in favour of physically handicapped [under Art. 16(1)] can be referred to as horizontal reservation. Horizontal reservations cut across the vertical reservations what is called interlocking reservations. Even after providing for those horizontal reservations, the over-all percentage of reservations in favour of Backward class of citizen remain and should remain the same.
7. For certain services and certain posts for example Defense, Research & Development, it may not be advisable to apply the rule of reservation. These are posts where merit alone counts.

Article 16 (4B): Has been inserted by 81st Constitutional Amendment Act 2000. This Amendment envisages that the

unfilled reserved vacancies in a year are to be carried forward to subsequent years and that these vacancies are to be treated as distinct and separate from the current vacancies during any year. The rule of 50% reservation laid down by the Supreme Court is to be applied only to the normal vacancies and not to the posts of backlog of reserved vacancies. This means that the unfilled reserved vacancies are to be carried forward from year to year without any limit, and are to be filled separately from the normal vacancies. This Amendment also modifies the proposition laid down by the Supreme Court in Indra Sawhney case. The Amendment does increase the employment opportunities for the S/C, S/T and OBC candidates.

Article 17: Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with the law. Article 17 has been implemented firstly at the instance of the enactment of the Protection of Civil Rights Act 1955 and later on by enacting Prevention of the Atrocities (SC and ST) Act 1989. Practice of untouchability has been made substantive offense by these enactments which have played relevant role for the acceleration of the process of abolition of untouchability against SC and ST.

Conclusion

On the basis of the historical background of the social reform movement and the approach of the Constituent Assembly advent from the assembly debates and the provisions incorporated in the Constitution and ratio of the above-mentioned judgments of the Supreme Court time to time pronounced while making interpretation of the relevant clauses and terms under Article 14, 15 & 16 of the Indian Constitution following conclusions can be drawn. The mandate to undertake affirmative actions inclusive of the reservation policy in favour of the SC and ST is the special Constitutional provision and same is not compatible with the reservation in favour of any other backward classes. Article 15(4) of the Indian Constitution has enabled the state to identify any socially and educationally backward classes of the Indian society like that of SC & ST, these classes are distinct from the backward classes contemplated under Article 16(4). The necessary implication is that former classes (under Article 15(4)) are expected to be more socially backwards in comparison of the latter classes (under Article 16(4)) The wording of social backwardness as such has not been reflected under Article 16(4) but the existence of some element of the social backwardness in the classes to be identified under said Article for providing vertical reservation is imperative otherwise any other kind of classification is not possible to survive under constitutional scheme of identification of backward classes and affirmative actions inclusive of reservation policy. Apart from the caste of the particular group of the people laying down the clear position regarding social backwardness, the historical position, occupation, educational and economic situation and place of residence (whether in plain area or in far-flung remote area) are the constitutionally valid parameters of the identification of the particular class as the backward class for the purpose of Article 16 (4) of the Constitution. Subject to the exception of the specific mentioned of the SC & ST classes no other socially and educationally backward class of the Indian

society so far has been identified by the state under Article 15(4) of the Constitution. The central and state Governments under Article 16 (4) have identified the OBC category as the backward class and have granted them the benefit of the reservation policy. This reservation has been declared constitutionally valid by the Supreme Court because as concluded by it while making provision of the same constitutional procedure for the identification of the backward classes contemplated under Article 340 has been meticulously implemented and some element of the social backwardness apart from the educational, economical backwardness exists amongst the OBC group. Attempts of the state to provide reservation in favour of people of particular religion purely on religious basis (Muslim reservation) or in favour of the such class of the society which doesn't bears any element of the social backwardness (Maratha reservation etc.) being violative of the above-mentioned jurisprudence of the identification of the backward classes and affirmative action specified by the Constitution have been turned down by the higher judiciary.

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