

How Economically Weaker Section (EWS) Reservation Amendment Bill Nourishes Existing Reservation Policy In The Indian Context? A Study On Kerala Scenario

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ABSTRACT

The idea of a ‘caste-based reservation policy’ has often been resisted by dominant right-wing forces right from colonial times. One of the main criticism against cast based reservation policy-, is that it should not be cast-based, it should be ‘meritorious’ based or based on ‘economic status’ instead. 124th amendment on current reservation policy evokes a lot of attention in society as it is an effort to empower the impoverished and an attempt to uplift and bring equality between rich and poor. The recent law that provides 10 percent reservation for economically backward sections is said to benefit the poor among upper castes as well as some farming communities. In spite of there being criticisms against the current reservation system including the bill bringing about to sub-nationalism, encouraging inefficiency, etc., the government is less interested to touch this area because it is a sensitive issue and caste-based organized politics is so strong in India. Here the researcher makes an attempt to study the positives and negatives of this bill in the light of facts and enquire more about whether this bill could be a positive step towards a more meaningful reservation policy and lead to a more prosperous society or not.

Keywords: Reservation, Higher Education, caste-reservation, Meritorious based reservation, economically weaker section bill.

INTRODUCTION

In India, under British rule, they exercised divisive politics to divide the Indians in the name of castes and religion in an effective way. Nivarthana Agitation from 1932 to 1938, prompted the British government to impose a caste-based reservation policy at the government level here.

Indian constitution inculcated the provision for reservation for socially, educationally, and economically backward classes in the Indian constitution. But primarily it constituted only for 10 years but it extended later multiple times. These backward classes were divided into different classes to the special deprived status they held in a society like Scheduled caste and scheduled tribes and provided benefits and welfare measures by that. Dr. B R Ambedkar (the chief architect of the Indian constitution) described the backward classes as the people who are not self-reliant to pick into the mainstream, but we have to ponder over it why all these efforts in the name of the reservation are not hit to the target even after 70 years of independence. It is suspected that our politicians in modern India are also trying to use the same tactics of the British, divide and rule among the Indians.

Arguments against reservation and alternative strategies.

In the era of globalization where the country as a whole, has to contest with other countries of the world so as to retain and survive excellence which cannot be given an unreasonable go-by and not conceded in its entirety. In a fast-changing world, survival, and keeping competitiveness is a test of fire. In the era when skills demands are rapidly outpacing the supply of candidates in specialized fields, Caste-based Reservation raises constraints. For example, it is hard to choose a suitable candidate in some strategically important fields like quantum physics or rocket science who need unique intellectual technical skills to work in the wake of the current caste reservation-based policy. It might be the main reason for brain drain, the talents are leaving the country not only for fame and money but also, up to an extent, as a result of they may be fed up or deject with the current hiring, procurement, and development policy prevailing in the Indian system including the caste-based reservation policy. Unlike developed countries, undermining the quality for protecting narrow short-term political and blunt social interests might be the reason for inefficiency and corruption which are sheer visible in all walks of life, especially in India.

Sonalde Desai (Director, NCAR) said that the statistics from the Union Public Service Commission provide basic facts, adding that in 2014, only 0.14% of applicants for UPSC were selected. In addition, the general category and OBCs have the highest pass percentage, about 0.17%, while SCs have the lowest, about 0.08%. This may be due to the perception that it is easier for Scheduled Castes to be recruited through the reservation quota, which may have led many Scheduled Castes to appear for the Civil Service Examinations.

One might say that many of these job seekers are not qualified for these jobs. However, looking at the candidates who passed the preliminary exam (which guarantees primary quality), the picture is equally awful. Only 8% of those who wrote the main exam passed. The pass percentage is 8.2-8.3% for SCs and STs, 9.9% for OBCs, and 7.8% for Generals. This indicates that despite the complaints of the upper castes, the reserved category applicants did not get many

benefits (www.thehindu.com). So it is assumed that a small section of the people among reserved categories, (may come from sound backgrounds or as a result of they benefited by reservation multiple times) enjoys all the benefits of the reservation and there is another section of people (among the reserved categories itself) who are living in the society who seems that the reservation for them is unassailable in fact.

It the high time to rethink about current reservation policy even After 70 years of reservation history, it couldn't hit the real target or couldn't lift these reservation categories from their pathetic status. It shows the inefficiency in implementation or the need to change its way of application. Authorities should take enough care spread the benefits in a more extensive way within the reserved categories to the extent it benefits a large number of new families to seek elevation of living status in society. Make the benefits of reservations available among all who deserve the help of the system instead of a small section of the people who enjoyed or taking benefits from the reservation for generations. To avoid the same, make sure that individuals use their reserved category status only once in their lifetime or if provided the benefits, it should be restricted to a maximum of two children per family. A family, reservation has availed once, should not be permitted to avail it again in the next generation too (www.legalserviceindia.com/articles). It is possible through ensuring registration by through using their AADHAR number, making it ineligible for another benefit in the future. Every country is initiating a strategy for divestment and privatization with the notion that future economic growth in India is going to come from entrepreneurship and the private sector. To ensure that all Indians, irrespective of class, caste, or religion, can contribute to economic growth, we must focus on a skill-oriented approach. Authorities can initiate a system which is limit the reservation at the school level or up to the 12th class maximum and it is awkward and ridiculous that providing reservations in the higher education system will only bring about an adverse result.

Literature review

Current Reservation system is oppressive and unscientific as it only divides the society, which leads to discrimination and conflicts among the stakeholders of the society (Sumedha Upadhyay; 1996).

Nidhi Khurana (2011), says that the main reason for the inclusion of reservation is a few parts of the society, were historically oppressed and denied equality due to the deeply routed caste system in India, so they are underrepresented, subsequently, article 15, 16 was inserted in the constitution to uplift such people. Chandola (1992), said that refusal or denial of acceptance to a historically marginalized group often resulted in rioting, and political disarray is the main reason for adopting the caste-based reservation policy in the constitution of India. Bhoumic (2009) and Basalt explained the corresponding quota splits for various OBS, SC/ST, and the general

category and its reasons. According to Nitesh Misra (2019), caste-based reservation accelerates the rural and urban divide a general category in rural areas sufferings as same as OBC, so the solution lies where provide them with all the basic facilities. Prakash Ambedkar (2001), once shared his view that hardly after 70 years of forming the constitution, reservation remained an issue because of the outlook of the Indian society and he said, societies should change the way it looks at lower castes and legislation has its own limitations to bring radical change among the people. Prime Minister Narendra Modi said Economic Weaker Section Bill is a milestone and an attempt to bring equality and justice to all sections of society. Then Finance Minister Arun Jaitley said economic reasons also should be considered as criteria along with birth (in a specific caste) for fixing backwardness in his speech on Parliament and also he stated further that the Economically Weaker Section bill was not impacted by the 50 % cap (Existing Maximum limit for reservation) criteria as it is only imposed by the supreme court in the case of caste-based reservation.

Economically Weaker Section Bill

In the globalized era, there is a wide disparity between the haves and have not's which is widening day by day. Social justice is inclusiveness in nature. Poverty is a marker of backwardness. It denies certain basic rights, and equality in society to the individual affected by it. Social, economic, and political justice are promised by the constitution in its preamble itself. We cannot end social inequality if we exclude the economically backward sections of society from availing the fruits of development in an equal manner.

A notification was issued by a central government ministry that the Constitution (103 Amendment) Act through 103rd Constitution Amendment Bill is a reality now after President Ram Nath Kovind has given his assent to the constitutional provision to provide 10-per cent reservation in government jobs and education to the economically backward section in the general category. It's considered a healing approach of the central government towards the long-waiting need of forwarding castes who need the support of society to come into the mainstream even though they have enough qualifications and skills. The basic idea of the bill is social justice is not possible if we exclude the economically backward sections of our society.

The main objective of this bill sought to be, to ensure that economically weaker sections of citizens get a fair chance of receiving higher education and participation in employment in the services of the State, it has been decided to amend the Constitution of India," the statement of objects of the bill said. While introducing the Bill in the Parliament, Union minister Thaalwarchand Gehlot said that at present, the economically weaker sections of citizens have largely remained excluded from attending higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The main criticism against the above Amendment Bill is against the basic concept of

the Indian constitution as the concept of reservation of economically weaker sections is not inculcated anywhere in the constitution. But when an amendment bill brings into the parliament by using the constituent power with two out of the third majority, the parliament is authorized to act as a law-making institution in a constitutional way. Subsequently, the bill would be added as a clause in the constitution later. In the prima phase, these allegations will not work.

There is no doubt that providing reservations for an economically weaker section is an exterior idea kept away from the basic concept of the Indian constitution. Especially in foreign developed nations, these sort of firm actions to empower the economically weaker sections is miss apprehensive as the denial of opportunities to those people who are not the beneficiaries. Rampant protests were raised in response to the implementation of the Mandal Commission (with a mandate to identify SEBC; socially educationally backward classes). However, this bill successfully gained the broad support of the majority of the parliamentarians showing that this bill sought to be a firm empowerment measure to strengthen the impoverished among the forward castes.

Reservation status in Kerala today

Kerala in one of the leading states in the Socio-Economic conditions compared to the other states, many are working in foreign countries, especially in Middle East nations. Foreign money is the nutshell of the Kerala economy because of that, most of the areas in this small state are in line with the character of a township.

The article 15 (4) gives a provision to provide reservation for the section of people who is socially and educationally backward. Article 16 (4) and Article 46 also mentioned the provision for reservation on jobs. Even today, there is no clarity on what basis the term 'minority' can be defined. The main criticism is that there were no new attempts to assess the current minorities and the social status of minorities. In 1820, 83 percent of Hindus, reduced to 73 percent in 1891, again it declines to 61 percent in 1931 and 2011, and it was only 54.73 % whereas the Muslim population elevated from 7 to 26.56 and the Cristian population raised to 8% to 18.38 % in the same duration. The people in favor of the Economically Weaker Section reservation argued that whereby the reservation system should be revamped in line with the current population figure. In many opportunities, there are judgments from the Supreme Court that reservation should not be based on religion as it is against its substance. But in Kerala, in the past 7 decades, it is happening. These people can claim 18 percent reservation including those who take place conversion from the Hindu religion.

In today's scenario, as per the 16(4) section, there is a 10 percent reservation in employment for scheduled castes and scheduled tribes. The constitution has authorized the state government to accommodate other backward castes in reservations since they do have not enough

representation corresponding to the population. In Kerala, since the year 1958, 50 percent (OBC -40 %, and SC /ST-10%) reservation has been provided in government /public limited employment opportunities whereas the central government and most of the other states implemented the same only from the year of 1990 onwards. This is questioned in the court and in the Supreme Court declared in the Indira Sawhney case, that the government was right and resolved to provide reservations except for higher-income people. The honorable Supreme court instructed the states to appoint a permanent commission to find the upper-class people and fix guidelines for providing reservations for the deserved. Unfortunately, the Kerala government didn't respond to this. To overcome contempt of the court, the Kerala government passed a bill that is Kerala Reservation Preservation Act 1995; and sends to the governor for his approval. The subject matter of the bill as there are no upper-class people in the Crème layer section and no one would include in the same soon. The Nair Service Society (NSS), a prominent organization based on the Nair caste approached the court against this. In response to this, The Honorable Supreme court-appointed A commission, led by Justice K. J. Joseph to investigate whether there is an upper class in backward castes; and if there is, what is then a criterion to provide the reservation for the deserved people. The Commission submitted a report on 27.5.1997. The honorable Supreme Court admitted the existence of the crème layer in the backward class and declared that the activities of the government were allotted to the court. 3 months were allotted for the government to inform about the crème layer and extended the validity of the Joseph commission until the submission of the report.

Again the government has shown negligence to implement this order. The Kerala government appoints another commission led by Justice Narendran to search whether there is sufficient representation by the backward classes in government employment positions on 2.11.2002. The commission report revealed the fact that there is a sufficient representation of backward castes was there, especially the Ezhava castes exceptionally more representation when compared to the other backward castes, and recommended that the present reservation statuesque should continue. Again NSS approached the Supreme Court against the findings of Justice Narendran's commission, which resulted in the cancellation of the full report, and instructed to appoint a new commission (Justice Rajendra babu Commission) to the multi-pronged analysis of the reservation issue in Kerala and submit a detailed report. Rajendra Babu Commission extended the crème Layer limit to 1,50,000, then 2, 50,000, later it is 4, 50,000 and eventually, it is limited to 8, 00,000.

The findings of the commission were based on the socio-economic survey conducted in 1931. It is a widely accepted fact that there is a wide disparity between the socio-economic conditions in 1931 and 2019. So it is a need of the hour that we need a new reservation policy based on new Socio-Economic conditions.

The income from traditional work/ fishing/ industry or the income from the business is exempted for minorities for calculating the income for fixing the crème layer limit. Many employment aspirants in the general category considered this an injustice to them. Most often, the candidates who cannot claim reservation by any means would forlorn as the reserved category can claim age relaxation even in Open/General vacancies and seniority is the stand-alone criteria for selection. When fixing the crème layer income limit as Rs /- 6, 00,000, the income from the agricultural land of 5 Acre and up to 50,000 salaried incomes could be exempted and both are considered as separate income from crème layer calculation and It is unfair that not considering the traditional income to assess the crème layer whatever it may be the amount.

The general category of jobs is open to everyone, so they get twin benefits as they will get the chance to apply in both reserved and non-reserved seats, subsequently 50: 50 is the maximum reservation criteria for reserved categories and general quota but most often the representation of reserved categories escalated to up to 70 percentage,(The corresponding decline may visible in open candidates representation) that is a sheer stealing the opportunity of the candidates from open quota even though they are qualified and proved their mettle before the interview board. Reserved categories are claiming reservations for generations, there is no limit to how many times you can claim reservations. Just imagine, a qualified meritorious ‘economically weaker candidate’ who comes from a remote village, could compete with a son hailed from the city if he is a son of government-employed parents or a doctor or an engineer from the reserved category, In the current scenario, he should work in an extraordinary way to get a spot as he should have to fight with not only to the interview board but also against the system too.

Argument against Economically weaker section Bill: In the Kerala context

The Majority of the political parties heartily extended their support to the move, the 124th a constitutional amendment bill to provide reservation for the economically weaker section including forwarding castes in jobs and education, though popularly perceived as a desperate attempt to woo voters in upper castes in upcoming parliament elections. A similar attempt was made by Narasimha Rao in the early part of the 1990 s, to provide 10 percent reservation to the poor, or economically backward to counterbalance the political repercussion of the execution of the Mandal commission report. A violent protest erupted against the OBC reservation that was suggested by the Mandal commission, that is 7 percent additional reservation provided for the backward classes over the existing level of 20 percent (even though they constituted 52 percent of the population). Whereas The SC/ST categories already enjoy 22.5 percent of reservation corresponding to their population. Supreme court ruled out beyond 50 percent of reservation as it is unconstitutional. In view of the above facts, it is clear that the above amendment attempt would be subject to judicial scrutiny. In the Indira Sawhney case, a nine-judge Supreme Court bench stated unequivocally, the reservation is a remedy for the historical discrimination and

effects are continuing even in the 21st century across the country and the same is not targeted to uplift the poor or alleviate poverty, etc. The people who raise criticisms appear to be suspicious about the government's intent and its eligibility criteria for the reservation avail for the economically weaker section category.

Critics of this bill say that while the benefits of the Economically Weaker Section quota are likely to be minimal, the fee may be bigger than expects. At first, this will not create a win-win situation as it brings about a blow by removing 10% of jobs from the open category, it reduces the opportunities for existing reserved groups meanwhile it is worth considering the fact that general category jobs are open to everyone, comprises SC/ST and OBC including minorities. Another important argument by them with the subject to fixing a new poverty line is that Rs. 8, 00,000/year or owning less than 5 Acres of Land can avail the quota. It is questioned by them that an individual who earns a salary of 66,000/Month since more than 25,000 Salary /month is being taxed.

In particular with the Kerala context, the actual implementation of the Economically Weaker Section quota could be challenging. The conditions are tough to meet in Kerala's socioeconomic environment. Unlike north Indian remote villages, most of the villages (with a high population density and social conditions wise) in Kerala are a town in character. If one can claim an EWS reservation, he /she or his /her family does not possess the following assets, i.e., 5 Acres of land; a Residential flat or 1000 square feet or above in notified municipalities; a residential plot of 200 square yards and above in areas other than notified municipalities, etc. The term family for this purpose includes the person, who seek the benefit of reservation, his or her parents, siblings, his or her spouse, and children (even though they are under the age of 18 years). The income is considered from all sources i.e., salary, agriculture, business, profession, etc. The property held by the family in a different location or different places /cities has been clubbed while applying the land or property holding a test to determine Economically Weaker Section status. Unfortunately, these criteria are unattainable as far as deserved one is concerned and make most of the candidates out in the purview of claiming reservation. Apprehensions are not over; most experienced people say that bureaucrats are also making so many objections because they are suspicious of its implementation due to various factors.

CONCLUSION

Social justice is a vigorous – dynamic concept that progressed over the period in accordance with the needs shifts and conditions of society. Like a developing country, India, the caste system is deeply rooted in its heart. The trend in the Indian political arena is religion, caste, and region-based parties evolving and strengthening day by day. The reservation policy itself is framed only for 10 years since its inception. Even in the 21st century, it has been practiced only because of unnecessary intervention made by political parties which overemphasized the principle of divide

and rule between the religions for their survival. Only a determined or decisive government can bring a radical change in the system. It has been rightly left to the wisdom of the authorities to enhance its ambit from time to time. We cannot restrict the term 'backwardness' in the constitution only to the meaning of social and educational backwardness and reservation is only one of the tools against social oppression. In the era of globalization, particularly in India, the growth is mainly visible in the upper level of society and it is an increasing huge disparity between the rich and poor day by day. Poverty is a situation, it denies equality of opportunity to needy people in education and employment. It is a need of an hour to extend a hand by the government to support poor people. The reservation in the EWS category is not restricted to any 'upper caste Hindus' only, it is open to the underprivileged economically in all general categories, who were from the non-reserved category. The substance of the constitution prevents discrimination on any grounds. It takes more than 70 years after independence to come up with a revolutionary decision like this, nevertheless, it would be described as a positive move in the right direction towards the equitable and prosperous world.

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