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JUDICIAL INTERPRETATION ON RESERVATION POLICY IN INDIA

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ABSTRACT

Reservation policy or affirmative action is a way to develop socio, economic and political life of the disadvantaged people. In order to establish equality among all citizens, this kind of preferential policy has been followed in many of the countries. In India, the same policy has been adopted for the disadvantaged people also. Judiciary in India also interpreted the implementation of reservation policy on its own way. This paper attempts to analyze the judicial interpretation on reservation policy in India.

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INTRODUCTION

Reservation is a part of the fundamental rights guaranteed to the socially, economically suppressed, deprived and historically disadvantaged people of India. Reservation of seats in the legislature including Union Parliament, there is practically no dispute. Other Backward Classes (OBC) do not enjoy any reservation of seats in the legislature. But in the sphere of education and government services OBC do enjoy reservation. In some States like TamilNadu, Kerala, Karnataka and Bihar, OBCs have become a dominant force in the bureaucracy. Thus, the transience of backwardness has given rise to clash of interests both at the political and legal levels¹(Sagar Preet Hooda). Indian Judiciary has pronounced some judgments upholding reservations and some judgments for fine tuning its implementations. Lot of judgments regarding reservations has been modified subsequently by Indian Parliament through Constitutional amendments. Some judgments of Indian judiciary have been flouted by State and Central Governments. Some of the judgements prelude the way for future concern. In this regard, this paper makes an attempt to study the major judgments on reservation particularly in education given by Indian judiciary in the post-Mandal period.

Reservation, in India, is a type of affirmative action that tries to allocate fixed number of seats in educational and social institutions for various under-represented communities. It is stated as a response to discrimination done by upper caste persons in India. Thus, when India attained independence, the constitution gave special provision for certain communities to have a minimum representation in various fields. The Constitutional provision of reservation for socially and economically backward classes is meant to provide access to education and jobs for the scheduled castes, scheduled tribes.

Without knowing the basic as well as important judgement regarding the reservation in pre-mandal period is meaningless. In this regard few judgements are highlighted to understand the reservation policy in India.

In State of Madras Vs Champakam Dorairajan², the Court was unwilling to uphold the validity of the Communal Government Orders of Madras Government, for the impugned Order went against the principle of 'equality before law' enshrined in the Constitution. There were two similar cases of admission to the Medical College and to the Engineering College.

In Kesava vs. State of Mysore³ (Devanesan Nesaiah) the issue involved whether the decision of the State to identify backward classes was valid, as State Government had declared every community except Brahmin as Backward Community. The High Court held that State was doubtlessly the sole authority to classify the communities as "backward classes".

In M.R.Balaji and Others Vs State of Mysore⁴ (K.L.Bhatia) the Court was trying to keep a balance between the conflicting interests of those who would like to have as much reservation as possible and those might lose their chance even if they are the deserving ones. The issue in this case is about the admission to the Medical Course. According to the petitioners, but for the reservations made by the impugned order, they would have been entitled to the admission in the respective colleges for which they had applied. The impugned order was issued on 31-07-1962 and it reserved seats for candidates belonging to the backward classes whose average of student population was the same or just below State average. This resulted in 68 percent of seats available for admissions to the Engineering and Medical Colleges and to the other Technical institutions is reserved for backward classes, most backward classes,

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scheduled castes and scheduled tribes. The classification of the socially backward classes of citizens made by the State, proceeds on the consideration only of their castes without regard to other factors, which are undoubtedly relevant. It was argued that this might lead to a virtual reservation for nearly 90% of the population, which might come under different categories of backwardness. This would be at the expense of those classes of people whose members may perform well but may not get an opportunity. After analyzing facts and probing the legal nuances, the Court came to the conclusion that caste alone could not be the criterion for backwardness. The Court also observed that reservation should not go beyond 50%.

In *Ritesh R. Sah vs. Dr. Y.L.Yamul*⁵ the Court observed that if a candidate belonging to the backward class got admission to a course on merit- in the instant case admission in the Medical College - it could not be considered to be admitted against reserved category. The apex Court instructed the Maharashtra Government that the above said directions should be borne in mind and the rules should be made accordingly.

In *Dr. Sadhana Devi v. State of U.P.*⁶ the Government of U.P. issued a circular dispensing with the requirement of minimum mark for the admission to Postgraduate course in Medicine for the Scheduled Castes and Scheduled Tribes candidates. The Supreme Court held:

“The importance of merit being the only criterion for admission to post-graduate medical courses was also emphasized in the case of *Dr. Pradeep Jain v. Union of India*⁷ .

This line of inquiry need not detain us here in this case because the case of the petitioners is not that there should be no reservation for the candidates belonging to the three special categories mentioned hereinabove at the post-graduate level. Their contention is that candidates belonging to the three special categories must be able to secure the minimum qualifying marks in the admission tests in order to gain admission to post-graduate medical courses. If they fail to secure even the minimum qualifying marks, then the seats reserved for them should not be allowed to go waste but should be made available to the candidates belonging to general category. This contention must be upheld. Otherwise, to borrow the language used in *Dr. Jagdish Saran Case*⁸, this will be a “national loss.”

In *Dr. Preethi Srivastava v. State of M.P.*⁹ the Supreme Court considered six petitions together. The issue was whether there could be provisions for reservation of seats in specialty and super specialty courses in Medicine. The State of U.P. fixed the cut off percentage of 20% marks for reserved candidates as against 45% for the general candidates. The State of Madhya Pradesh fixed 20% for Scheduled Castes and 15% for Scheduled Tribes and 40% for other backward Classes. According to the Court “the disparity of qualifying marks being 20% for the reserved category and 45% for general category is too great a disparity to sustain public interest at the level of post graduate medical training and education.”

In *Haridas Parsedia v. Urmila Shakya*¹⁰ the question of law involved was concerned with Constitution of India, Art. 16, Art.16 (4), Art.309 and M.P.Transport Department Subordinate (Class III Executive) Service Recruitment Rules (1971), R.11 (A), R.20-Recruitment exam. The Rule provided relaxation or passing marks to SC/ST candidates. It was the result of policy decision of State Government taken in 1964 and reiterated in 1985 and 1990 to grant relaxation in passing marks to SC/ST candidates in direct recruitment and departmental exams. The Court was of the opinion that it would be erroneous to hold that the decision of the Government for relaxation of passing marks for SC/ST department candidates at the departmental examination can be applied only when in such examination, the departmental candidates and not otherwise.

In *K. Duraisamy and another v. State of T.N.*¹¹ and others, the Government Order that provided 50% quota for in-service and 50% for non-service candidates for admission in the specialty and super specialty courses in Medicine was challenged. The Court held the Order valid. According to the Court ‘quota’ and ‘reservation’ are different concepts. Therefore, the matter does not come under Article 15 (4).

A case came before the Supreme Court where a similar notification of the Punjab Government was challenged. In *State of Punjab v. Dayanand Medical College and Hospital* the impugned notification fixed the quota of 60 per cent for in-service candidates and 40 per cent for non-services. The Court held the notification valid. But the Court observed that with regard to marks in the tests the State could not make any relaxation.

But the apex Court would quash any unreasonable fixing of quota. This happened in the case of *A.I.I.M.S. Students Union Vs. A.I.I.M.S.*¹² The rule regarding admission to Post-Graduate Course in AIMS was based on the quota of institutional reservation of 33% coupled with 50% reservation discipline-wise. This was held super reservation and hence it infringed the equality principle of Article 14.

In *Archana Reddy Vs State of Andra Pradesh, 2005*,¹³ the main challenge to reservation of seats in educational institutions and of appointments or posts in Public Services under the State to Muslim community Ordinance 2005, was that the entire Muslim population in the State cannot be declared as Socially and educationally backward. The judgment of the court laid down that “there is no prohibition to declare Muslims, as a community, socially and educationally backward for the purposes of Article 15(4) and 16(4) of the constitution of India, provided they satisfy the test of social backwardness, as stated in the judgment. Going through what is stated in the judgment, the majority of judges held that the entire Muslim community in A.P is not a homogenous class and that there are several groups/classes among them. The Court approvingly quoted the findings of N.K.Muralidhara Rao Commission, Anantaraman Commission and the National Backward Classes Commission and cited the “People of India”

series by the ASI & the “Encyclopedia of the World Muslims: Tribes, Castes and Communities” editors N.K.Singh and A.M.Khan, on this finding. It was also held that the condition of social backwardness which is fundamental has not been shown to be existing in respect of the Muslim community as a whole and the High Court struck down the ordinance/act as the identification done in this case did not indicate as to whether the Muslim community as a whole is backward or not. The Commission respects these observations. Accordingly, the Commission decided not to treat the entire Muslim population as a single group and declare them as Back Classes. In this report we have decided to recognize identifiable separate groups among Muslim communities and consider which of them are socially and educationally backward. So far as data and methodology is concerned the Commission is conscious that the deeper we dig into the data mine the better the results. The Commission has, therefore, looked into the elaborate and authentic data found in “ the People of India, A.P.” series by Anthropological Survey of India which was first published in 2003, Sachar Committee Report, the valuable historical perspective and careful analysis given in the Sri.P.S.Krishnan’s report, numerous data made available by different government departments on the number of employees belonging to Muslim communities, the house hold survey done by the staff of the Commission, the information collected in public hearings held by the Commission and the written representations given to the Commission. The present findings of the commission are arrived at on the basis of above vast data, and in deference to the observations of the High Court. Regarding the importance of transparency which is also in accordance with the principles of the Commission, the Commission has kept the entire report of Sri P.S.Krishnan on website immediately after its receipt. The Commission also held a number of public hearings.

The Supreme Court upholds law enacted by the Centre in 2006 providing a quota of 27 per cent for candidates belonging to the Other Backward Classes in Central higher educational institutions. But it directed the Government to exclude the ‘Creamy layer’ among the OBCs while implementing the law. A five-Judge Constitution bench headed by Chief Justice K.G.Balakrishnan paved the way to giving effect to the Central Educational Institutions (Reservation in Admission) Act, 2006. The bench was disposing of a batch of petitions questioning the 2006 quota law and the 93rd Amendment.

In March 2007, by an interim order the Court, restrained the Centre from implementing the law for 2007-2008. The 1931 census data could not be the basis for providing reservation. The Chief Justice of India said: “93rd Amendment Act does not violate the basic structure of the Constitution so far as it relates to State maintained institutions and aided educational institutions. Article 15(5) of the Constitution is constitutionally valid and Article 15(4) and 15(5) are not mutually contradictory.” He agreed with the decision to exclude the minority institutions from Article 15(5), and said: “it does not violate Article 14 as minority educational institutions are a separate class and their rights are projected by other constitutional provisions.”

CONCLUSION

Summarizing the evolution of judicial observations, the court have largely following the lead of the legislature and the executive and when they did intervene occasionally it was mainly to regulate and modify, rather than to innovate or redirect policies. Except during a brief period...the role of the Supreme Court in advancing preferential policies had, up to the nineties been modest. But some recent judgments, notably Indra Sawhney (1993), may be heralding of enhanced judicial action in the years to come. What enhanced judicial action is in store for the future cannot be predicted.

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