

Effect of Conversion on Job Reservations in India-A Critical Study

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Indian society is characterized by a high degree of structural inequality based upon the organization of people into caste and ethnic groups. The former, known as the caste system, is the social organization of Hindus who comprise more than 80 per cent of the Indian population. In this system, people are divided into social groups of castes and assigned hierarchal and unequal social positions and rights which are predetermined during birth. The caste system is highly exclusionary in nature: exclusion is integral to the system and thus, a consequence of its basic features. Social exclusion between caste groups is ensured through the practices of endogamy and social separation. In retrospect, every caste – except those at the top of the caste hierarchy – has suffered from unequal and hierarchal assignment of rights. The erstwhile untouchables, also known as the Scheduled Castes (SCs), having been located at the bottom of the caste hierarchy, are the ones who suffered the most. For instance, apart from manual labor and some occupations that were considered impure and polluting, the erstwhile untouchables were denied the right to do business or own property. They were even denied the right to education and civil, cultural and religious rights. Besides, they have been made to suffer from residential segregation and social isolation because they are considered impure and polluting and not fit for social association by the high castes (Ambedkar, 1936 and 1987; Akerlof, 1976; Lai, 1988; Scoville, 1991 and Thorat, 2005).

Another source of exclusion is linked with ethnic identity from which groups like the Adiwasis suffer. This group has been subjected to isolation, exclusion, neglect and underdevelopment owing to their geographical location and cultural exclusivity.

There is another category of erstwhile untouchables who have either converted into the Sikh, Buddhist or Christian religion. They account for about 4 percent of India's population. Though technically they are outside the matrix of the Hindu social caste system, they continue to suffer from caste-based discrimination in certain spheres and are known as the ex-untouchable castes. The Government has made efforts to provide them certain benefits that they previously enjoyed, but not all. For instance, the ones who have converted into Sikhs and Buddhists continue to benefit from the affirmative action policy of Government. However, the Christian converts have been kept outside the safety net of affirmative action; hence, their petition for the consideration of inclusion in the list of those eligible for reservation still remains in the court. A third social group termed as the "other backward castes" has recently been awarded reservation in government jobs only. This policy also encompasses a group of backward Muslims.

Objective: the objective of this project is:

- To study the implementation of reservation policy.
- To find out the actual need of the reservation policy.

Hypothesis

The researcher has made certain assumption in the beginning of the research project which are going to be tested during the project, they are the following.

- The reservation policy for jobs for SC & ST should be changed. As there is vast change in today's condition.
- The reservation policy should be based on the economical basis not on the class or caste basis. If it caste based then we are only creating discrimination with them.

Scope of the Study

The research is a doctrinal research. The researcher here would like to study only the judicial viewpoints in the appointment of SC & ST in various jobs in public and private sector. The researcher has tried to analysis the topic by studying various authors, experts, cases of The Indian Apex Court and High courts, articles, etc. The researcher has strictly followed the boundary and has studied only with reference to Indian authors, experts, cases, etc.

Constitutional Provisions for the Empowerment of Dalits:

India's affirmative action policy, more popularly known as "Reservation Policy", is authored by the provisions in the Indian Constitution which was adopted in 1950, though its initiation at the country level dates back to the early 1930s. The two important features of the provision in the constitution which needs to be acknowledged for the purpose of this working paper are: the principle of "Non-discrimination and Equal opportunity" and the provisions enshrined in the Constitution empowering the State to take steps to ensure equal opportunity. Article 16 provides for "equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State". It bans discrimination, particularly in any employment or appointment to any office under the state on grounds of religion, race, caste, sex, descent, place of birth, residence, or any of them. In fact Article 17 abolished the institution of untouchability which sanctified discrimination and exclusion of the erstwhile untouchables. The Article states: "Untouchability is abolished and its practice in any form is forbidden". Accordingly, the Constitution empowered the state with the responsibility to ensure non-discrimination and equal opportunity in practice. Article 46, a 'Directive Principle of State Policy' states: "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." Such provisions in the constitution relates to government services, education, political representation and others.

A) Government Services:

The constitution provides for both appointment and promotion in the government services. Article 16 (4) empowers the State to make "any provision for the reservation in appointments, or posts in favor of any backward class of citizens". Article 16 (4A) enables the State to make provision for reservation in matters of promotion to any group or groups of posts in the services under the State in favor of the SCs and STs. Article 335 states: The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments of services and posts in connection with the affairs of the Union or of a State.

B) Education:

In the case of education, the provision relates to non-discrimination in educational institutions, equal representations, and measures for educational promotions. Article 15 (4) states that "Nothing in this article 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". Article 29(2) provides protection for admission and against discrimination in any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

C) Political Safeguards:

The constitution empowers the State to take steps to provide due representation to the SC/STs. various articles contains provisions for the reservation of seats for the SC/STs in the nation's legislative bodies in proportion to their population: Central Legislative Assembly (Article 330), Legislative Assembly of the States (Article 332), in Municipalities (Article 243 T), in various Panchayat (local self-government) level bodies, namely, village, taluk (block) and district (Article 243 D).

Limitations of the Safeguard- Article 335:

Article 335 of the Constitution originally read as under:- " The claim of the members of the Scheduled castes and the Scheduled Tribes shall be taken in to consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State." The Hon'ble Supreme Court has held in a number of cases, that Article 335 operates as a limitation to the provision contained in Article 16(4) though Article 16(4) does not specifically refer to Article 335 or raise any question of maintenance of efficiency of the administration. Thus, reservation for the backward class will be struck down as violate of Article 14 and 16(1), if it is unreasonably excessive. While forming an opinion for making reservations the State shall also take cognizance of the limitation set out in Art.335 i.e. whether making reservation is consistent with the maintenance of efficiency of administration. 82nd Amendment Act, 2000, amended the Article 335. The background for the amendment was that the Hon'ble Supreme Court in the case of S.Vinod Kumar Vs. U.O.I had held that the various instructions of

Government providing for lower qualifying marks/lesser standard of evaluation in matter of promotion for candidates belonging to SC/ST are not permissible in view of the provisions contained in Article 335. In view of this decision the various orders regarding lower qualifying marks/standard of evaluation for SC/ST in the matter of promotion were withdrawn by the Government w.e.f. 22.7.97. However, the Parliament decided to once again restore the relaxations and concession in promotion and the following proviso to Art.335 were added:- "Provided that nothing in this Article shall prevent in making of any provisions in favor of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State"

Critical View on Reservation policy and Conclusion:

Now we have seen that government had kept various welfare schemes for the SC and ST in india. If we take few examples than reservations in educational systems, land allotments for residents (free of cost), agricultural land allotted free of cost for farming etc. I believe that there should be reservation in the educational system of India. Due to which they can also get good and higher education, but at the time of the jobs/ public service there should be n reservation. A person has got almost 22 to 25 years benefit of reservation policy and had completed his studies. Now he should stand on his own feet's and should face the competition in the market. They have got all the things which a person born in other cast has got by now.

If government still wants to keep reservation policy then now it should not be based on caste or class, it should be based on the annual income of the person. If the person is earning less than he requires more money for his family and children and this thing he can get only by a job or in public service. By this means only such persons can provide good education to their children. Judiciary has played great role in the reservation policy. The great example of this N Nagrajan's case, Ashok Kumar Thakor, and Indira Shawney's case. In this cases , supreme court has given passing reference to the reservation on the SC & ST in jobs. But Supreme court has said that reservation should not increase then 50% in any condition but in most of North Eastern state this reservation is increased to 85% and still they have started a move to increase it to the 95% and court is not taking any steps against it. By this way we can see that

judiciary is also playing a role in increase of reservation for SC & ST. Now days politicians are playing a major role in reservation policy. The reservation policy was only for 10 years after the independence, for upliftment of SC and ST but till now it is continue and no one has taken any step to amend it or revise it or to change it. The reason behind this is the population of SC and ST in country. Nearly 33% voting is done by SC and ST so now if they make any change in the reservation policy against the SC and ST then they have to suffer a lot for the same. So they are not taking any steps against the reservation policy.

Now if you consider the theory of John Rawls of justice then he has clearly said that "starting line should be / must be the same for all the persons." By providing reservation in the educational systems we are giving the same line to all the persons. He further also said that by providing equality in education they are providing equal chance to start to all the persons and further there is no need of reservation in service also. I am totally agreed with the viewpoint of John Rawls on reservation. Policy and there is clear need of revising the present reservation policy.

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