

Reservation In Higher Educational System In India

Neeraj

Assistant Professor, Geeta Institute of Law, Panipat, Haryana (India)
Email: advocateneerajjain@gmail.com

Abstract: The concept of “*welfare state*” essentially requires the instrumentality of government to undertake such initiatives which not only furthers the common goals of the citizens but also such other actions that particularly targets that group which has been long deprived of from the counting of these “*common goals*”. It is for this purpose that the idea of equality enshrined under the Constitution of India does not inculcate the basic understanding of the English term but necessitates such meaning which fulfils its real purpose. Following the same, India has time and again taken various steps for providing education those who are the real victims of social (*such as caste*), economical and other evils. This, *in turn*, requires the fulfillment of Constitutional obligations by taking appropriate measure such as reservation policy. The Indian Legislature has, *therefore*, marked its step by furthering the idea of equal opportunity of education to all. This paper, *therefore*, is an attempt to lay out the entire scenario as to how the “*welfare state*” fulfills its obligation under the Constitutional mandate which certainly targets the roots of discrimination. It is also showed that how the reservation policy in the area of higher education in India has benefitted the national interest and undermined the institutions such as of caste. The equality and non-discrimination debate is also debated upon extensively in the light of recent amendment.

[Neeraj. **Reservation In Higher Educational System In India.** *Rep Opinion* 2019;11(8):18-22]. ISSN 1553-9873 (print); ISSN 2375-7205 (online). <http://www.sciencepub.net/report>. 4. doi: [10.7537/marsroj110819.04](https://doi.org/10.7537/marsroj110819.04).

Keywords: Education, Reservation, Constitution, Equality & Discrimination etc.

Introduction:

Higher education in contrast to primary or secondary school education has been the domain of the elites and leads to substantial differences in life chances, access, and admissions criteria. The most common argument used against “equality” policies in higher education is that “excellence is often posited in opposition to equality”. Any theory supporting distribution of resources and giving equal opportunity won't overlook the sturdy affiliation between economic condition and academic attainments.

Access to education is important for economic empowerment and opportunity to enjoy a life of culture, which ultimately enables the development of human personality. From capability approach of Amartya Sen and Martha Nussbaum, education may be considered a substantive freedom which the people have a reason to value.

One of the most common solutions for extending equal opportunities in higher education is by reserving seats for certain sections of the society. The rationale behind this quota system is to ensure equality among equals. Reservations are a democratic means to avoid social unrest based on caste discrimination. The reservation system offers opportunity to some creative minds that were deprived of such opportunity for centuries. Thus Reservation helps in social mobility and access to modern education for the oppressed class, which is prerequisite for the modernization of India.

We have a system of standardized merit in admission selection processes which examines solely a set of pre determined academic skills. The privileged groups' understanding of merit has lead to the standardization of merit which reduces the guarantee of equal opportunity in selection processes to a distant goal. Merit is understood as not something inherent in individuals but is the consequence of privileges enjoyed by the members of certain classes of society. These classes are doomed to replicate the status quo instead of bringing fair representation of all groups.

Standardized examinations which test developed skills does not reflect the past history and socio-economic background of the candidate. Thus, Sawant J., in *Indra Sawhney v. Union of India*, explains that conditions of inhuman habitations, limited and crippling social intercourse, low-grade educational institutions and degrading occupations perpetuate the inequities in myriad ways which must be factored in the college admissions equation.

The need for devising a fair and inclusive mechanism to test merit is effectively stated by Prof. John Rawls in these words:

“Undeserved inequalities call for redress; and since inequalities of birth and natural and environmental endowment are undeserved, these inequalities must be compensated for to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into less favourable positions”.

Equality And Positive Discrimination:

Conception Of Positive Discrimination In India:

The framers of the Indian Constitution applied Rawls Substantive Theory of Justice to create a society based on justice which would guarantee socio-economic equality but unequal treatment would be permitted in cases where it for the benefit of the underprivileged. Protective discrimination ensured to achieve the above goal by a fixing a particular number of seats in educational institutions for specified underprivileged groups.

The reservation policy in India originated through the Indian Council Act, 1909, where four different communities were for the first time provided reservation in politics. Currently the Indian constitution provides reservation to scheduled caste, scheduled tribe, other backward classes and women.

The Mandal commission in order to redress this goal considered the question of seat reservations and allocating quotas for the socially or educationally backward people to curb caste discrimination. The 93rd Constitutional Amendment made provisions for advancement of socially and educationally backward classes of citizens, including their admission in aided or unaided private educational institutions. 15% and 7.5 % of the students admitted to universities are from Scheduled castes and Scheduled tribes. The state governments also follow their own reservation policies based upon the population of each state. So it can be said that nearly 50% seats are reserved. Reservation of seats in educational institutions should not generally exceed 50 percent. However this is not a rigid rule and every case must be decided with reference to its current scenario and not according to hypothetical results which the application of the rule may yield in the future. As stated in the Universal Declaration of Human Rights, "everyone has the right to education," and educational institutions are supposed to safeguard this ideal. Equal opportunities in educational institutes should be provided regardless of their family's wealth, background or social belonging.

Affirmative Action In India:

Affirmative actions are brought in usually to win the support of the marginalized or under-represented sections of society. The public policies supporting affirmative action are justified as they aim achieve equity, justice or democracy. The essential goal served by affirmative action policies in higher education are compensation to the victims for the past discrimination. Affirmative actions ensure redistribution of resources and opportunities to the unprivileged sections of society. Such actions help in motivating students from lower socio-economic and disadvantaged classes to aspire for better positions in society. Thus it enhances potentiality and productivity of such students and they get higher quality education and learning due to incorporation of diversity on

campuses. They end up getting better access to career opportunities. Ultimately a more legitimate democratic order is maintained. Affirmative action is usually resultant of socio-cultural, geographical, historical, political, demographical circumstances rather than of common psychological predispositions. Caste based discriminations are quite deeply rooted in our socio-cultural upbringing. Despite of having Article 17 of the Indian constitution prohibiting untouchability, lower castes are looked down upon in rural India. Thus the whole concept of reservations, quotas or affirmative action can be seen as a social contract between "the winners" and "the losers".

Equality Of Educational Opportunity:

There is a great need for having the equality of opportunity in education due to the following reasons:

a) It is needed for the establishment of an egalitarian society.

b) It is needed because it is only through the education to all citizens the success of democratic institution is ensured.

c) The equality of educational opportunities will essentially lead to a steady advancement of the country.

d) Search of talent and selection in entrance examinations will happen among all the citizens and not be necessarily limited to privileged class.

The Constitution of India also mandates the restoration of educational opportunities to all its citizens. Educational opportunities are the opportunities that enable the individuals to acquire knowledge and skills thus leading to the cultivation of certain capacities. The goals of the educational opportunities are closely linked to access to educational institutions such as higher educational universities.

Fair Equality Of Opportunity:

The conception of Fair Equality of Opportunity is developed by John Rawls. According to the conception of Fair Equality of Opportunity the social offices and positions should be open to all individuals who are equally talented. This enables all individuals getting equal chance to attain important positions, irrespective of their social background. By the conception of Fair Equality of Opportunity all members of the society are counted as the relevant agents. Irrespective of the social class background there should be no obstacles to achieve the desired goal in offices and other positions. The only obstacles that people may legitimately face include having fewer cultivated abilities or lack of willingness to use them. This principle closes the achievement gap between the rich and the poor who are similarly situated in terms of same talent potentials. The Rawlsian principle of Fair Equality of Opportunity aims to eliminate the effects of discrimination on grounds of social background on

educational achievement. Thus Fair equality of opportunity offers a radical and equitable interpretation of equality of educational opportunity.

The Cause For Diversity In Higher Education:

Selection in higher education institutions is an opportunity to be strategically provided to a certain class an institution looks for in the candidates. Ronald Dworkin describes this as:

“Places in selective universities are not merit badges or prizes for some innate talent or for past performance or industry: they are opportunities that are properly offered to those who show the most promise of future contribution to goals the university rightfully seeks to advance.”

A stronger and more legitimate higher education system can be formed by enabling persons from all backgrounds to find representation in universities. A diverse student body will encourage mix of values and experiences providing an effective and fertile platform for learning and scholarship. By bringing diversity in universities will not only reconcile differences in ethnicity and socio economic background but also diversify the environment of learning and achievement of goals. It provides a valuable platform for human interaction.

According to Patricia Gurin a diversified student body can think deeper and interpret complex situations. They are better nurtured to become responsible participants in a pluralistic, democratic society. In a residential university the effects of having a diversified student body are more pronounced where the students engage in constant and intense interactions. The validity of the diversity argument is dependent on the type of discipline or profession in question. In the field of legal education, researchers have highlighted the role of having a diversified student body. In a law school a diversified student body helps to achieve twin objectives: firstly it refines the student’s capacity for intellectual, moral and aesthetic engagement as a lawyer.

Secondly it prepares the candidates for a responsible participation in the public life of his community as well as the society at large. The first objective is personal and inward looking while the second objective is more outward looking and communitarian. A law school “cannot be effective in isolation from the individuals and institutions with which the law interacts.” By a diversified student body the realities of discrimination faced by different class of persons can be strictly scrutinized. Students coming from the background of social discrimination will not feel alienated from the society and will perform better to make positive sense of their professional life.

Reservation As A Tool For Affirmative Action:

Martin Luther King Jr. very rightly argued that, “legislation cannot change the hearts of the people

(even though it may restrain the heartless).” His argument applies to Indian scenario also as caste based discrimination was abolished in the Indian Constitution but despite of the legislation, the principles of hierarchy continues to exist. Hence we need the policy of reservation as a tool for affirmative action.

In the present society the reservation policy seems to be the most controversial policy as it has created a divide in the society with its supporters on one side and its critics on the other side. The reservation policy is criticized on the ground that it violates the principle of merit and further leading to lowering of evaluating standards. Lowering of the standards further leads to incompetency and inefficiency which is detrimental to the interests of the society at large Caste-based reservations often face criticisms due to the reason that they promote unhealthy culture of identity politics which deliberately avoids focus on the more substantive and critical social issues. With regard to this argument, eminent jurist Nani Palkhivala commented:

“The basic structure of the Constitution envisages a cohesive, unified and casteless society. By breathing new life into casteism the judgment of *Indira Sawhney v Union of India* fractures the nation and disregards the basic structure of the Constitution. The decision would revitalize casteism, cleave the nation into two- forward and backward, and open up new vistas for conflicts and fissiparous forces, and make backwardness a vested interest. It will undo whatever has been achieved since independence towards creating a unified, integrated nation. The majority judgment will revive casteism which the Constitution empathetically intended to end.” However this argument assumes that caste consciousness is the result of the policies of the government rather than the historical socio-cultural discrimination. Caste politics are not the product of Government reservation policies rather they are the result of past discrimination that existed against the backward class.

Evolution Of The Reservation Policy In India:

The evolution of the reservation policy can be traced to pre-independence era. In 1925 the government reserved some percentage of the posts in the government services to persons belonging to minority community. Such reservation policy was based on caste of an individual.

In 1943 this reservation policy got extended to other minorities like Schedule Castes.

In 1946 the share of jobs reserved for Schedule Castes corresponded to their population percentage in India. This policy continued for Schedule Castes and Schedule Tribes in educational institutions and government services.

The concession given to minorities was done away. But the Report of the Advisory Committee on minorities under the Chairmanship of Sardar Patel observed "consistent with the need of efficiency in administration, it is necessary for the state to pay due regard to the claim of minorities in making appointments to public services". However at a later point of time the Advisory Committee altered its stand on reservation for minorities and observed "except the backward classes who are economically and socially backward and SCs and STs who have special claims of their own, no other minority should be recognized in the Constitution". Though the constituent assembly was not sympathetic towards the demands of minorities, it responded positively towards the need of providing reservation to backward classes, Schedule Castes and Schedule Tribes. Few of members of the constituent assembly even opposed reservations. But Dr. Ambedkar defended the reservation policy by claiming: "we have quite a massive opinion which insists that there shall be a provision made for the entry of certain communities which have so far been outside the administration".

The policy of reservations was not based on economic or political considerations but on social and cultural considerations. The reservation policy aimed to devise a method by which backward class can climb up the social ladder and achieve positions of power and prestige like other sections of the Indian Society.

Reservation In Higher Education – Present Scenario:

State quotas in private unaided professional colleges were abolished by the Supreme Court. This led to the Ninety-third Amendment in the constitution by the Parliament in December, 2005. This amendment inserted the clause (5) in article 15 of the Constitution:

"Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the state from making any special provision by law, for the advancement of socially and educationally backward classes of citizens or for the scheduled castes or scheduled tribes in so far as such special provisions relate to their admissions to educational institutions including private educational institutions; whether aided or un-aided by the state, other than the minority educational institutions referred to in clause (1) of article 30"

Regarding the imposition of reservation on private unaided educational institutions the viewpoint of the judiciary is not very direct and outright. The only opinion we find addressing this question is the minority judgment of Bhandari J. in *Ashoka Kumar Thakur v. Union of India*, Bhandari J. in this case opined that non-imposition of reservation to private unaided educational institutes is misplaced.

Most importantly Article 15(5) does not provide specifically for "reservations". Special measures do not mean only reservations but can include many other measures in addition to reservations. It is only an enabling provision empowering the state to lay down by law "special provisions" in the matter of admission to "educational institutions". There is no particular emphasis on higher education institutions.

On the lines of this constitutional amendment the Union Government enacted the Central Educational Institutions (Reservation in Admission) Act, 2006 (the Act) under which 50% of the seats came under reservation in all the central educational institutions including institutions of higher learning and professional institutes like IITs, IIMs and government medical and engineering colleges. However the act excluded institutions in tribal areas, research institutions as specified in the schedule to the Act, minority institutions and super specialty courses from the scope of reservation. In case of super speciality courses Supreme Court in various cases held that there can be no reservation. But the act does not specify which super speciality courses are excluded and it is left to the discretion of the government to decide which super speciality courses stand excluded from the scope of reservations.

Bibliography:

- A. B. S. K Sangh (Rly) V. Union Of India, Air 1982 S C 298.
1. Amartya Sen, *Development As Freedom* 88 (1999).
2. Anna L. Green Et Al., *The Use Of Multiple Intelligences To Enhance Team Productivity*, 43 *Mgmt. Decision* 349 (2005).
3. Anthony T. Kronman, *Is Diversity A Value In American Higher Education?*, 52 *Fla. L. Rev.* 861 (2000).
4. Asha Gupta, *Affirmative Action In Higher Education In India And The Us: A Study In Contrasts*.
5. *Ashoka Kumar Thakur V. Union Of India* 6 Scc 1 129 (2008); *P.A. Inamdar V. State Of Maharashtra* 2005 Air (Sc) 3226.
6. *Ashoka Kumar Thakur V Union Of India* 6 Scc 1 129 (2008) .
7. *P.A. Inamdar V. State Of Maharashtra* 2005 Air (Sc) 3226.
8. *Bandhua Mukti Morcha V. Union Of India*, 3 Scc 161 (1984)
9. Chinnappa Reddy, J., *Holds The Majority Opinion In A. B. S. K Sangh (Rly) V. Union Of India*, Air 1982 Sc 298.
10. Fullinwider, Robert, *Affirmative Action*, (2018).

11. Ilaiah, Kancha, Merit Of Reservations, 41, Economic And Political Weekly, 2447–2449, (2006).
12. Indra Sawhney V. Union Of India, Supp (3) Scc 212 (1992).
13. John H. Bunzel, Special Issue: Education Law And Policy: The Diversity Dialogues In Higher Education, 29 Fordham Urb. L.J. 489 (1998).
14. John Rawls, A Theory Of Justice, 100 (1971).
15. Kirsten A. Dauphinais, Valuing And Nurturing Multiple Intelligences In Legal Education: A Paradigm Shift, 11 Wash. & Lee Race & Ethnic Anc. L. J. 1 (2005).
16. Lachat, Mary Ann, Standards, Equity And Cultural Diversity, (1999).
17. M. Nagaraj V. Union Of India, (2006) 8 Scc 212.
18. Martha Nussbaum, Frontiers Of Justices 76 (2006).
19. Media Reports, Press Releases, Press Information Bureau, Rncos Report, Department For Promotion Of Industry And Internal Trade (Dpiit), Union Budget 2018-19.
20. Nani Palkhivala, We The Nations: The Lost Decades 179 (1994).
21. Narayan Ramachandran, Opinion Time To Review India’S Reservation Policies, Livemint (01 Oct 2018).
22. Nitesh Mishra, Liberalisation Of Legal Services In India, Law Times Journal, (2019).
23. Patricia Gurin Et Al., Diversity And Higher Education: Theory And Impact On Educational Outcomes, Harv. Educ. Rev. 72, 3, 332-366 (2002).
24. Rawls, John, Justice As Fairness: A Restatement, (2001).
25. Ronald Dworkin, The Bakke Decision: Did It Decide Anything?, N.Y. Rev. Books, (August 1978).
26. Saurabh Chaudri & Ors. V Union Of India & Ors. (2003) 11 Scc 146; Dr. B.N. Vijayanarasimha V. State Of Karnataka And Others, Air1990 Kant 359.
27. Sharma, B.A.V. And Reddy, K.M, Constituent Assembly Of India Debates, Reservation Policy Of India, Light And Life (1982).
28. Shields, Liam, Newman, Anne And Satz, Debra, Equality Of Educational Opportunity, (2017).
29. Sweatt V. Painter, 339 U.S. 629 (1950).
30. Thorat, Sukhadeo, Oppression And Denial – Dalit Discrimination In 1990’S, Economic And Political Weekly, (2002).
31. Weisskopf, Thomas E, Is Positive Discrimination A Good Way To Aid Disadvantaged Ethnic Communities? Economic And Political Weekly, 1-23. (2006).

Internet And Online Citation:

<http://dx.doi.org/10.2139/ssrn.2052658>.

<http://www.nmji.in/text.asp?2017/30/3/159/215171>.

<https://ssrn.com/abstract=2052658>.

8/18/2019