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EXAMINING THE LEGAL FRAMEWORK AND SOCIO-ECONOMIC RATIONALE BEHIND RESERVATION POLICIES IN HIGHER EDUCATION

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ABSTRACT

The Reservation Policy has almost become an integral part of public policy. The reservation policy has three facets: reservation in education, reservation in job and services and reservation in parliament and Legislatures i.e. political reservations. However, the reservation in education and jobs and services have become a subject matter of debate and controversy; some argue that, reservation is necessary for removal of historical ill and injustice, where as some vehemently oppose reservation policy, and say that, it is discriminatory and harm the merit. But it is a constitutional provision and it is well placed in part- III and part-IV of the constitution; and made inalienable part of the fundamental rights, and directive principles i.e. Principle of governance. Therefore, it becomes incumbent upon the government to implement reservation policy, as envisaged by the constitutional makers, to set right the historical ill and injustice suffered by the certain group of the society, particularly scheduled caste, schedule tribes and other backward class.

However, in this "Research Paper" we are confining ourselves to the study of reservation policy related to the education, that too, "HIGHER EDUCATION", and try to investigate its Socio-economic impact on the society. For this we try to study the principles that underpin the reservation policy and its legal modalities and try to give justification for "Socio-economic development" of the society.

Keywords: Reservation, Legal Modalities, Socio-economic justifications, affirmative action, economic growth, economic development.

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INTRODUCTION

Though a well-developed education system was prevalent in ancient India, it was not inclusive. Majority of the population was forbidden to learn, to read and write under the guise of religious ethics. This was continued even in Middle Ages i.e. during the Mogul period also, since Mogul avoided indulging in religious matters of indigenous societies. However, on arrival of British East India Company, they opened school, though out of their own necessity to produce their administrative staff and servants; but again, under the pretext of social-pollution and untouchability lower castes people were not allowed to attend to school. However, in due course time, social reformers like Mahatma Phule came forward to fight for such excluded castes and with the co-operation of British officials like Mr, Hunter started to impart primary education to such outcaste people. Thus, Mahatma Phule became the pioneer of primary education for outcaste and untouchables.

Further to this, British government of England also extended their full support to company by granting charter act of 1813, which ushered new era of British education system in India, leading to the beginning of reorganization and modernization of Indian education on the line of British Educational system.

In 1857 there was a historical but political change; queen of England took over the 'rule of India' from East India Company and made lot of administrative and political changes in almost all the field, education was not immune to such changes. As result of it, "Education Departments'' were set up in each province along with three universities: Calcutta, Bombay and Madras; were also opened. Thus, higher education on the line of British universities started in India.

However, only high caste people from Hindu's and rich people from Muslim could reap the benefits of these institutions. Majority of the people, more particularly, of lower caste and untouchable remained untouched and could not be absorbed in newly created administrative set up. This resulted in substantial backlog not only in education but in the job and services also.

This situation was well realised by the British government, but they were helpless due to "religious sanctions" imposed on the lower caste. But due to Morley-Minto reform (1909), Chelmsford reform (1919) and Simon commission (1928), Govt. of India act 1935 Britisher

could fulfil the political aspirations of all such caste and communities; despite this, backlog in education and job and services went on piling.

Therefore, after independence it became the bounden responsibility of newly formed government of India, to do something for the lower caste to bring them at par with mainstream society, to mitigate the wide gap in educational field, created due to historical and religious constraints. Therefore, newly formed government decided to give certain privileges to such deprived caste through constitution itself. This deprived caste was fortunate enough to have their leader Dr. Babasaheb Ambedkar, who was not only Constitutional expert but well versed with caste problems and above all he got the opportunity to draft the constitution of newly liberated India.

Dr. Babasaheb Ambedkar being a versatile personality, well knowledgeable in the field of law, economics and social issues along with the caste system, he therefore, made use of all his knowledge and framed suitable "Legal Model of reservation policy" by keeping in mind the prevailing societal Conditions and lacunas in respective caste and communities, to upgrade their social status and economic conditions also, without harming the privileged class, by providing adequate socio-economic justifications for the adoption of "Legal Modalities of reservation policies".

GENESIS AND HISTORY OF RESERVATION POLICY

The King of Kolhapur, Rajarshi Shahu Maharaja, pioneered the idea of reservations, out of his own experience, the infamous 'VEDOKTA-EPISODE[1] 'wherein he was denied the right to hear the 'Mantras from Vedas', just because, according to the high caste priest the king belong to "Shudra Caste" and not authorised to listen "Mantras from Vedas". On hearing this, The King got irritated with the treatment given to him by the high-caste priest. Later, he realised that, most of the servants of his administration are from high caste and all of them are not only avoiding to recruit servants from other caste, on the contrary humiliate them, if there is any.

To eliminate such humiliation Maharaja ordered to recruit more servants from other caste in his administrative staff; but due to inadequacy of educated persons from other castes, he ordered to open school to produce learned people from the lower caste also, and went to the extent of reserving 50% seats for lower caste not only in education but job and services also.

[1] Reservation by Teltumbde (Navyana publication) page -23

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Due to such exorbitant illiteracy among the lower caste, Shahu Maharaj opened boarding school also.

Thus, the policy of reservation came into existence in the year 1902, and Shahu Maharaj recognized as a father of "reservation policy". Later, the king of princely state of Mysore, Krishna Raja Wadiyar (IV) also followed the suit in the year 1910, in this way; the era of "Reservation Policy" came into existence on Indian social horizon; which later Dr. Babasaheb Ambedkar developed it as a constitutional right in the form of legal modalities.

LEGAL MODALITIES OF RESERVATION POLICIES FOR EDUCATION

The policy of preferential treatment to certain groups or communities is not unique to India, it prevails in other countries also like: USA, Malaysia (Malaya); however, each country has its "own model of preferential treatments". The study shows that, there are two main models of preferential treatment, one is affirmative action and the other is Reservation with quota.

The USA had preferred to have "Affirmative action" which is suitable for their racial and socio-economic point of view, Malaya also preferred somewhat similar model. However, we in India, in view of caste discrimination and hatred against lower caste, leading to untouchability preferred to have a model of reservation with quota.

However, there are various legal modalities suggested by Legal and constitutional Experts and social reformers depending upon the various parameters and factors that are considered by them for implementation of their model of reservations,

For example,[2]

1.1.1. Sachar Committee report Model,
1.1.2. Purushottam Agarwal Model,
1.1.3. Deshpande and Yadav Model,
1.1.4. JNU Model,

All the above modalities possesses inherent advantages and disadvantages, still all the above modalities are useful either to maintain equality among the groups by way of reservation policy or completely to do away the reservation policy and inculcate the spirit of entrepreneurs and

[2] Reservation and Social justice by Rudder Datta (Dr. Mookerji Smruti Nyas)

competition among the groups on socio-economic front and simultaneously to keep eye on social, educational and economical backwardness of such groups, so as to eliminate backwardness and inequality from the society.

However, instead of above, modalities, we are limiting ourselves to the, "Legal Modalities" that have been adopted by Dr. Ambedkar in Indian Constitution. There are three such models of reservation policy pertaining to education embedded in article (15) of the constitution which runs as under,

Article15[3] :15(4) 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 SCs/STs.

In fact, there is no mention of "reservation for education" in the above article, however, language used and construction made of that article, empower the government to make special provisions for "advancement of education." Of course, other articles like, 29,30,45,46 and 350(A) corroborate the empowerment of government to make educational facilities available to all, including all types of minorities, groups, and communities without any discrimination; such empowerment included: primary, secondary, and higher education also; based on all the above articles and provisions made therein created "three Legal models of reservations" in educational policies including higher education, such as,

MODEL ADOPTED BY INDIAN CONSTITUTION

1.4.1. Reservation for scheduled caste with quota of 13.5 %

1.4.2. Reservation for scheduled tribes with quota of 7.5 %

1.4.3. Reservation for socially and educationally backward classes with quota of 27%

This Model is called as "Reservation with quota," and the same has been provided in the Indian constitution also. This model is further, strengthened by constitutional amendments not only from implementation point of view but to make it more inclusive also e.g.

1. 86th Constitutional amendment made it possible to frame RTE act and has not only made the primary education compulsory but it has expanded its horizon to bring the neglected

[3] Bare act of Constitution of India (Law & justice) page no.16

communities like tribal and nomadic communities in educational net and created a strong bedrock for higher education and made the reservation model more inclusive.

2. 103rd Constitutional amendment added one more facet to the existing model of reservation by adding article 15(6) and provided reservation of 10% to economically weaker section of the society and made the reservation model more inclusive.

IMPORTANCE OF HIGHER EDUCATION

In view of the adoption of new policy called "Liberalization, Privatization and Globalization," it became incumbent upon the entire world to adopt new education policy suited to LPG. India also followed the suit. Apart from this UNESCO also issued new guidelines in World Conference held at its Headquarter, Paris. Therefore, to meet the challenges of LPG and UNESCO guidelines, it became necessary to strengthen the field of higher education; not only to produce skilled and expert technocrat but also thinkers and scientists in all most all the faculties of higher education.

The universities of higher education are the gateways to the numerous opportunities, in a country like India; where ample socio-economic disparities are historically prevalent. In such a situation, higher education must not be confined to some elitist caste or societies but it should be provided to all the youth of India without any discrimination to produce skilled, expert, and knowledgeable individuals from various backgrounds to thrive and cope up with Global work force.

Apart from this, higher education provides socio-cultural benefits; fosters critical thinking, encourages exchange of diverse ideas, and promotes an understanding and appreciation of different cultures. This is particularly important in a country like India; where higher education can play a vital role in promoting social cohesion and national unity, along with the personal development suited to individual's passion.

Thus, the importance of higher education in India is multifaceted, and it not only impact individual development, societal progress, and socio- economic development of Indians as a whole.

Therefore, in view of the above, it becomes necessary to open additional colleges on the lines of IITs, IIMs and such other universities and naturally for the same cause, Indian government cannot keep people of SC/ST and other backward classes away from such educational

opportunities; Naturally in terms of constitutional provision reservation facilities are also to be provided in higher education.

SOCIO-ECONOMIC JUSTIFICATION FOR RESERVATION IN HIGHER EDUCATION

Over the past many years antagonist was criticising the reservation policy that, **"it kills the merit, retards efficiency and affect the economic growth adversely."** Therefore, the government and the pro- reservationists must come forward to defend the reservation policy not only from the constitutional perspective but also from socio-economics development point of view; and to understand the views of both: antagonist, protagonists; about the reservation policy.

The socio-economic developments involve two factors one is economic growth and other is economic development. The economic growth speak in terms of quantitative aspect like increase in production, increase in income and its reflection in GDP; whereas economic development speak in terms of qualitative aspects like education, health care, life expectancy and such other indicators through which societal wellbeing is reflected.

Thus both: economic growth and economic development; collectively called as a "socio-economic development."

Therefore, it becomes incumbent upon the researcher to justify in what way the reservation in higher education will affect the Socio-economic development of the society, from constitutional perspective. The framers of the Indian constitution have taken adequate care for economic development of the entire population of India; that is the reason why Indian constitution is called as a "socio-economic document". Moreover, all the articles of Indian constitution are so cohesive and inalienable that it cannot be interpreted mutually exclusively.

Most of the articles of directive principle directly or indirectly contribute to socio-economic development of the society as whole. For example,

5.1) Article 36 to 51 comes under directive principles[4].

Article No. 38: State to secure a social order for the promotion of welfare of the people.

[4] The constitution of India(published by j.b.International ,Agra)

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Article, No. 39: Certain principle of policy to be followed by the state as enumerate in Article 39(a)to 39(f).

Article, No 39(a): Equal justice and free Legal aid.

Article, No. 41: Right to work, to education, and to public assistance, in certain cases.

Article, No. 42: speak about maternity relief.

Article, No. 43: Living wages etc. for workers

Article, 45: provision for education of children.

Article, No 46: Promotion of Educational and economic interest of SC/ST and other weaker sections,

Article, No. 47: Duty of the state to raise the level of nutrition and the standard of living and to improve public health.

All the above articles speak about the welfare and wellbeing of the people of India and contribute towards economic development as envisaged by makers of the constitution.

Though the directive principles are not enforceable in court of law but they are fundamental in governance of the country and therefore, it shall be the duty of the state to apply these principles for making any law for social and economic development of the Indian masses. For this, art.37 categorically states that, "it shall be the duty of the state to bear in mind and apply directive principles while making laws for any causes, including laws relating to fundamental rights; even judiciary must follow the suit while interpreting fundamental rights and it shall be in consonance with directive principles. That is the reason why Chief Justice Subbarao unequivocally stated that, "Part III and Part IV of the Indian constitution constitute an integrated scheme forming a self-contained code and the scheme, being an elastic one, the directive principles can be implemented without any conflict between part IV and part –III of the constitution[5].

Moreover, most of the articles of directive principles are constructed in such a way that it contains grammatical, "Legal Modalities.' the word, "SHALL" which stand for not only as a

[5] Golaknath Vs. state of Punjab AIR 1967,S.C. 1943.

command to the government but the use of "SHALL" indicates clear mandatory duties imposed upon the state to take specific action.

ECONOMIC DEVELOPMENT

In view of the above, it is said that, part IV of the Indian constitution, dealing with fundamental principles of governance are so designed to bring about a, "Social and Economic revolution," which was immediately felt imperative after attainment of independence.

All the above discussion shows that, it is constitutionally bounding responsibility of the state to see that no element of the Indian society is deprived of, "economic development." Therefore, it becomes incumbent upon the government of India to make some arrangement for the people, who are historically lagging due to religious and such other reasons in "Economic development", a contributory factor of "Socio-economic development". For this, and to bring such deprived peoples at par with, "main stream of the society "thus the government have no other alternative but to provide some preferential treatment like, affirmative action on the lines of USA or reservation- quota system.

In view of the social circumstances, instead of 'affirmative action like USA, we have preferred to have,' "reservation with- quota system" as the social circumstances were such that, there was no other alternative for economic development of the deprived people comprising of more than 85% of the total population like Scheduled caste, Scheduled tribe, and other backward class.

ECONOMIC GROWTH

The other contributory factor of, **"Socio-Economic development" is economic growth,"** Broadly speaking, there are two main sources of economic growth: growth in the size of workforce and growth in productivity (output per hour worked) of that workforce. Either can increase the overall size of the economy but only strong productivity growth can increase per capita GDP[6] . But such growth of the country depends upon its knowledge economy and skilled man power; in every economy skilled manpower helps to strengthen the economic growth by extending knowledge to the productive process. The manpower of the country is known as 'Social Capital' or human resources. In addition to this, 'social capital' is usually developed

[6] Available at: https:/www.cbpp.org/research/economy/economic-growth-benefits-and-current limits

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by education and innovative ideas. Therefore, to make the society vibrant and more productive and effective, education must be an important aspect in fostering economic growth.

Thus, as mentioned above, economic development and economic growth collectively boost the socio-economic development of the nation.

CONCLUSION

The above study shows that, as for as India is concerned, due to caste system, untouchability, and religious hatred more than 50% "Social Capital" via-a vis manpower remained defunct, unutilised, and untouched, apart from this 33% population of India is treated as a brainless and years together deprived them of education, and made India to suffer huge loss of "Social Capital" because such manpower cannot be recouped or regained. The only solution for this is, "mainstreaming of all such people" i.e. scheduled caste and scheduled tribe and part of OBC communities like nomads.

To do all this, education must be taken to their doorsteps; they are to be provided some facilities, allow them to mingle freely in all the fields of mainstream society at the cost of killing the resistance high handedly, this sacrifice of elitist societies will certainly not only improve the economic conditions of such outcaste communities but it will also boost the economic growth of India as a whole, resulting into socio-economic growth of the country as a whole.

This situation had been well appreciated by the makers of our constitution and they therefore, adopted the, "Legal Model of Reservation with Quota," from socio-economic development point of view.