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Article 15 of Indian Constitution

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ABSTRACT

"Dr Ambedkar stated that "the report of the Minorities Committee provided that all minorities should have two benefits or privileges, namely representation in the legislatures and representation in the services."

The reservation issue has remained a cause of disagreement between the reserved and the non- reserved sections of the society. Its implementation may disbalance the aim to attain Fundamental right by not fulfilling of Art 14 i.e Equality but Reservation can be reason to a step towards ensuring the constitutional goal of equality of status, rather than opportunity and thus, the formalistic notion of equality has to be compromised a bit in the interests of social justice .A Lot of Says by honourable Judges of our Indian Judiciary as to reservations have been modified by our parliament through Constitutional Amendments Acts.

I. ARTICLE-15: PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to.

(a) Access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 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.

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(5) 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 any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

"The basis of providing reservation is giving proportionate opportunities to the people of Scheduled Castes, Schedule Tribes and other backward classes.The reservation is intended to aggrandize the social diversity in campuses and workplaces. Reservation in our Country is known as "Quota" system. Article 15 of Indian Constitution lays down that a citizen shall not be discriminated against, on grounds of religion,race,caste or place birth.

II. RESERVATION IN INDIA

Reservation is the process of setting aside a certain percentage of seats (vacancies) in government institutions for members of *backward* and under-represented communities (defined primarily by caste and tribe). Reservation is a form of quota-based affirmative action. Reservation is governed by constitutional laws, statutory laws, and local rules and regulations. *Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC)* (and in some states Backward Classes among Muslims under a category called BC (M)) are the primary beneficiaries of the reservation policies under the Constitution – with the object of ensuring a level playing field.

III. MANDAL COMMISSION

The ***Mandal Commission*** was established in India in ***1979*** by the Janata Party government under Prime Minister Morarji Desai with a mandate to "identify the socially or educationally backward." It was headed by Indian parliamentarian *B.P. Mandal* to consider the question of seat reservations and quotas for people to redress caste discrimination, and used eleven social, economic, and educational indicators to determine backwardness. In 1980, the commission's report affirmed the affirmative action practice under Indian law whereby members of lower castes *(known as Other Backward Classes (OBC), Scheduled Castes (SC) and Scheduled Tribes (ST))* were given exclusive access to a certain portion of government jobs and slots in public universities, and recommended changes to these quotas, increasing them by 27% to 50%.Mobilization on caste lines had followed the political empowerment of ordinary citizens

by the constitution of free India that allowed common people to politically assert themselves through the right to vote.

IV. INDRA SAWHNEY CASE (INDRA SAWHNEY AND ORS. VS UNION OF INDIA (UOI) AND ORS. ON 8 AUGUST 1991. NEW DELHI: SUPREME COURT OF INDIA. 1991):-

The following points were held in this case:

- classification of backward and more backward is valid.
- reservation cannot exceed 50%.
- only economic criteria is not valid.
- creamy layer must be excluded.
- reservation if promotion is invalid. - This was nullified by 77th amendment which added clause 15 (4). This clause permits reservation in promotions with consequential seniority.
- 16(4) is not an exception but only an instance of classification. Reservation can done without 16(4) as well, under the doctrine of reasonable classification.
- Any new parameters on reservation can be added only after consulting the supreme court.

(A) Issue Settled In Indra Sawhney Case

1. Whether clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment/in promotion as well?

The court saw no justification to multiply the risk', which would be the consequence of holding that reservation can be provided even in the matter of promotion and held that reservation of appointments or posts contemplated by clause (4) is only at the stage of entry into State service, i.e., direct recruitment. The court thus, overruled its own previous decisions in ***Rangachari (G.M., S.Rly. v. Rangachari, AIR 1962 SC 36)*** and ***Karamchari Sangh*** (***Akhil Bhartiya Shoshit Karmachari Sangh v. Union of India, (1981) 1 SCC 246)***. It also observed that providing for reservation thereafter in the matter of promotion amounts to a double reservation and if such a provision is made at each successive stage of promotion, it would be a case of reservation being provided that many times, and thus, would be a serious and unacceptable violation of the rule of equality of opportunity. That would mean creation of a permanent separate category apart from the mainstream, or a vertical division of the administrative apparatus. The members of reserved categories will not need to compete with others but only

among themselves. There would be no will to work, compete and excel among them. Whether they work or not, they will tend to think that their promotion is assured. This, in turn is bound to generate a feeling of despondence, frustration and heart-burning'among open competition members. According to the court, the members of the reserved category would not work hard since they do not have to compete with all their colleagues but only within the reserved category and further because they are assured of promotion whether they work hard and efficiently or not, and this is bound to affect the efficiency of administration. Thus, the court observed that at the initial stage of recruitment, reservation can be made in favour of backward class of citizens, but once they enter the service, efficiency of administration demands that these members too compete with others and earn promotion like all others; no further distinction can be made thereafter based on their ―birth-mark. They are expected to operate on equal footing with others. Crutches and handicaps cannot be provided throughout one's career. That would not be in the interest of efficiency of administration, nor in the larger interest of the nation. The court also said that it is wrong to think that by holding so, the court is confining the backward class of citizens to the lowest cadres. It was observed that it is well-known that direct recruitment takes place at several higher levels of administration and not merely at the level of Class IV and Class III. Direct recruitment is provided even at the level of All India Services and. District Judges. The court also noted that during the debates in the Constituent Assembly, none referred to reservation in promotions; it does not appear to have been within their contemplation.6 The court also made it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in **Thomas** (***State of Kerala & Anor. v. N.M. Thomas (1976) 2 SCC 310)*** and the concessions namely carrying forward of vacancies and provisions for in service coaching/training in Karamchari Sangh were cited as instances of such concessions and relaxations. However, at the same time, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. The court reiterated that ―while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs consistent with the efficiency of administration and the nature of duties attaching to the office concerned in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove.

It was also held that in ***Balaji (M.R. Balaji vs. State of Mysore AIR 1963 SC 649)***, a Constitution Bench of this Court rejected the argument that in the absence of a limitation

contained in **Article 15(4)**, no limitation can be prescribed by the court on the extent of reservation. It observed that a provision under **Article 15(4)** being a "special provision" must be within reasonable limits. It may be appropriate to quote the relevant holding from the judgment:

When **Article 15(4)** refers to the special provision for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exhaustive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that **Article 15(4)** authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of **Article 15(4)**. It would be extremely unreasonable to assume that in enacting **Article 15(4)** the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored. A Special provision contemplated by **Article 15(4)** like reservation for posts and appointments contemplated by **Article** 16(**4**) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the State and the center have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, State reserves practically all the seats available in all the colleges, that clearly would be adverting the object of **Article 15(4)**. In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case.

2. To what extent can the reservation be made?

It was held that "it was for the first time that this Court in Balaji has indicated broadly that the reservation should be less than 50% and the question how much less than 50% would depend on the relevant prevailing circumstances in each case. Though in Balaji, the issue in dispute related only to the reservation prescribed for admissions in the medical college from the educationally and socially backward classes, scheduled caste and scheduled tribes as being violative of **Article 15(4)**, this Court after expressing its view that it should be less than 50% observed further that "the provisions of **Article 15(4)** are similar to those of **Article** 16(**4**).

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Therefore, what is true in regard to **Article 15**(**4**) is equally true in regard to **Article** 16(**4**) reservation made under **Article** 16(**4**) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution." This decision has gone further holding that the reservation of 68% seats made in that case was offending **Article 15**(**4**) of the Constitution. To say in other words, Balaji has fixed that the maximum limit of reservation all put together should not exceed 50% and if it exceeds, it is nothing but a fraud on the Constitution. Even at the threshold, I may emphatically state that I am unable to agree with the proposition fixing the reservation for SEBCs at 50% as the maximum limit".

(B) Position After Indra Sawhney

The Government felt that the judgment of the Supreme Court in Indra Sawhney adversely affected the interests of SCs and STs in services, as they had not reached the required level. Therefore, the Government felt that it was necessary to continue the existing policy of providing reservation in promotion confined to SCs and STs alone. The Constitution (Seventy-seventh Amendment) Act, 1995 introduced clause (4-A) in Article 16 of the Constitution. The said clause (4-A) was inserted after clause (4) of Article 16 to say that nothing in the said article shall prevent the State from making any provision for reservation in matters of promotion to any class (es) of posts in the services under the State in favour of SCs and STs which, in the opinion of the States, are not adequately represented in the services under the State. After the Constitution (Seventy-seventh Amendment) Act, 1995 this Court stepped in to balance the conflicting interests and to mitigate the inequity created. This was in **Virpal Singh Chau*han* *(Union of India and others v. Virpal Singh Chauhan and others (1995) 6 SCC 684)*** in which it was held that a roster-point promotee getting the benefit of accelerated promotion would not get consequential seniority. As such, consequential seniority constituted additional benefit, and therefore, his seniority will be governed by the panel position. According to the Government, the decisions in Virpal Singh and Ajit Singh bringing in the concept of ―catch-up‖ rule adversely affected the interests of SCs and STs in the matter of seniority on promotion to the next higher grade.

Nagraj Case (Nagaraj & others vs. Union of India & Other (2006) 8 scc 212)

In 1995, 77th amendment to the Constitution was made to insert clause (4A) to Article 16 before the five-year period expired to continue with reservations for SC/STs in promotions. Clause (4A) was further modified through the 85th amendment to give the benefit of *consequential seniority* to SC/ST candidates promoted by reservation.

The 81st amendment was made to the Constitution that inserted clause (4B) in Article 16 to permit the government to treat the backlog of reserved vacancies as a separate and distinct group, to which the limit of 50 percent ceiling on reservation may not apply. The 82nd amendment inserted a provison in Article 335 to enable states to give concessions to SC/ST candidates in promotion.

The validity of all the above four amendments i.e. 77th, 81st, 82nd and 85th was challenged in the Supreme Court through various petitions clubbed together in ***M Nagaraj & Others vs. Union of India & Others***, mainly on the ground that these altered the Basic Structure of the Constitution.

On 19 October 2006, the ***Supreme Court*** upheld these four amendments but stipulated that the concerned state will have to show, in each case, the existence of *compelling reasons* which include *backwardness, inadequacy of representation* and overall *administrative efficiency*, before making provisions for reservation. The court further held that these provisions are merely enabling provisions. If a state government wishes to make provisions for reservation to SC/STs in promotion, the state has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class.

Balaji vs State of Mysore AIR 1963

In this case, Supreme court held the following:

- reservation cannot be more than 50%.
- the classification of backward and more backward is invalid.
- caste cannot be the only criteria because ***Article 15(4)*** talks about class and class is not synonymous with caste. So other factors such as poverty should also be considered.

State of Madras vs. Smt. Champakam Dorairanjan AIR 1951 SC 226

In this case, Supreme court held the following:

- Court pronounced that caste based reservations as per Communal Award violates Article 15(1).
- 1st constitutional amendment (Art. 15 (4) introduced after this judgment.

Unni Krishnan, J.P. & Ors. Vs. State of Andhra Pradesh & Ors. (1993 (1) SCC 645)

It was held that right to establish educational institutions can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). This was overruled in ***T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481,P.A.Inamdar v. State of Maharashtra***

2005 AIR(SC) 3226 Supreme court ruled that reservations cannot be enforced on Private Unaided educational institutions.

V. CONCLUSION

The reservation has remained a cause of disagreement between the reserved and the non-reserved sections of the society. While the unreserved segments, keep on opposing the provision, the neediest sections from within the reserved segments are hardly aware about how to get benefited from the provision or even whether there are such provisions.

On the contrary, the creamy layer among the same segment is enjoying special privileges in the name of reservation and political factions are supporting them for vote banks. Reservation is no doubt good, as far as it is a method of appropriate positive discrimination for the benefit of the downtrodden and economically backward Sections o, the society but when it tends to harm the society and ensures privileges for some at the cost of others for narrow political ends, as it is in the present form, it should be done away with, as soon possible.

Reservation is a step towards ensuring the constitutional goal of equality of status, rather than opportunity and thus, the formalistic notion of equality has to be compromised a bit in the interests of social justice. But, as held in ***Minerva Mills (Minerva Mills Ltd Vs Union (1980) 3 SCC 625 : AIR 1980 SC 1789***), for attaining the constitutional goals ie, the DPSPs, the constitutional means, i.e. the fundamental rights cannot be wholly abandoned. The proposed amendment, though successful in clarifying aforestated mixed- up concepts, has the effect of providing a handicap to the reserved category at every stage of the government ladder and thus, of reverse discrimination against the general category candidates, and thus, is most likely to be hit by article 14 of the constitution.

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