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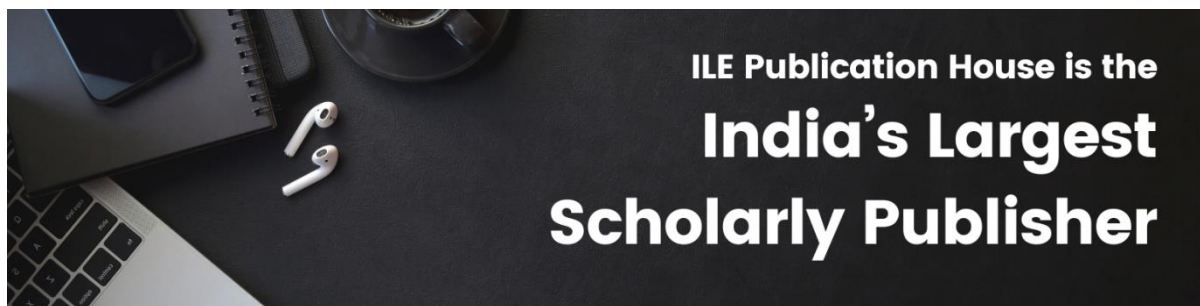
Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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“A CRITICAL ANALYSIS OF THE AFFIRMATIVE ACTION AND RESERVATION IN INDIA: RETHINKING THE CREAMY LAYER”

AUTHOR – AKHEKIVIMI K CHISHI, LL.M SCHOLAR AT CHRIST UNIVERSITY, BANGALORE

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ABSTRACT

In India, affirmative action and reservation laws have long been hotly contested issues. These policies, which were initially intended to support underprivileged areas, have come under fire for the way they have been implemented, especially in relation to the "creamy layer" idea. This essay examines the necessity of reconsidering reservation policies and affirmative action in light of the creamy layer, evaluating the implications for equality and social justice. Through an analysis of historical precedents, contemporary legislation, and the socio-economic context, this research proposes a more sophisticated strategy to guarantee that affirmative action achieves its intended objectives.

Key Words: Affirmative action, Reservation, Creamy layer, Backward classes, Social justice, Equity, adaptation, empowerment.

1. Introduction

In order to address past injustices experienced by Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), affirmative action was implemented in India as a weapon for social justice. The goal of the reservation system was to give people access to jobs, education, and political representation. But as the socioeconomic scene has changed, the idea of the "creamy layer" has become important to this conversation. The term "creamy layer" describes the relatively well-off OBC members who would not need reservation advantages, which makes these policies less effective. In order to guarantee that the advantages of reservation are received by those who actually need them, this paper makes the case for a reevaluation of affirmative action in India, especially in light of the creamy layer.³⁶²

2. Historical Context of Affirmative Action in India

2.1. Origins of Reservation Policies

In India, affirmative action has its origins in the systematic marginalization of some populations throughout the British colonial era. Social inequality was made worse by the divide and conquer strategy of the British government. Social justice and equality were enshrined in the Indian Constitution after independence. Affirmative action is expressly allowed under Articles 15 and 16 to improve socially and educationally disadvantaged groups. The principal author of the Constitution, Dr. B.R. Ambedkar, argued in favor of adding clauses that would correct past wrongs and advance social justice.³⁶³

The original intention of the constitutional fathers was not to provide reservations indefinitely. They proposed it for ten years. They thought the backward classes would come to be on par with other sections of society by then. Successive governments kept extending

³⁶² Surendrakumar Bagde, and others, "Does Affirmative Action Work? Caste, Gender, College Quality, and Academic Success in India," *The American Economic Review*, Vol. 106, 2016.

³⁶³ Durga P Chhetri, "Politics of Social Inclusion and Affirmative Action: Case of India," *The Indian Journal of Political Science*, Vol. 73, 2012.



reservations without a real plan for their upliftment. According to Justice Ranganathan, certain reservations may be necessary and, not reservations of all types in all cases. It, in fact, curbs initiatives for betterment and results in frustration and discontent in people. It is needed to treat the root cause, or it will be like taking tablets without proper diagnosis and treatment. The Indian Constitution has in its vision a perspective that aims at social justice in order to address the historical or the systemic discrimination faced by the sections of the society.³⁶⁴ The reservation policies are based on the ideals of equality and of affirmative action sanctioned under the various constitutional provisions:

Article 15 (4): This clause was added in 1951 through the First Amendment and allows the government to take special measures for those who are socially and educationally backward or belong to Scheduled Caste or Scheduled Tribe categories.

Article 16 (4); This clause allows the government to have quotas for “any backward class of citizens” as perceived by the leadership to be under served or public services.

Article 16 (4A): This provision allows such caste reservations in promotions and employment for the other backward classes/ states and tribes for member of these castes through amendments to this legislation, recognize the need to systematically address the issue in 1995.³⁶⁵

These provisions in totality establish the firm constitutional foundation that lies behind India's reservation policies designed to achieve substantive social justice and equality.

2.2. Evolution of the Creamy Layer Concept

The concept of the “creamy layer” was first defined in the famous case of Indra Sawhney v. Union of India (1992), commonly known as the Mandal Commission case. The apex court sought to exclude, for the purpose of ensuring

that affirmative action was directed towards the historically disadvantaged, those OBCs who were found to be “socially advanced” from the scope of reservation.

Important milestones in the development of the ‘creamy layer’ doctrine are:

Indra Sawhney (1992): It was defined by the court holding the following individuals: OBCs with a ‘creamy layer’ should be excluded from benefit of reservation and it identified socially and economically advanced groups who should in effect be the unfavorable target of reservations.

Subsequent Developments: These years have witnessed the evolution of certain guidelines which are used to define these criteria – usually income, type of employment and occupation of parents. On the contrary, SCs and STs, still being structurally disadvantaged groups, have been left out of the ‘creamy layer’ definition.

Because these communities had historically been disadvantaged, it advocated OBC reservations in government positions and educational institutions.³⁶⁶ But the goal of creating the creamy layer—a group of OBCs that is made up of the wealthier and better educated members of society—was to make sure that the economically disadvantaged groups received the advantages of reservation. In a number of decisions, the Indian Supreme Court affirmed this idea, stressing that reservations shouldn't sustain privileges for the wealthy within the underprivileged sections. Understanding social dynamics in a more sophisticated way was necessary when the creamy layer was identified, as not all members of the lower classes experienced the same obstacles. The discussion has also led to questions about the effectiveness and equity of the concept with most opponents arguing that the concept concentrates on economic literacy instead of caste oppression.³⁶⁷

³⁶⁴ P.P. Rao, “Right to equality and reservation policy,” *Journal of the Indian Law Institute*, Vol.42, 2000.

³⁶⁵ Constitution of India.

³⁶⁶ Rochana Bajpai, “Rhetoric as Argument: Social Justice and Affirmative Action in India, 1990,” *Modern Asian Studies*, Vol. 44, 2010.

³⁶⁷ Report of the Mandal Commission, Government of India, 1980.



3. Current Scenario of Affirmative Action and Reservation

3.1. Impact on Education and Employment

Reservation has led to a rise in the number of SCs, STs, and OBCs working in government and academic institutions, although its effectiveness is still being questioned. For example, research indicates that even with an increase in OBC enrollment in higher education, many of them continue to encounter major obstacles to both academic success and access to high-quality instruction.³⁶⁸ Critics question the intended purpose of affirmative action since they claim that the creamy layer has disproportionately benefited from these measures. In order to guarantee that the reservation system actually meets the requirements of individuals who are economically and socially disadvantaged, requests for reform have been made in response to this.³⁶⁹

3.2. Socio-Economic Disparities

There is a dilemma because of the creamy layer in OBCs. On the one hand, it has made it possible for some people to get access to good schools and well-paying jobs. However, it has excluded people who actually suffer from poverty and limited access to resources. For instance, an affluent OBC family could gain from reservations while a low-income, illiterate family in the same neighborhood is kept out and excluded. Because of this discrepancy, it is necessary to reevaluate current regulations to make sure they still reflect the socioeconomic realities of the modern world.

4. Theoretical Framework

4.1. Social Justice and Equity

The justification for affirmative action is based on the social justice idea. The present reservation system, however, runs the risk of weakening this idea by giving those from wealthy backgrounds access to programs intended for the underprivileged. In order to make sure that affirmative action is truly

effective, theoretical frameworks of equity need to be reviewed. In this context, equity refers to removing the structural obstacles that impede underrepresented communities from taking advantage of possibilities.³⁷⁰

4.2. Intersectionality

Reevaluating reservation laws requires an understanding of the intersections of caste, class, and economic standing. It is impossible to consider the experiences of marginalized communities in a vacuum; these groups' lived realities are influenced by a variety of factors, including gender, regional differences, and economic circumstances. A woman from a Scheduled Caste background, for example, can experience discrimination on top of it because of her caste and gender, therefore affirmative action measures need to be more specifically tailored to her needs.

5. Rethinking the Creamy Layer

5.1. Reevaluating the Criteria

The definition of the creamy layer must be reevaluated in order to increase the efficacy of affirmative action. It's possible that the income levels in place now don't fairly represent people's socioeconomic circumstances.³⁷¹ A more thorough analysis is required, one that accounts for geographical differences and the cost of living. For instance, in rural locations with much lower cost of living, an income level deemed "affluent" in a metropolis could not have the same significance.³⁷²

5.2. Expanding the Definition of Backwardness

Not only should caste be included in the notion of backwardness, but also socioeconomic circumstances. This strategy might more effectively aid people who actually need help, irrespective of their caste. People from the general category's economically weaker portions, for example, frequently confront the same difficulties as people from backward

³⁶⁸ Durga P Chhetri, "Politics of Social Inclusion and Affirmative Action: Case of India," *The Indian Journal of Political Science*, Vol. 73, 2012.

³⁶⁹ Rakesh Basant and Gitanjali Sen, "Who participates in Higher Education in India? Rethinking the role of Affirmative Action," *Economic and Political Weekly*, Vol. 45, 2010.

³⁷⁰ Clark D Cunningham and N R Madhava Menon, "Race, Class, Caste? Rethinking Affirmative Action," *Michigan Law Review*, Vol. 97, 1999.

³⁷¹ J. Laxmi Narasimha Rao, "Affirmative Actions in India: Emerging Contours," *Indian Journal of Political Science*, Vol.69, 2008.

³⁷² Clark D Cunningham and N R Madhava Menon, "Race, Class, Caste? Rethinking Affirmative Action," *Michigan Law Review*, Vol. 97, 1999.



classes, yet they are not eligible for reservation benefits. This necessitates a more comprehensive framework that tackles economic inequality outside of caste boundaries.³⁷³

6. Case Studies

6.1. Success Stories

A number of Indian states have made an effort to improve their reservation laws in order to better handle the creamy layer problem. Tamil Nadu, for instance, has put in place a novel paradigm that divides OBCs into various groups according to their socioeconomic standing. More focused aid has been made possible by this strategy, guaranteeing that individuals who truly require assistance will be given priority. In a similar vein, Maharashtra has updated its creamy layer criteria to take a wider range of socioeconomic considerations into account, which has improved the representation of the poor in the OBC category.³⁷⁴

6.2. Challenges and Failures

On the other hand, the conditions of those who are actually marginalized have not improved much in governments that have strictly followed the current standards without taking socioeconomic realities into account. For example, many worthy applicants are excluded in Uttar Pradesh, where reservation regulations have been rigidly centered on caste without taking socioeconomic realities into account. These case studies highlight how policies must be flexible and adaptive in order to guarantee that affirmative action actually helps the underprivileged.³⁷⁵

7. Policy Recommendations

7.1. A Dual Approach

It is advised to use a dual strategy for affirmative action, keeping the reservation system in place but also introducing socioeconomic standards to determine recipients. This plan would guarantee that the

most underprivileged populations get the assistance they require. Regular evaluations and modifications based on current socioeconomic data would be part of the dual approach, which would make sure the system is adaptable to changing circumstances.³⁷⁶

7.2. Periodic Review and Adaptation

To take shifting socioeconomic situations into account, the reservation system should be subject to compulsory regular evaluations. This would entail evaluating the efficacy of policies and adjusting them as needed to precisely target the deserving population. These reviews might be carried out by an impartial organization, guaranteeing responsibility and openness in the reservation procedure.³⁷⁷

7.3. Community Involvement

It is essential to involve marginalized communities in the formulation of policies. Their opinions can offer insightful information about the obstacles they encounter, enabling the creation of more inclusive and successful policies. Community consultations may be able to pinpoint the unique requirements of various groups, resulting in more effective solutions that are more suited to their needs.³⁷⁸

7.4. Promoting Economic Empowerment

Policies should prioritize programs for marginalized populations' economic development in addition to racial and educational equity. This could involve funding for business, loan availability, and skill development initiatives. The economic causes of inequality can be addressed in order to make affirmative action more comprehensive and successful.³⁷⁹

8. Critical Evaluation of the Reservation Policy

Equality of status and opportunity, promotion of fraternity, and assuring the dignity of the

³⁷³ Dipankar Gupta, "Towards Affirmative Action," India International Centre Quarterly, Vol. 33, 2007.

³⁷⁴ Frank de Zwart, "The Logic of Affirmative Action: Caste, Class and Quotas in India," Acta Sociologica, Vol. 43, 2000.

³⁷⁵ Pratap Bhanu Mehta, "Affirmation without Reservation," Economic and Political Weekly, Vol. 39, 2004.

³⁷⁶ Sujit M Raman, "Caste in Stone: Consequences of India's Affirmative Action Policies," Harvard International Review, Vol. 21, 1999.

³⁷⁷ Amarnath Mohanty, "Affirmative Action in India: An Alternative Perspective," Economic and Political Weekly, Vol. 42, 2007.

³⁷⁸ Deepak Nayyar, "Discrimination and Justice: Beyond Affirmative Action," Economic and Political Weekly, Vol. 46, 2011.

³⁷⁹ Pratap Bhanu Mehta, "Affirmation without Reservation," Economic and Political Weekly, Vol. 39, 2004.



individual and unity and integrity of the nation are the aims of the Constitution. The framers of the Constitution felt that the right to equality and prohibition of discrimination on grounds of religion, caste, creed, religion, or place of birth was inadequate to give equal rights to weaker sections. So, they included articles 41, 45, and 46 advocating positive state action and reservations. Article 334 guarantees reservations to scheduled tribes and castes in parliament and legislative assemblies.³⁸⁰

To whom the backward classes should be identified with? Can it be identified with castes? This question arose in the *Indra Sawhney v. UOI* as to whether identifying backward classes with caste was permissible. Most judges favored identifying backward classes with caste as neither the Constitution nor the law provides for any definition of the backward classes. However, Judges Kuldip Singh and R.M. Sahai opined that the Constitution envisages a casteless society, and caste should not be generally identified with backward classes under article 16 (4). They advocated that religion and caste cannot be the basis for the reservation of posts. On the other hand, the uplifting of such weaker sections must be done through special social and economic programs. According to D. A. Desai, a casteless society, as envisioned in the Constitution, can be achieved by eliminating the continuation of caste stratification, destroying poverty, and giving opportunities to backward classes.

At times the reservation can be counterproductive. In India, people seem to be happy to remain backward as a lot of privileges are attached to it. For example, the Jats, a powerful community, have been enrolled in the backward class. In Manipur, the Meitei community, who once rejected the proposal to be included in the scheduled tribe status, are now shedding blood to gain it as it would give them more gains and privileges. People are happy to remain backward; what is needed is

not reservation but equality of status and opportunity. Reservation policy has resulted in social tensions and barred the process of social integration.³⁸¹

The solution doesn't lie in job reservation and observes that the problems of the backward classes will not be over with job reservation. We tend to identify the problem of the backward classes merely by job reservation and neglecting the real issues they face without trying to go to the root of the problems that make them backward classes in society. It has only resulted in taking away attention from Adivasis who are too poor and who do not avail the reservations that are available to them because they have greater concerns of feeding their family and taking care of them. They continue to be in the lower strata of society because we have diverted our attention from the real problems they face.³⁸²

Article 334 provided for reserving SCs and STs in parliament for ten years. Every parliament has kept on extending the reservation through amendments. Reservation, which was supposed to be a temporary phenomenon, has become permanent. The concentration should be on educational and financial assistance to backward classes whereby one day they will be empowered to fare well in the competitions of this world. If the backward classes are to be brought to the mainstream of society, they need empowerment to come up in life and equality of opportunities in matters of status and opportunities in life. Reservation without empowerment would never serve the purpose for which the founding fathers of the Constitution had made provisions for reservation.³⁸³

9. Conclusion

Reservations should not be permanently identified with a particular caste or group. There must be a provision to make sub-castes even in

³⁸⁰ Amarnath Mohanty, "Affirmative Action in India: An Alternative Perspective," *Economic and Political Weekly*, Vol. 42, 2007.

³⁸¹ P.P. Rao, "Right to equality and reservation policy," *Journal of the Indian Law Institute*, Vol.42, 2000.

³⁸² Dharma Kumar, "The Affirmative Action Debate in India," *Asian Survey*, Vol. 32, 1992.

³⁸³ Ashwini Deshpande, "Quest for Equality: Affirmative Action in India," *Indian Journal of Industrial Relations*, Vol. 44, 2008



castes to identify the most backward ones. One could read the recent landmark judgment of the Supreme Court headed by Chief Justice Chandrachud, which allowed states to create sub-divisions within castes along this line. If, in spite of several years of reservations to a particular group, they continue to be backward, it implies something is wrong with the basic strategy itself. There is a need for attitudinal change in politicians as well. They, more than declaring empty promises and vote bank-targeted election manifestos, must come with better opportunities for all classes of people. Take the example of the state of Karnataka. The cabinet passed the bill for the reservation of locals in employment. It is a violation of Article 15 (1), Article 16 (1) and Article 19 (1). Can the Karnataka government be blamed for thinking of the larger interests of the Kannadigas? The solution to the problems lies in more than giving reservations. Efforts must be made to create more job opportunities and to uplift the state's people to be more skilled. Are the politicians trying to create more job opportunities outside of Bangalore that would benefit the local population? This requires visionary leadership more than vote bank politics. One could also read the 'creamy layer' concept along these lines. This idea tries to reach the benefits of the reservation policies to the most backward sections. It acts as a counter to the monopoly of more privileged groups within the backward classes. However, even this concept has met with many challenges in its implementation. Thus, in summary, one can say that the Article carries the author's resentment of the reservation and stresses that the reservation has been counterproductive.³⁸⁴

We can conclude by saying that affirmative actions are necessary but that alone can not be sufficient. In order to make sure that reservation and affirmative action in India serve the intended purposes, these policies must be reexamined. Although the creamy layer is a major obstacle, affirmative action can be made

to better correspond with social justice and equitable ideals with careful reevaluation and flexible approaches. A more sophisticated strategy that takes into account socioeconomic realities and community feedback can open the door to a reservation system that is more effective and inclusive and actually helps people in need.³⁸⁵

³⁸⁴ Dharma Kumar, "The Affirmative Action Debate in India," Asian Survey, Vol. 32, 1992.

³⁸⁵ Clark D Cunningham and N R Madhava Menon, "Race, Class, Caste? Rethinking Affirmative Action," Michigan Law Review, Vol. 97, 1999.