

Reservation in India within Constitutional Ambit: An Overview

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Abstract

Inequality is widely pervasive and deeply embedded in the Indian society with explicit manifestations in the socio-economic and political life of a large section of people on account of the normative structure of the Indian society. The constituent assembly constituted to frame the constitution of the Republic of India seriously deliberated on the issue and resolved to adopt 'reservation' as an effective mechanism to address the issue of inequality. Reservation was considered a form of affirmative action to uplift the living conditions of the hitherto excluded and disadvantageously placed backward class of people who have been historically oppressed and denied of basic human dignity and equal opportunity. It was accorded constitutional status with provisions for representation of the underprivileged people in the parliament and state assemblies of the country, and their employment in the government controlled economic enterprises in fixed percentage. Reservation, as evidence suggests, has been instrumental, and has certainly played a very significant role in the uplift of the living conditions of the hitherto excluded communities. But at the same time, it has also limited its scope, and kept away a large number of people in waiting on account of debatable criterion adopted in identification of the genuine and deserving groups and households. It is found that the first group of beneficiaries having availed of reservation benefits have established their monopoly at the cost of the remaining vulnerable groups who are left with no alternative other than to wait indefinitely because of non-pragmatism practised in implementation of the policy of reservation and in practical identification of the needy people. It is suggested that an institution with judicial power be created at the national level to meticulously prepare the group(s) of needy people for reservation, and closely monitor its implementation in letter and spirit of the constitutional provisions.

Keywords: Inequality, reservation, Republic of India, backward class, constitutional status

INTRODUCTION

Inequality has been pervasive in almost all the societies across the world since ages in various forms because of differential potentials of human beings, and unequal presence of natural resources. This has also been one of the most serious contentious issues among nations resulting in frequent outbreaks of wars witnessed between nations throughout the history of mankind. While, it is acknowledged that there can never be absolute equality in human society, its accentuation, aggravation and perpetuation on account of men in power can also never be overlooked and underrated at the same time. Philosophers, policy makers and leaders of the societies have had always expressed their serious concern at the presence of inequality in societies which is not only grossly unjust and inhuman but is also a blot on human civilization. Consequently, various initiatives have been in vogue to frontally attack it as witnessed in the American Declaration of Independence 1776, French Declaration of the

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Rights of man and citizen 1789, and Karachi Resolution of the Indian National Congress 1931, The Universal Declaration of Human Rights 1948, The International Covenant on Civil and Political Rights 1966 etc. The core theme of all such declarations unequivocally was that, “human beings are born equal, and everybody is entitled to be treated at par with each other without any discrimination or qualification [1]. Prior to explicit pronouncement of the ‘Rule of Law’ by A.V. Dicey, the primacy of this idea was already highlighted by W.E. Hearn, and even before that similar sentiments are found to have been expressed by Aristotle (384–322 BC). In view of Thomas Fuller (1654–1734), ‘Be you never high, the law is above you’.

In the long process of civilizational and ideological evolution, and with wider acceptance of open market system, and democratic governance based on adult franchise, a near consensus appears to have been reached with regard to the ‘principle of equality’, ‘human rights’ and ‘peaceful coexistence’. As a result, different mechanisms in monetary and non-monetary forms were initiated in different societies to address the issue of inequality depending on its nature, dimension, magnitude, and root causes. In societies especially in India with rigid hierarchical social division (casteism, racism, feudalism, sexism and tribalism etc.) resulting in differential access to economic and natural resources, socio-political accomplishments and socially acquired privileges and decorations etc., the device, and strategy that were considered to be effective were designed and based on the concept of ‘reservation’ [2]. In this very context, reservation was conceived and came into being in India to address the issue of inequality in order to ameliorate, and root it out from its basic sources of origin. It was premised that without extraneous support two unequals may never be able to compete with each other in an open system, and therefore, a specifically packaged reservation in educational institutions, legislative bodies and government controlled economic enterprises, and their ancillary services ought to be provisioned as a policy measure, and means to bring basic parity between the unequals that may provide stable boost to the socio-economic and political status of the hitherto excluded people of the society [3].

The incidence of hierarchical high degree of caste-based inequality deeply embedded in Indian society with its explicit manifestation in the socio-economic and political life of the people is highly exclusionary in nature. Further, the exclusion between caste groups is ensured through the practices of endogamy and social separation, and is further reinforced by linking it to occupation, economic production, and access to wealth and property. Its glaring manifestation in conduct of the socio-economic and political life of the people placed at the bottom of the social hierarchy being alarmingly inhuman and deplorable, warranted immediate resolve without any further delay. Various privileges acquired by birth, and practised by the upper caste people in their conduct of lives vis-à-vis the underprivileged lower caste people was beyond all limits, human tolerance and dignity. The dignity and honour of the Scheduled Castes (SCs) and Scheduled tribes (STs) placed at the bottom of the social hierarchy and considered as one of the weakest constituents of the society, ought to be legally protected on priority basis in view of its urgency. In retrospect, every caste except those at the top of the hierarchy had suffered from unequal and hierarchal assignment of rights. For instance, apart from manual labour and some occupations that were considered impure and polluting, the erstwhile deprived communities were denied of the right to do business or own property. They were even denied of the rights to education and several other civil, cultural and religious rights. Besides, they were made to suffer from residential segregation and social isolation because they were considered as impure and polluting, and not fit for any social association by the high caste communities. They were placed at the bottom, and viewed as “underneath” the caste system. They were further made to remain confined to the hereditary professions such as agricultural labourers, manual scavenging, tannery, washing clothes, daily wage workers, and fishing etc. which were below dignity for other castes groups. Historically, they were barred from entering temples and other places of worship, and sometimes were not even allowed to use the public roads used by the high caste people. They were subjected to the practice of untouchability in forms of various social restrictions ranging from ‘fatwa’ (a decree)—‘not to move freely’, and intermingle with other castes’, ‘use the same water source’, or even ‘live in the same area’ as that of the upper caste people.

There are around 220 million people, or 17 percent of India's population, who work as landless labour today. Similar is the condition of the scheduled tribes with primitive traits, distinctive culture, geographical isolation, shyness of contact with other communities at large, and backwardness. Most of these groups are called as Adivasis—the original inhabitants, while others are nomadic tribes as were they then termed by the British under their rule. Their modes of existence ranges from subsistence agriculturalists (who started interacting initially with the outside world as situationally demanded) to hunter-gathering groups living in the jungles. Those who had some land were evicted from their lands by the British, and were subjected to various kinds of exploitation. However, in the Northeast of the country, many of the tribes were somehow relatively better-off with no bar on interaction with the outside world because of their geographic location. There are around 100 million tribal people, or around 8percent of the India's population which includes the Bodo, Gondi, Banjara, and Santal etc. Besides scheduled tribes and castes, the other underprivileged groups of people are the Other Backward Classes identified by the Mandal Commission—the government constituted body entrusted with the task of identifying such groups whose living conditions were equally worrisome. Though they were not originally in the reservation scheme, they were included later by the Mandal Commission which studied all the communities in India to find out, what castes were “backward” compared to the general population. Based on 1931 census data, it was estimated that 52percent of India's population belonged to such castes that were “backward” due to various socio-economic factors like wealth or jobs performed.

In this backdrop, ‘reservation’ was considered as an effective strategic mechanism to redistribute critical societal resources by enacting legislative laws in favour of the disadvantaged sections of the society. It aimed to provide them a legislatively decided fixed percentage of share in the legislative bodies and government-controlled enterprises to stabilize, and strengthen their living. It was hypothesized that in the given situation, reservation may be the most effective way to support the underprivileged sections in uplifting their status which will ultimately empower and enable them to participate with strength and regained confidence in the mainstream societal activities like any other member of the society. Following, this, in the considered view of the constituent assembly, it was resolved that in view of the prevailing socio-economic and political conditions, without reservation constitutional safeguard the issue of inequality may never be satisfactorily addressed. Further, with the constitutional status accorded to it, there may not remain any scope of further probable negotiation, compromise or giving second thought to it even if there is a change in the power equation at the federal level in future.

The ‘principle of reservation’, however, is not new to India. The history of its origin goes back to ancient Hindu sages’ contemplation of people’s wellbeing who considered law as real protector of their interest. Formally, in 19th century when India was under the British rule, in the background of the hierarchical stratification of the Indian society, the British considered essential to provide separate representation to different ethnic communities, namely Muslims, Sikhs, Indian Christians, Anglo Indians and Europeans for their various religious activities. The depressed classes were assigned a number of seats to be filled in by their representatives in various elected bodies like village panchayats, state assemblies and parliament. The same policy was continued even after the independence in 1947, with its enlarged scope to bring in the scheduled castes, scheduled tribes and other backward classes in the entitled groups of people for reservation benefits. The Constituent Assembly of India constituted to frame constitution of the Republic of India adopted a resolution on 22nd January 1947 in which it promised ‘equality before law’ as the basic structure of the constitution. It made specific statutory provisions for reservation to such communities so that the entire society can be joined in the mainstream without discrimination of any kind. The common practice of untouchability was outlawed outrightly. The constitution specified the right to equality in Articles 14 to 18, Article 14 being general, and Articles 15–18 being supplemental to Article 14, with the provision of specific application of the ‘principle of equality’ to address the issue of socio-economic and political disparity and discrimination prevailing in the country.

The philosophy of the constitution can be summed up in the words of Sardar Patel, “Now our object is, or the object of this House (referring to the Constituent Assembly) should be declared, as soon as possible, and as rapidly as possible to drop these classifications and differences and bring all to a level of equality.” And so, he appealed to all sections—majority and minority, high caste and low caste—to work together for their obliteration, and this approach remained the beacon of the reservation policy of the constitution. In a landmark statement, the first Prime Minister of the country, Pandit Jawaharlal Nehru about reservation stated, “it is a motion which means not only discarding something that was evil, but turning back upon it, and determining with all our strength that we shall pursue a path which we consider fundamentally good for every part of the nation” (Shastry, 2020). As an affirmative action, reservation, in India, thus, came into being with a number of seats to be reserved in educational, social, economic and political institutions for participation of various under-represented communities to uplift their living conditions. Accordingly, special provisions were made in the constitution for the hitherto excluded communities for their representation in various decision-making bodies and government controlled economic enterprises. These constitutional provisions of reservation aimed to empower the scheduled tribes and castes educationally and economically by reserving seats for them in educational institutions and economic enterprises.

The constitution prohibits discrimination (Article 15) of any citizen on grounds of religion, race, caste, etc., untouchability (Article 17), and forced labour (Article 23). It reserved seats for the SCs and the STs in the Parliament (Article 330) and in the State Legislative Assemblies (Article 332), as well as in government and public sector jobs under both the central and state governments (Articles 16(4), 330(4) and 335) [4]. It was considered that reservation will not only act as a catalyst but will also be a step forward in establishing an egalitarian society wherein social, economic and political justice would prevail, and opportunity to equality in status would be available to all. The instrument of reservation, thus, will facilitate the Indian society in its transformation towards egalitarian order by providing special protection to the marginal sections of people which was an important tenet of the constitution. Reservation was originally given to SCs and STs only, but was later extended to include other backward castes (OBCs) in 1987 after the implementation of the Mandal Commission report which was constituted by the Government of India to identify the people of the backward class.

The constitution however, founded on the lofty ideals of justice, liberty and fraternity, and right to equality as a fundamental right has to make minor departure from the rule of equality in order to infuse further egalitarianism in the society. But this departure made was to benefit the vulnerable groups—women, children, scheduled castes, scheduled tribes and other backward sections of the society. Although, Articles 15 and 16 of the constitution marked the departure from the rule of equality, Article 335 worked as a balancing wheel at the same time.

Having committed to the principle of reservation to uplift the socio-economic and political status of the hitherto excluded communities, a serious debate followed as to who should be included in the list of the excluded communities, how to identify them, and what criteria should be adopted to determine their identity etc. While some were in favour of applying caste as the sole criterion to qualify for reservation, others vehemently opposed and considered it to be violative of the basic justice. They argued, it may not always be the case that all households from a community may be similar to each other of the socio-economic and political status at a given point of time. Some may be as good and well placed as other households of the upper castes, or even some households from their own community. The advocates of the caste criterion harped on exclusion and exploitation of the scheduled castes and tribes since ages, who had been at the bottom of the social hierarchy with no ownership over economic resources (land or employment) and deprived of their legitimate political rights. On the other hand, the proponents of the other view argued that the purpose of reservation may be self-defeated if reservation is strictly followed on the caste lines, as there may be other eligible caste communities too who may equally need support to improve their living.

In a democratic polity based on party system, rival political parties always look for opportunities and compete with each other, whether in power or in opposition, to win the confidence of their electorate. They always race to be ahead of others, and encash and capitalize on the situation arising out of such political exigencies in their favour by showing sympathy and taking sides with the group(s) likely to be benefitted. Taking advantage of the situation, the Government of Andhra Pradesh appointed a commission to identify the groups amongst the backward classes, who had failed to secure benefit of reservation provided to the scheduled castes in the state in admission to professional colleges, and appointments in services of the state under article 341 of the constitution of India. An ordinance under article 213 (later on converted into an Act) was brought in, which divided 57 castes into four groups based on inter se backwardness, and fixed separate quota of reservation for each of these groups. However, the Andhra Pradesh Scheduled Castes Act, (Rationalization of Reservation) 2000, which divided the scheduled castes was challenged as violative of Articles 15(4), 16(4), 16(2), 162, 246, 341 (1) 338 (7), 46, 335 and 213 of the constitution [5]. This was not acceptable to several groups, who then approached the Supreme Court which held that the backward class under the clause (4) of article 15, or article 16 must consist of homogenous group-the element of homogeneity being the backwardness characterizing of the class. Thereafter, the Mysore government further laid down two tests for determining backwardness. These were economic condition and profession (*R. Chandra Lekha v. State of Mysore*). Further, in *M.R. Balaji* case, the court observed that though caste may be a relevant factor, but not the sole factor for determining backwardness.

In an interesting turn of events in subsequent cases, however, the apex court took a turn and accepted 'caste' as a test for determining backwardness. Following the Apex Court's observation, the Government of Andhra Pradesh again appointed a commission to prepare a fresh list of eligible groups after taking into consideration tests like caste, educational backwardness, occupations and general poverty, and the court held the test valid (*S.V. Balaram v. State of A.P.*, AIR 1972 SC 1375). However, the court held that reservation for backward community should not be so excessive that may create monopoly, or disturb unduly the legitimate claims of other communities (*Arati Roy Choudhury v. Union of India*). Reservation to posts was further made on the basis of various castes and communities, e.g., Harijans, Backward Hindus, Hindu Brahmins, Non-Brahmins, Christians and Muslims (*Venkataramana v. State of Madras*) [6]. In another case (*Triloki Nath v. State of J.K.*), the state government of J.K. issued a government order reserving 50 percent of vacancies for Muslims of Kashmir, 40 percent for the Hindus and 10 percent for Kashmiri Hindus.

The Apex Court further observed that, backward class was not a synonym of backward caste or backward community. However, the economic factor can be a factor for determining backwardness, but not the sole determining criterion. Social backwardness which results from poverty should also be highlighted along with caste considerations. The Supreme Court held that Article 16 (4) permits reservation to posts in favour of the backward classes only, and not for others. It even quashed the notification of 4th March 2014, issued by the central government granting the status of backward class to other communities, namely the Jat community in various states. The court suggested to evolve new practices, methods and yardsticks to move away from the caste centric definition of backwardness [7]. In *M. Nagraj v. Union of India*, a constitution bench of the Supreme Court examined the concept of reservation from jurisprudential angle, and treated it as an aspect of social justice.

RESEARCH METHODOLOGY

The present study has explorative-cum descriptive research design. The study is based on secondary sources of materials. The objective of the study is to analyse the criteria of reservation in India within the constitutional ambit vis-a-vis judicial scrutiny of reservation.

DISCUSSION

In a traditional and highly stratified society of India with rigid caste hierarchy, and assigned socio-cultural norms inequality is omnipresent and deeply inherent since ages. Any attempt to root it out is a

herculean task and always stands out as a serious challenge, before any democratic government. The presence of multilingual, multicultural, multireligious, and multiethnic communities in India and their living together adds further woes to the complex and contentious issue of reservation [8].

Having agreed to the principle of equality in the constituent assembly, and after according it constitutional status, its implementation stood and emerged as the serious most challenge. It was inevitable that it would invite the wrath of and stiff resistance from the privileged sections of the society who have had historically dominantly dictated over others. Even if one agreed to the principle of equality, and to the measure of 'reservation' as a way to address the issue of inequality after a long persuasive debate, there remained deep resentment and disagreements among the contending groups and political parties as to who should be given the benefit, and what criterion should be followed in determining the eligibility of castes and or classes for reservation. Whatever criterion was proposed to be followed, counter arguments were instantly brought forward on the grounds of effective and meaningful outcomes of the reservation, as all households in a caste or class are never placed at par with each other at the same time, nor can they be found on the same point of socio-economic and political positioning because of wide variance in the socio-economic and political status of people across different caste and class communities. At the same time, it also created political turmoil and bitter political rivalry among political parties waiting to exploit the situation. However, state governments without going through detailed analysis of the pros and cons of the policy of reservation immediately brought out orders for the benefit of their political constituencies [9]. In consequence, these orders were summarily challenged in the courts of law for final verdict. In a classic study, M.N Srinivas while dealing with his concept of 'dominant caste' concluded that, the dominant caste does not universally constitute of upper caste only. Rather, other castes are also found to be in dominant status in different areas. Besides, reservation was considered necessary for transcending castes but not for perpetuating it [10].

In course of time, as a result, several petitions were filed in the courts of law with regard to reservation on the ground of its discriminatory nature and adoption of criterion for reservation benefits. This compelled governments to go for further amendment(s) in the relevant provisions of the constitution under courts direction and public pressure. Petitions which came before the courts under Article 15(4) and Article 16(4) primarily concerned with the determination criteria of backward class, and the extent of reservation. As people once enjoyed the benefits of reservation do not readily agree to part away with it under any circumstances [11]. Thereafter, governments under growing public pressure were left with no option, but to frame suitable legal provisions to ensure benefits continue accruing to the people as before. The state of Madras in order to benefit the backward classes fixed the proportion of each community that could be admitted in the state engineering and medical colleges. However, the Supreme Court declared it unconstitutional (*State Madras v. Champakam Dorairajan*, AIR 1951 SC 226: 1951 SCR 525), as it was offending Article 15. The court observed, though Article 15 permits advancement of socially and educationally classes of citizens, its basis on caste lines may not do justice with the objective of reservation, as all backward castes may not necessarily be in need of extraneous support. Subsequently, Article 15(4) was inserted in the Constitution (First Amendment) Act, 1951 allowing states to make special provision for advancement of any socially and educationally backward classes of citizens, and scheduled castes and scheduled tribes. This clause was an exception to clause (2) of the Article 29 dealing with protection of minorities. This Article mandated educational institutions not to deny admission to any citizen on the ground of race, sex, caste, language or any other kind. Such institutions, however, must be maintained by the state, or receiving aid from the state, was the directive of the court. Similarly, under Article 15(3), the governments were empowered to make special provisions to protect the interests of women and children. Thereafter, the question of limit of reservation came up before the court (*Mr. Balaji, Arati Roy Choudhury v. Union of India*), as it had exceeded the stipulated 50 percent of reservation in several cases. On this, the court ruled that this should never be so excessive as to create a monopoly, and takes away the claims of other communities [12].

Further, in respect to the tedious issue of ‘what should be the extent’ of reservation, is another aspect dealt by the court. For instance, the State of Mysore issued an order reserving 68 percent seats in engineering, medical and other technical institutions for the backward classes, scheduled castes, and scheduled tribe candidates (*MR. Balaji v. State of Mysore*). This reservation was challenged and in its defence the state government submitted that Article 15(4) does not prescribe any limit and even cent percent reservation can be made for backward classes if the backwardness in the state so required. The court declared 68 percent reservation inconsistent with Article 15(4). This issue was again considered by the Supreme Court in *Indira Sawney v. Union of India* and the court held by majority held that “reservation contemplated by Article 16(4) should in no case exceed the limit of 50 percent (AIR 1993 SC 477).

The law relating to reservation in employment under the state in favour of backward classes was laid down in *Indira Sawney v. Union of India* also known as the Mandal Commission constituted by the government to decide backwardness, and identify backward classes. The Mandal Commission judgment had taken note of, and given directions to, and further laid down certain important principles in respect to reservation, such as to what extent reservation can be fixed. Overall, reservations in a given year should in no circumstances exceed 50 percent [13].

The court in order to clarify the situation laid down specific criterion to settle the issue of the backward classes. It stated, there must be backwardness, reasonable with rational nexus to the object in view of adequate representation of the backward classes (BCs). And above all, the consideration of administrative efficiency should always be kept in mind while giving preferential treatment to BCs. Thereafter, 77th amendment, 1995, 81st amendment, 2000 were made in which clauses (4-A) and (4-B) in Article 16 were inserted. The constitution bench on these changes has held that these two clauses flow from Article 16(4) and, they remain as the controlling factors, or the compelling reasons, namely, backwardness and inadequacy of representation enabling the states to implement reservation while maintaining the overall efficiency of the state administration under article 335. Article 16 (4-A) inserted in the constitution (seventy-seventh Amendment) Act, 1995, and amended by the constitution (Eighty-fifth Amendment) Act, 2001 carry provisions for reservation in matters of promotions. Examining the constitutionality of Article 16 (4), the court observed that it is not in the nature of an exception of Article 16 (1) rather it furthers the idea of equality of opportunity with reference to underprivileged and depressed classes of citizens. It also held that Article 16(4) was an instance classification permitted by Article 16(1), as a reasonable balance has to be struck so that the affirmative action does not lead to reverse discrimination.

The objective of providing reservations in services was not only to give jobs to few persons belonging to BCs, but it also aimed at empowering them, and ensuring their participation in the decision-making process of the State. Similarly, in order to provide reservation benefits to other vulnerable sections of the society, under Section 33 of the Persons with disabilities (equal opportunities, Protection of Rights and Full Participation) Act, 1995, it mentioned reservations to the persons with disabilities in government and its undertakings was to be 3 percent of the vacancies arising to the post. Further, the court made it clear that reservation for disabled persons has nothing to do with the ceiling of 50 percent and hence, *Indira Sawney v. Union of India* is not applicable with respect to disabled persons.

In a further development, another important issue of ‘creamy layer’ came into question and hotly debated whether citizens having improved their social and educational status, and who fall in the category of ‘creamy layer’, should be recommended or permitted to take benefits of reservation. It was decided to keep away the creamy layer class of people from the purview of reservation, so that reservation benefits reach all the genuine and deserving households. It was the duty of the state to identify the reserved category of citizens and the creamy layer. In respect to promotion to posts, it was decided that professional positions and positions requiring highly specialized skills, e.g., professor in

educational institutions, pilots, scientists in research organizations, technicians in nuclear and space applications to be exempted, and kept beyond the purview of reservation in view of their highly sensitive and strategic responsibilities. It further held that promotion to such positions should be made on the basis of merit only, and no extraneous factor be considered at all. Another related issue to reservation was voluntary transplantation of reservation [14]. A citizen of India born in a forward class but transplanted in the backward class by marriage, or adoption or any other voluntary act will not be entitled to avail of the benefits of reservation earmarked for SCs and STs. Similarly, forward class girls marrying a backward class, or a SC or ST boy will also not be eligible for the benefits under Article 15 (4) and Article 16 (4) of the Constitution (*Valsamma Paul v. Cochin University*, AIR 1980 SC 116).

In order to show concern for the poor, and to broaden public support in their political constituency, the rival political parties raised the issue of 'carry forward' of unfulfilled vacancies before the court for clarification and guidance. It was argued that in cases when qualified backward class candidates were not available, and if the same is carried forward to the next year, this will eventually exceed the stipulated 50 percent limit, and thus, would become illegal in view of the Supreme Court (*M.R. Balaji v. State of Mysore*). Thereafter, it was realized and recommended that an effective mechanism ought to be worked out and designed for proper implementation of the reservation policy in its letter and spirit to ensure reservation benefits continue reaching the target groups uninterruptedly.

CONCLUSION

Inequality in different forms with deep manifestations in the socio-economic and political lives of the people has always been found to be pervasive and widespread in almost all the societies of the world. This is not only grossly unjust and inhuman, but is also a blot on human civilization. In view of the alarming presence and serious manifestations of inequality in societies, there has been a universal consensus to eliminate the evil inequality from its basic roots. The constituent assembly constituted to frame the constitution of India seriously deliberated on the issue of deep rooted socio-economic and political inequalities prevailing in the country, and resolved by consensus to adopt 'reservation' as the most appropriate policy measure to address it effectively. However, soon after its implementation, it gave rise to several contentious issues, as to what should be its extent, and what should be the eligibility criteria to identify genuinely needy groups to avail of the reservation benefits [15].

Taking advantage of the situation, a mad rush followed among state governments to bring out government orders granting reservation to the underprivileged communities based on castes without realizing their constitutional validity in order to strengthen and consolidate their political constituencies ahead of other rival political parties. As a result, these orders were challenged in the courts of law, and ultimately the Apex court of the country had to give its verdict with regard to implementation of different facets of reservation time and again in order to maintain balance, and justice to all in the society. Despite, there is no denial to the fact that reservation has greatly improved the living standard of a large number of the underprivileged communities resulting in their enhanced status. Yet at the same time, it has also given rise to several critical issues to be resolved in order to fully realize the objectives of reservation. Consequent upon the implementation of reservation, the age-old harmony established in the social fabric of Indian society is seriously damaged, on the one hand, and a new class of 'reservation beneficiary' has emerged, on the other hand. This has led to bitter social rivalry and unpleasant social distance between beneficiary and non-beneficiary groups. Political parties under constant public pressure for inclusion of more castes in the list of backward classes have also plunged into the scene to win over the public sympathy in their favour. The recent Gujjar agitation in the state of Rajasthan for their inclusion in the list of backward communities is the latest example. The upper limit of reservation fixed by the court is also flouted time and again by government to keep their political constituencies in good humour. Besides, the first group of beneficiaries having availed of reservation benefits, who have now entered the creamy layer, and established monopoly over the reservation benefits, are not prepared to part away with it at any cost.

Political parties also dare not speak out against it, lest their political constituency may revolt against them. As a result, the policy of reservation to ameliorate inequality has in effect become self-defeating. And, in practice, reservation has remained confined to only the creamy layer group at the cost of the other remaining groups who are in wait but continue to suffer from inequality and exploitation.

As a policy measure, it is suggested that an apex institution with judicial power be constituted at the federal level to closely scrutinize, and regularly prepare the list of genuine deserving candidates for onward transmission to the government for reservation, so that justice is done with all and benefits of reservation reach all the deserving households of the society without any discrimination based on flimsy grounds. It is further suggested that reservation be made progressive in order to eliminate inequality and bring all the underprivileged groups under its ambit in sequential order rather than remain confined to the first group of beneficiaries who have already entered the creamy layer but continue to enjoy the benefits because of being ahead of others.

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