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CRITICAL APPRAISAL OF THE CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN TEACHERS CADRE) BILL, 2019

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ABSTRACT

Education is a tool for empowerment and full development of human personality and dignity and teachers play a vital role in influencing the society shaping the future of a nation. Reservation, a tool for social justice is essential to create a fair ground to explore opportunities and exhibit abilities. To implement this social justice measure The Central Educational Institutions (Reservation in Teachers Cadre) Bill 2019 Bill was passed by the parliament on July 3, 2019. The bill specifically provides for reservation in teaching posts in central educational institutions provided under the Act and it also emphasises and establishes that in such reservations the educational institution shall be considered as a whole single unit instead of departments. This came as a development against the judicial decision where the Allahabad High Court criticised the UGC Guidelines 2006 for applying reservation for teachers in colleges and universities in a blanket manner. The UGC in pursuance of the said judgement which was upheld by the Supreme Court, after much consideration amended its guidelines implementing the rooster system with departments as units for calculation which stands nullified after the bill. The object of the study is to measure the impact and effectiveness of social justice through reservation policy in teaching jobs. The study aims to analyse the bill in the light of the prevailing reservation practice and to reflect upon the impact the said bill may have on legal education.

Keywords: Teachers, Reservation Bill, Social Justice

OVERVIEW OF THE BILL

“Reservation is not a charity it is representation.”

Justice Chinappa reddy

The Central Educational Institutions (Reservation in Teacher's Cadre) Bill 2019¹ defines appropriate authority as the University Grants Commission or any other body established under a central act for maintenance of standards of higher education. The Bill covers under graduate, masters and doctoral levels of study. Every institution or university established under a central act or under the Societies Registration Act 1860 or which is declared as deemed university under University Grants

¹ The Central Educational Institutions (Reservation in Teachers' Cadre) Bill, 2019 was introduced in Lok Sabha by Mr. Ramesh Pokhriyal Nishank, Minister of Human Resource Development on June 27, 2019. It replaces an Ordinance that was promulgated on March 7, 2019.

Commission 1956 or receiving aid from central government are covered under the definition of central educational institutions. The Bill covers provides for reservation in relation to direct recruitment and provides reservation for economically weaker section. The Bill specifically provides that for the purpose of reservation central educational institution shall be regarded as one unit. The Bill exempts institutes of excellence, research institutes and institutes of national and strategic importance mentioned in schedule of the Bill. The Bill also expressly excludes minority educational institution. The Central government has been conferred power to amend the schedule of institutes of excellence by notification in official gazette which shall be laid before parliament for negative resolution. The schedule of the Bill lists eight institutions as institutions of excellence which are exempted from the application of the act.

HISTORICAL BACKGROUND OF RESERVATION POLICY IN INDIA

India, is the world's 2nd largest populated country and hosts pluralism in culture, religion, ethnicity, language and multilayered caste system which often imposes challenges on the Indian government to structure and manage a harmonious society. The challenges include creating equal employment opportunities, providing and allocating equal distribution of resources and funds of the government and making education available to all citizens of India without discrimination on the grounds of their religion, caste, race, sex, etc. In order to overcome such challenges, the government use reservation as a tool for the smooth administration of the country. The term reservation can be described as 'certain policy measures or the techniques adopted by the Indian governance in order to empower, promote and uplift those social segments (members of community) which has remained backward, or discriminated, or historically oppressed, by reserving their access to seats (quota) in governmental jobs, or admission into educational institutes and legislatures. The categorization under reservation is based on segregation of existing castes and religion which are declared as scheduled castes (SC), scheduled tribes (ST), other backward classes (OBC), and minorities by the constitution, statutory law and the municipal rules and regulations. This paper aims to elucidate and review the status of 'reserved classes' in India and the present scenario of 'caste based reservation in Indian education sector', and provide recommendations for the scope of reservation in education system as part of Indian governance, critically.

The Mandal Commission² was a set up by the Prime Minister of India in the year 1979, Morarji Desai³. The head of the Commission was Mr. Bhindeshwari Prasad Mandal, and its objective of setting up was identify and the socially or educationally backward class. In the year 1979 Morarji Desai govt formed commission headed by Mandal to look into the issues of job opportunities of backward classes of the society. And subsequently the committee submitted its report. It recommended 27% reservation in civil services and central govt services for the candidates belong to other backward classes.

But no step was taken by the govt at that time. Its in 1990 govt headed by V.P.Singh issued executive order giving 27% reservation to OBC community. Govt's order created chaos among the forward class people. With rising unemployment and slow growth of economy it added more fuel in the fire.

And the case went to court. Opponents litigated that the order is against constitutional provisions which provides for "no people should be discriminated in public employment on the grounds of caste, race, sex, language and place of birth"

² Indra Sawhney Etc. Etc vs Union Of India And Others, Etc. ... on 16 November, 1992

³**Morarji Ranchhodji Desai** (29 February 1896 – 10 April 1995) was an Indian independence activist and served between 1977 and 1979 as the 4th Prime Minister of India and led the government formed by the Janata Party. held many important posts in government such as Chief Minister of Bombay State, Home Minister, Finance Minister and 2nd Deputy Prime Minister of India.

The bench⁴ heard both the sides in the famous 'Indra Sawhney and others vs union of India'. It underlined the constitution provisions which provided that "govt can give reservation for the economically and socially back ward class people whose population is not represented". And it also added that reservation should be limited to deserving candidates of the foresaid class and well off people of the classes should be exempted from getting reservation. Then the govt has issued another order which provided for "creamy layer" concept which you might be aware of.

This gives the number of people who have basic qualifications of "reading and writing". When we go above the ladder, the situation is still worse. Many people view reservation which is associated with caste. But it's associated with opportunities. But unfortunately in our society 'opportunities are associated with caste.' Caste system with its strong roots of 3000 years can't be completely phased out. For achieving inclusive growth of all sections of the society, what govt can do is providing reservation. We will understand the progress we made as a nation to include all our sisters and brothers in the journey of inclusive growth.

Reservation system can be discontinued completely for all sections of the Indian society once we reach "social equality".⁵

The 200-point and 13-point roster

The roster system deals with the allocation of seats under different categories in the recruitment process. Since OBCs have 27% reservation, they are allotted every $100/27 = 3.7$ or the 4th seat in a count from 1 to 100. Similarly, SC are given $100/15=6.7$ or the 7th seat and the ST category $100/7.5 = 13.3$, that is, every 14th vacancy.

But the cycle was inexplicably kept at the 13th point, that is, seats would be allocated in the following manner: UR (unreserved), UR, UR, OBC, UR, UR, SC, OBC, UR, UR, UR, OBC, UR and the 14th seat would go to the ST before the cycle restarts. It can be seen that it was a fraudulent formula as 9/13 seats were given to the UR, even if there are indeed 13 seats to be filled.

The 200-point roster was proposed by the UGC committee in 2006. It also proposed that college/universities, instead of departments, should be considered as a unit for implementation of reservation by clubbing the posts of assistant professor, associate professor and professor across departments to prepare the roster. The cycle would continue till 200 seats were filled mainly to ensure proper implementation of the 7.5% reservations for STs.

This formula was also a compromise arrived at after much deliberation and favoured the UR category because the sequence of the seat allocation in the roster didn't change. Therefore, in the initial years, the vacancies to be filled comprised mainly of the UR seats and there was no opposition as such. But as more and more seats were to be filled, the process would start favouring the reserved categories as the percentage of the reserved seats in the overall appointments starts increasing after the 40th seat. It is here that the game started so as to stop the recruitment process on the reserved seats and a case was filed in the Allahabad High Court to restore the old system of the department-wise reservation using the 13 point roster.

Since reservation is to be implemented institution-wise, it means that the departments in the beginning will mostly have the UR vacancies while the department which comes later will be tilted in favour of the reserved vacancies. And due to the small size of most departments, it is possible that some department may have only UR seats and some, only reserved seats in advertisement. It is on this

⁴ Justice M Kania, Justice M Venkatachaliah, Justice S R Pandian, . Justice T Ahmadi, K Singh, Justice P Sawant, Justice R Sahai, Justice B J Reddy

⁵ www.quora.com/Gokul, former Junior Manager at Air separation plant at JSW Steel

technical basis that the Allahabad HC ordered that the roster system be implemented department-wise, so as to 'ensure' that reserved category seats are evenly distributed.

The court reportedly overlooked that this would lead to a drastic fall in the reserved seats with most departments not having any reserved seats at all. This was amply demonstrated by the advertisements issued after the judgment. For example, the Indira Gandhi National Tribal University had just one reserved seat (OBC) out of the 53 seats advertised.

Not a single seat for the Tribals. Seats were filled under any existing system till vacancies were under the UR category and then, as the sequence of the reserved categories approached, the system was changed and restarted. This was done in 1997 on a massive scale. The 1995 Sabharwal judgment mandated the shift from vacancy-based reservations to post-based reservations but also asked to continue the old process till the reserved seats are filled under the old system. But the entire system was changed in 1997 thousands of the unfilled reserved seats were converted into unreserved seats overnight.

Status of OBC Faculty reservation in Central and Deemed Universities (2016-17)

University	Type		Sanctioned	Filled	Filled with OBCs	% of OBC
Central (30)	Assistant	Professor	7888	6051	839	13.87
	Associate	Professor	4006	2298	28	1.22
		Professor	2100	1057	12	1.14
Deemed (14)	Assistant	Professor	1796	1608	327	20.34
	Associate	Professor	452	294	53	18.03
		Professor	266	171	19	11.11 ⁶

Compared to the 27 per cent OBC quota recommended by the Mandal Commission, actual reservation as a percentage of total filled posts is very low, particularly in the higher posts of associate professor and professor: 1.22 per cent for the former and 1.14 per cent for the latter in Central universities; and 18.03 per cent and 11.11 per cent respectively, for the deemed universities. Noticeably, the representation of OBCs was less than that of Muslims at all levels of professorship; Muslims are categorized as OBCs in some states. Though recruitment of OBCs at the three levels leaves much to be desired, the need for more OBCs at the levels of associate professor and professor is crucial (since 10-year tenure as professor is mandatory for the position of vice-chancellor and many other high offices in the academic world).

RECOMMENDATIONS

Though the selection committee for faculty recruitment in the university system consists of OBC representatives too, perhaps because of their obligations to political parties and employees' organizations, they are least helpful in ensuring justice to OBC applicants. Total accountability and compliance can only be ensured if the advertisement of vacancies also mention the quotas they have been assigned. The UGC should also make aid to central universities contingent on the faculty's social diversity and on the support provided to researchers from reserved categories.⁷ So the Bill will achieve its fullest objective only when it includes minorities and curb these difficulties.

⁶ Compiled from Table 7.2 (i), UGC Annual Report 2016-17, p 275 (based on data submitted by the universities).

⁷ Abhinav Prakash Singh, Assistant Professor at Delhi University and columnist.

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