

THE RIGHT TO EQUALITY IN INDIA: IS EQUALITY ALWAYS JUST?

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Abstract

The constitution of a nation, is many a times defined as the, “Supreme law of the land.” This definition, seems to be more or less accurate in terms of its practical application. This essay, focuses on certain aspects of the Constitution of India, 1950, which are integral to it and form an essence of the ideals of the world’s largest democracy. One of the most important fundamental rights which this essay focuses on is the Right to equality, which is enshrined in the Indian constitution. This essay, is an attempt to look at the certain sections of the Indian constitution in a very critical light and allow the researcher to synthesise an honest opinion about the concept of reservation which prevails in India, as a method of removing disparity between classes, also, to establish a well-studied perception of the Fundamental right to equality and how it may be abused or better wielded by the legal sovereign of the time.

KEYWORDS: Constitution of India, 1950; Equality; Fundamental Rights; Reservations; Disparity; Justice;

“The worst form of inequality is to try to make unequal things equal”.

-Aristotle

INTRODUCTION

In the judicial sphere of the Indian context, there exists an omnipresent notion, that if needed, and if felt necessary in a particular case, the Indian judiciary, shall apply the doctrine of “Justice, Equity and Good Conscience”². Moreover, it has also been established that, there exist certain rights, which are fundamental in nature. These rights, are said to be inalienable, and it is said that the aim of all political associations should be the conservation of these inalienable and natural rights of man³. As far as the Indian context is concerned, it is promised to all citizens, that the political sovereign shall secure for them, “...Equality, of

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² Varden Seth Sam v. Luckpathy Royjee Lallah, Bunhah Lall, Sadaseva Tanker, and James Ouchterlony 1863 9 M.I.A 307.

³ The Declaration of the French Revolution, 1789.

status and opportunity...”⁴ Part III of the Constitution of India, gives to each of its citizens certain rights, which are, as aforementioned, fundamental in nature and cannot be denied under any circumstances, unless there are exclusive restrictions which are mentioned and which can be judiciously exercised⁵. The fundamental right to equality⁶ does not allow the citizenry to be discriminated on grounds of race, religion and caste.⁷ To add more specificity to this, the legal sovereign is further prevented to discriminate on grounds of place of birth⁸, residence⁹, descent¹⁰, class¹¹, language¹² and sex¹³. Furthermore, there are provisions in the Constitution of India, which outlaw untouchability¹⁴ and defend the individuals from discriminatory practices by private persons and institutions¹⁵.

Article 14 of the Constitution of India, 1950, grants to all citizens, the right to equality. It is considered as one of the most important fundamental rights. It has been proclaimed to be, “...one of the magnificent corner-stones of Indian democracy.”¹⁶ India, is the world’s largest democracy. It has been intoned by the Indian judiciary that, “Equality is the essence of democracy and accordingly a basic feature of the Constitution.”¹⁷ This assault on the practice of discrimination is only one of the sides to this ‘right to equality’ our constitution confers on us. The Constitution also directs and empowers the legal sovereign to exercise measures to make sure that backward classes of society also advance. This idea was beatifically invoked by a judgement which relayed the following idea: Equal protection requires affirmative action

⁴ The Preamble to the the Constitution of India, 1950.

⁵ Union of India v. Naveen Jindal A.I.R. 2004 SC 1559.

⁶ Article 14 of the Constitution of India, 1950.

⁷ Governmental discrimination on grounds of race, religion, and caste is prohibited generally by article 15(1) of the Constitution of India, 1950. More specifically, discrimination is prohibited by article 16(2) (in regard to state employment) of the Constitution of India, 1950; article 23(2) (in regard to compulsory public service) of the Constitution of India, 1950; article 29(2) (in regard to state-run and state-aided educational institutions) of the Constitution of India, 1950; article 325 (in regard to electoral rolls) of the Constitution of India, 1950.

⁸ Articles 15(2) and 16(2) of the Constitution of India, 1950.

⁹ Article 16(2). But cf. article 16(3) of the Constitution of India, 1950.

¹⁰ Article 16(2) of the Constitution of India, 1950.

¹¹ Article 23(2) of the Constitution of India., 1950

¹² Article 29(2). Cf. article 30(2) of the Constitution of India, 1950. Articles 29(1), 30(1), and 350, which grant rights regarding language.

¹³ Articles 15(2), 16(2), and 325 of the Constitution of India, 1950.

¹⁴ Article 17 of the Constitution of India, 1950.

¹⁵ Article 15(2) of the Constitution of India, 1950 prohibits discrimination by private individuals in regard to use of facilities and accommodations open to the public; articles 28(3) and 29(2) of the Constitution of India, 1950 forbid discrimination in private educational institutions.

¹⁶ Thommen, J., in IndraSawhney v. Union of India, A.I.R. 1993 SC 477.

¹⁷ M. Nagaraj v. Union of India A.I.R. 2007 SC 1.

by the state towards unequals' by providing facilities and opportunities.¹⁸ This, is the crux of the issue that the researcher hopes to answer through the course of this paper. The right to equality intoned under Article 14 of the Constitution of India, 1950 and the advantages which are given to backward classes and their subsequent effects on Indian society. Most prominently, the idea of reservations which has its origins in the "Communal Award", announced by the then British Prime Minister, Ramsay Macdonald, in August, 1932, took root in Indian society.¹⁹ Many stalwarts of the Indian freedom struggle had opposed it, but there were a few prominent people, who had supported this new legislation, which gave separate electorates on grounds of caste and religion. The Government of India Act, 1935, had further indoctrinated this idea and provided for more penetrative discrimination on religious and communal grounds.²⁰ To finally and resolutely invoke the theme of this paper, it is understood by the researcher that there was a particular case wherein it was laid down that the judiciary has the power to determine and acknowledge a class of people and make laws especially for them.²¹ This brings the researcher to the conundrum that with the right of equality being present, how is it correct for reservations to still exist after 69 years of independence, and in the current socioeconomic scenario.

"I am an aristocrat. I love liberty; I hate equality."

-John Randolph

THE CONCEPT OF RESERVATIONS IN FAVOUR OF BACKWARD CLASSES

From the communal award scheme²², to the Poona Pact²³ between Gandhi and Ambedkar, the debate for reservations for backward classes has been endless. Reservations are "minimum quotas" available to members of disadvantaged groups for Government jobs and educational institutions provided qualified members of such groups apply for those positions.²⁴ There have been many cases wherein the cause and need for reservations in almost every sphere has been condoned by the Indian judiciary, yet many times, this concept has been held to be inapplicable to certain scenarios. In the famous and very important case of *State of Madras v. Champakan Dorairajan*²⁵ the Supreme Court held that the provision allowing reservation in

¹⁸ Panchayat Varga Shramajivi Samudaik Sahakari Khedut Cooperative Society v. Haribhai Mevabhai, A.I.R. 1996 SC 2578.

¹⁹ Britannica Encyclopaedia, Communal Award, <http://www.britannica.com/topic/Communal-Award> (last visited: 16th September, 2015).

²⁰ *Ibid.*

²¹ Chiranjit Lal v. Union of India, (1950) S.C.R. 869.

²² *Supra*, at note 18.

²³ Poona Pact, <http://www.ambedkar.org/impdocs/poonapact.htm> (last visited: 16th September, 2015).

²⁴ Reservation-how and why?, Ajit Warrier, Heinonline, 1 Student Advoc. xiii 1988-1989.

²⁵ A.I.R. 1951 SC 226.

employment did not extend to educational institutions. This concept of reservations has stemmed from the idea that there are many social classes which are inherently backward. That it is the prerogative of the government to make sure that the gap between the backward and the advanced classes is narrowed till all the classes within the Indian society stand at an equal footing. In *Venkataramana v. State of Madras*²⁶ the Supreme Court struck down the quota system and held that only 'backward classes'²⁷ could receive the benefit of reservations.

In India, minorities have always existed in some form or the other, since ancient times.²⁸ It is not a new situation and their presence itself has also contributed largely to the formation of backward classes in the state. The gap which exists between societal classes, has been tried to be addressed by this concept of reservations, yet it is imperative to point out that this concept is not entirely a perfect failsafe. The idea of reservations for backward classes is a tool for governance. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions.²⁹ The permissibility of this concept has been questioned time and again as far as Indian legal history goes, yet it was laid to rest in a case wherein, it was stated that it would be permissible under Article 15(4) of the Constitution of India, 1950, for the state to reserve seats for members of the backward classes or of the Scheduled Castes and Scheduled Tribes or to grant them fee concessions, in public educational institutions.³⁰ On the contrary, the classification of these people, who are deemed to be backward, must not be arbitrary. It must be reasonable and in tune with the legislation which brings them extra benefits and they should reasonable be in need of such legislation to help them lead a better and healthier life which is not possible for them to attain without the respective legislation.³¹ The idea, that the state may provide or reserve posts or seats for backward classes, citizens, who, in the opinion of the state are not adequately represented in the services in question, is done to provide socioeconomic equality to the disadvantaged.³² There have been ample cases from the other side too. There was a situation, wherein a part of land for construction of a colony was being given to a particular community, even though there were others who were held to be equally in need of that land.³³ After the inclusion of Article 15(4) into the constitution of India, 1950 in 1951, it became perfectly legal for the

²⁶ A.I.R. 1951 SC 229.

²⁷ Article 16(4) of the Constitution of India, 1950.

²⁸ Minorities in India, Pankaj Bhanot, Heinonline, 1 Int'l J. Group Rts. 137 1993-1994.

²⁹ Onkar Lal Bajaj v. Union of India, A.I.R. 2003 SC 2562.

³⁰ Chitrallekha v. State of Mysore, A.I.R. 1964 SC 1823.

³¹ Ameeroonissa v. Mehboob, (1953) S.C.R. 404 (414).

³² State of U.P. v. Dr. Dina Nath Shukla, (1997) 9 S.C.C. 662 (para 7).

³³ Jagwant Kaur v. State of Maharashtra, A.I.R. 1952 Bom. 461.

government to do what they could not in the previously mentioned case.³⁴ It is impertinent for the researcher to further point out that reservation of a class is not a constitutional mandate, but a prerogative of the state.³⁵

There are different kinds of reservations available in India. There is a special reservation for women and children irrespective of their caste, creed, religion or community. Then there are the different classes of people:

1. Scheduled Tribes
2. Scheduled Castes
3. Other Backward Classes.

Furthermore, apart from these scales for providing reservations, there are also reservations which are available for specific domiciles of an individual i.e. which state he or she was born in or where he or she has settled to make a permanent home.³⁶ Furthermore, it has been laid down by the Indian judiciary, that for a class to be deemed backward, it should be both socially and educationally backward.³⁷ Also, it is vital to mention in the humble opinion of the researcher, that reservation of seats for children of defence personnel, ex- defence personnel, political sufferers has been upheld by the Indian courts.³⁸ During the drafting of the Constitution of India, Dr. B.R. Ambedkar, the father of our constitution, envisaged reservations to continue for a limited time only.³⁹ It has been seen that successive politicians who came to power after him, kept on renewing the idea and now it has come to be established indefinitely. Reservations are supposed to help backward classes attain an equal footing in society as compared to the more advanced and affluent classes. This noble thought has been warped today and is something which India, as a self-aware nation must look into. The most famous case as far reservations in India are concerned is *Indra Sawhney's* case, for which a nine judge bench of the Supreme Court had sat and laid down basic tenets and laws regarding reservation in India.⁴⁰ It was further stated in this Mandal Commission's report that

³⁴Moosa v. State of Kerala, A.I.R. 1960 Ker. 355.

³⁵E.V. Chinnaiah v. State of A.P., (2005) 1 SCC 394 : A.I.R. 2005 SC 162.

³⁶Black's Law Dictionary, 2nd Online edition, Domicile, <http://thelawdictionary.org/domicile/> (last visited: 16th September, 2015).

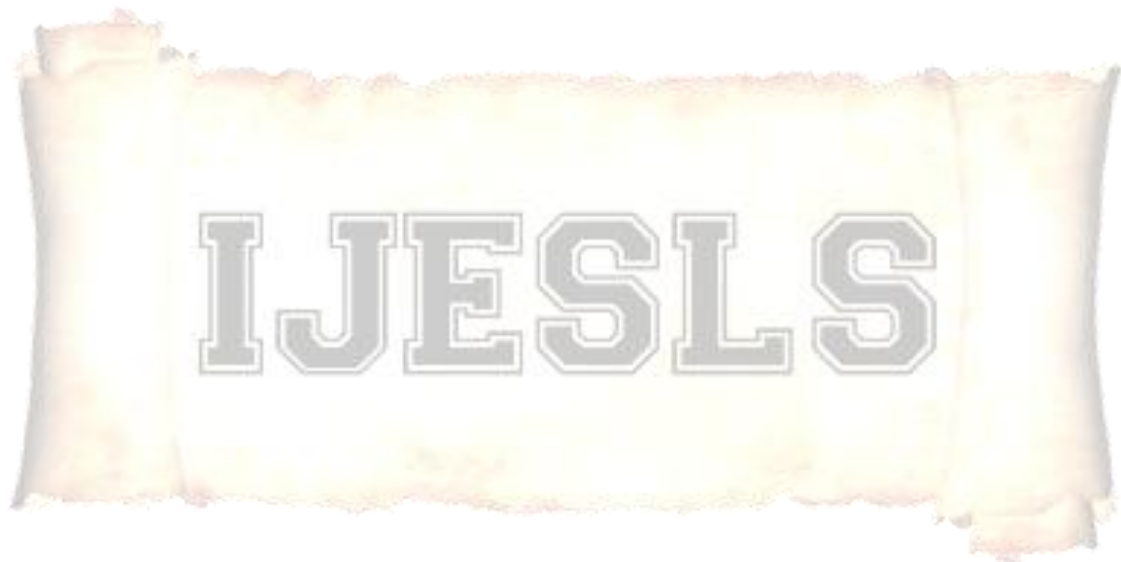
³⁷M.R. Balaji v. State of Mysore, A.I.R. 1963 SC 649.

³⁸D.N. Chanchala v. State of Mysore, A.I.R. 1971 SC 1762.

³⁹What If Reservations Had Come To An End In 1957?, Manu Joseph, The Outlook, <http://www.outlookindia.com/article/what-if-reservations-had-come-to-an-end-in-1957/224881> (last visited: 17th September, 2015).

⁴⁰Dr.Durga Das Basu, Introduction to the Constitution of India, 20th Edition, LexisNexis butteerworthsWadhwa Nagpur, chapter 8, 145.

the identification of backward cases is subject to judicial review.⁴¹ The rules laid down by the Mandal commission were exhaustive and thorough.⁴² They were meant to safeguard the rights of the backward classes and therefore, were efficiently indoctrinated in the legal doctrine reservations, as it is practiced in India.



⁴¹*Ibid.*

⁴²*Ibid.*

“Men are mortal. So are ideas. An idea needs propagation as much as a plant needs watering. Otherwise both will wither and die.”

-B. R. Ambedkar

EQUALITY AS A FUNDAMENTAL RIGHT

The Constitution of India, has had many inspirational sources.⁴³ The drafting committee has taken many features from ideas and constitutions of nations from all over the world.⁴⁴ The fundamental idea of equality stems from the previously mentioned principles of natural law of “Justice, Equity and Good Conscience.”⁴⁵ This right, is inalienable⁴⁶ and under no circumstance, can be infringed upon. In the Indian context, these rights cannot be waived, even by willing parties, only laws that are unconstitutional, may be waived.⁴⁷ Equality before the law, is the second corollary from Dicey’s concept of the Rule of Law.⁴⁸ The doctrine of equality before law, is a necessary corollary to the concept of Rule of Law, which exists in India.⁴⁹ Equality is not a nascent concept. There are a multitude of people who have been preaching equality and fighting for it across history. The annals of history are full of such examples. The idea that might is not right and every living member of society, subject to certain laws should be given equal status and opportunity is the fundamental concept of civilisation and fair rule. The Justness of the concept is impeccable. Equality as a fundamental right, should be enshrined in every democratic or fair constitution, in the humble opinion of the researcher. The usage of reservations, in almost every facet of life, in the Indian context, had its roots in the ideals of fairness and justice in absolute. Yet, it is seen that across time, ever since India got its independence, those same ideals have been corrupted somewhere and now the quota system is being abused and the general population, which cannot avail any such reservation is suffering.⁵⁰ The ideals enshrined in our right to equality (mainly Article 14 of the Constitution of India, 1950), have been warped and corrupted to a certain extent today. Earlier, there was a legit need of reservations to bring the backward class back on its feet and at par with other classes of society. Yet today, this

⁴³ Borrowed Features of the Indian Constitution, Gyancentral, <http://www.gyancentral.com/forum/law-preparation/legal-aptitude-preparation/7573-features-facts-constitution-india-clat-2013-a.html> (last visited: 17th September, 2015).

⁴⁴ *Ibid.*

⁴⁵ *Supra*, at note 1.

⁴⁶ *Supra*, at note 2.

⁴⁷ *Behram v. State of Maharashtra*, A.I.R. 1955 SC 123.

⁴⁸ Dicey, *Law of the Constitution*, 9th Edition, 202.

⁴⁹ *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34.

⁵⁰ *Sumedha Upadhyay*, *Reservation: Understanding The Past, Present And Solutions*, Youth ki Awaaz, <http://www.youthkiawaaz.com/2011/02/educational-reservations-india-solutions/> (last visited: 18th September, 2015).

provision has been allowed to exist for too long and is now it seems, in direct contravention to the right of every citizen to equal opportunity. There has been a shift in the interpretation of equality over time, in post-independence India.

“Neither Parliament nor any State Legislature can transgress the principle of Equality.”⁵¹ These words were intoned in a very famous judgement which has changed the Indian legal sphere for the better.⁵² The idea behind making equality a fundamental right is simple: The drafting committee, wanted equality to be present in every aspect of life as a citizen of India. It is one of the most important parts of the constitution of India and has been considered as a corner-stone⁵³ by eminent jurists. The fundamentality of this ideal, is invested in pure good conscience. It is a supreme protection as far as the rights of an individual is concerned and should be protected by tooth and nail in case of any perversion or infringement. Moreover, the right to equality being absolute, should never be questioned. The only time wherein it can be contemplated and scanned is when there is a questionability as to its true application in the legal sphere. That is when the judiciary may review it. Equality has been enshrined as one of the basic tenets of the Constitution of India, this is wherein the power of Indian democracy lies and it should never be allowed to be infringed. By its own nomenclature, ‘equality’ is a ‘fundamental’ right, having established that very obvious fact, it is inconsiderate of the Indian political thought, if this fundamentally applicable and present right, is allowed to be misused and twisted to not allow eradication of disparity to be its goal, but on the contrary, the goal of this right becomes, something as perverted as vested interests. It seems that it has just become easier for the individuals in power to allow for this right to be exercised unjustly and it is in their ‘convenience’ that the general populace suffers.

⁵¹Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225.

⁵²*Ibid.*

⁵³ *Supra*, at note 15.

“We are Indians, firstly and lastly.”

-B. R. Ambedkar

CONCLUSION

After a thorough and exhaustive analysis of the fundamental right to equality and the advantages given to backward classes, as far as the current skills and abilities of the researcher allow, it is in the researcher's humble opinion that there has been a frank and outright warping of the ideals behind reservation. Ambedkar had noble intentions when he fought for the presence of reservations for backward classes as a legal provision to be present in the Constitution of India. It was supposed to exist for a limited period of time and not be extended indefinitely so as to become corrupted and misused as it is today.⁵⁴ There was indeed a need to remove the socioeconomic disparity that existed between the Indian classes during the period of nascent independence or “neo-Independence”. Yet now, those same ideals which were supposed to bring about equality in the truest sense of the term, are now spreading that disparity which they were invoked to destroy. In almost every field today, the percentage of reservations is so high that general category individuals who are meritorious are finding it unreasonably difficult to get what they deserve. While non-meritorious individuals who are in one or more of the reserved quotas are easily getting what is not truly due to them. In the opinion of the researcher, instead of relaxing the admission requirements for reserved individuals, the government should provide them with means to learn and develop themselves and come at par with the General category individuals. This is strictly in the sense of academic or professional reservations. As far as other kinds of reservations are concerned, some are duly required even in the current scenario, yet the crux of the issue should not be whether there reservations should be more stringent or relaxed, but instead, it should be whether they should be there in the first place or not. The current scenario needs to be inspected deeply and understood by the scholars of today and a completely new plan of action as far as removing inequality goes should be drafted. From, the categorisation of backward classes to the meaning of equality which we are interpreting and letting us define what it means to us. The legal definition of equality is, “The condition of possessing the same rights, privileges, and immunities and being liable to the same duties. Equality is equity.”⁵⁵ This definition seem simple and exhaustive and to the point, it should be further

⁵⁴ Supra, at note 46.

⁵⁵ Black's Law Dictionary, online 2nd Edition, Equality, <http://thelawdictionary.org/equality/> (last visited: 17th September, 2015).

indoctrinated or “redoctrinated”, as the case may be, for the sake of maintenance of equity in the life of an Indian citizen.

