Affirmative Action in India and Modern Challenges

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"So long as you do not achieve social liberty, whatever freedom is provided by the law is of no avail to you.” - B.R. Ambedkar

Abstract: Reservation in India has always been an issue of multiple deductions since the day it was enforced in the country. Even before independence, Indian leaders started advocating for preferential treatment for groups that had experienced economic and socio-political discrimination based on the caste system. This paper looks at the prevailing collateral reservation in Indian Society along with present day reservation scenario and demands suggesting some methods to deal with the issue.

Keywords: Collateral Reservation, Constitution, Caste, Discrimination, Law

I. Introduction
The reservation system finds its origin in the age-old caste system of India. The caste system at its birth was meant to divide people on the basis of their occupation like teaching and preaching (Brahmins), kingship and war (Kshatriya) and lastly business (Vaish) etc. but soon it became an instrument to divide the society on caste-basis, creating various walls between different sections of the society. As per extant instructions, reservation is provided to Scheduled Castes, Scheduled Tribes and Other Backward Classes at the rate of 15%, 7.5% and 27%, respectively, in case of direct recruitment on all-India basis by open competition. In case of direct recruitment on all-India basis otherwise than by open competition, the percentage fixed is 16.66%, 7.5% and 25.84%, respectively. Reservation at initial stage was just for a certain period of time to cure a certain ill, for the injustice which has happened thousand of years ago so certain segment of society was given some extra privileges for their upliftment but unfortunately reservation alone have not been able to fulfill this vision. Even today in some villages across the country dalit people are not allowed to enter temples, they are not allowed to sit with the upper caste even not allowed to touch the utensils of the upper caste, segregated society is prevalent even today. Indian Society, stand divided widely into Hindu, Muslim, SC, ST & OBC with newer reservation demands coming up for other different sections of the society like Christians, Kashmiris, Jats, Kashmiri Pandits, Tribals etc.

II. Affirmative Action
Affirmative action is defined as an action favouring members of the disadvantaged group who have suffered from discrimination within a culture. INDIA’s experiment with affirmative action is the world’s oldest. Reservation in India is a form of affirmative action designed to improve the well-being of backward and under-represented communities defined primarily by their caste. "Reservation Policy" is a quota system for public jobs, in publicly funded colleges—like the Indian Institutes of Technology (IIT’s), All India Institute Of Medical Sciences (AIIMS) and in most elected assemblies. However, these QUOTA based practises are illegal in the United States, where no employer, university, or other entity may create a set number required for each race.

III. Foundation goals of Affirmative Action
1. To offer equal opportunities for the classes who have been excluded, deprived and underplayed in academics as in to behold a percentage of seats in school admissions, PSU’s, representation in parliament and in careers in a way to prefer and offer promotions, salary hikes etc.
2. Originally against racial discrimination (such as the practice of untouchability), it was extended to include discrimination based on sex, disability etc.
3. It was initially planned to be enforced for a fixed period of time till the marginalized are able to regain their rights in the society.
IV. Constitutional Provisions

Article 14:
Article 14 of the Constitution reads:
“The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
What do the two phrases in this Article namely “equality before the law” and “equal protection of law” mean? On the face of it the two phrases may seem to be identical, but in fact, they mean different things.

Article 15(4):
Article 15(4) of The Constitution states that:
“Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class or citizens, which, in the opinion of the State, is not adequately represented in the services under the State.”

Article 16:
Article 16 of The Constitution reads as under:
“"This article of The Constitution provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

Clause (1): "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

Clause (2): "No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment of office under the State."

Clause (3): “Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment.”

Clause (4): “Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the state”.

In the Indra Sawhney’ case (Writ Petition No.930 of 1990 ,Indira Sawhney Vs UOI) hon’ble Supreme Court also held that reservation in promotion is unconstitutional but permitted the reservation, for SC’s and ST’s to continue for a period of five years (from 16/1/92). Consequent to this, the Constitution was amended by the Constitution (Seventy-seventh Amendment) Act, 1995 and Article 16(4-A) was incorporated.

Clause (4-A): “Nothing in this article shall prevent the State from making provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State are not adequately represented in the service of the State.”

The words “Backward class” used in Article 16(4) have been instituted in Article 16(4A) by the words “SCs & STs”, itself precludes consideration of making reservation in promotion in favour of any other category of citizens.

Clause (4-B): “Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or Clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year (Constitution 81st Amendment Act, 2000).”

V. Difference b/w SC , ST and OBC Reservation

Article 330 provides for reservation of SC/STs in Lok Sabha. There is no provision for reservation for SC/STs in Rajya Sabha.OBC do not have any reservation , neither in Lok Sabha nor Rajya Sabha.To prevent any imbalance in such positions there were caste based reservations in Parliament and State Assembly.This was a good move as otherwise everyone would not be represented fairly.

Allocation of seats for Scheduled Castes and Tribes in the Lok Sabha are made on the basis of proportion of Scheduled Castes and Tribes in the State concerned to that of the total population, vide provision contained in Article 330 of the Constitution of India read with Section 3 of the R. P. Act, 1950.48 seats in the Lok Sabha are reserved for SCs and 47 for STs.Over these seats only SC/ST candidates respectively can fight and hence subsequently win elections and enter the Lok Sabha. Every party fields an SC/ST candidate in these seats because if the candidates are not as required (SC or ST), they will be automatically disqualified.

But how are these individual seats selected? How do parties know in which specific constituencies should they field only SC/ST candidates?

The answer rests with Delimitation Commission of India

Delimitation commission or Boundary commission of India is a Commission established by Government of India under the provisions of the Delimitation Commission Act. Among other functions, the Commission can determine and change the number of SC/ST seats.
The Delimitation Commission is a powerful body whose orders cannot be challenged in a court of law. The orders are laid before the Lok Sabha and the respective State Legislative Assemblies. However, modifications are not permitted.

The Commission has stated in a letter dated July 5th 2004 the guidelines for determining seats to be reserved for SCs and STs.

Reservation of Seats for SCs and STs
(i) Seats have to be reserved for the scheduled castes and scheduled tribes in proportion to their population to the total population of the State.
(ii) This allocation of seats for the SCs and STs is to be worked out separately both for the assembly and parliamentary constituencies in each State, on the basis of 2001 Census.
(iii) Under section 9(1)(d) of the Delimitation Act 2002, seats for the STs are to be reserved in the constituencies in which the percentage of their population to the total population is the largest. Therefore, after all the assembly constituencies in the State have been delimited, the constituencies to be reserved for STs will be those where the percentage of the ST population to the total population of the constituencies is the largest, in descending order equal to the number of constituencies to be reserved for STs.
(iv) Under section 9(1)(c) of the said Act, the constituencies for SCs are to be distributed in different parts of the State and seats are to be reserved for SCs in those constituencies where the percentage of their population to the total population is comparatively large. Therefore, while working out the allocation of total number of seats for each district as mentioned above, the number of seats to be reserved for SCs in those districts will also have to be worked out separately. Subsequently, SC seats will be reserved in those constituencies in the district in which, so far as practicable, the percentage of their population to the total population is the largest, in descending order equal to the number of SC seats in the district concerned.

So which constituency will be reserved for SCs/STs is determined using the above guidelines and those constituencies are declared reserved for SCs/STs until the Government sets up a new Commission, which happens once in a while - Delimitation commissions have been set up four times in the past - In 1952, 1963, 1973 and 2002 under Delimitation Commission acts of 1952, 1962, 1972 and 2002.

VI. Collateral Reservation

Apart from the reservation granted by The Government Of India, Indian Society do have some sort of reservation which is being implemented and followed indirectly in Indian Societies. For example most of the sweepers which clean drains are mostly SCHEDULED CASTE which comes from their community of people known as “BHANGI”, similarly in TEMPLES only brahman/pandit community people of UPPER CASTE are preferred and serve as "PRIESTS". Aim of reservation is to demolish this already prevalent inequality in society but even after years of independence Indian Government couldn’t make it. Reservation policies, today should be redesigned in such a manner that it targets the mentality of people.

VII. Statement Of Problem

Affirmative Action/Reservation apart from its flaws benefitted the Indian Society. People did rise from worst circumstances in life to reach a respectable position. Not all the people who take reservations lack merit/talent. A considerable percentage of them didn’t have resources to work. Hence reservation compensate them for unequal playground.

However what was desired and what is happening is slightly different -

1. Makers of The Constitution wanted to promote reservation temporarily and keeping in mind the extent of upliftment, to do away with it. However due to some compulsions they have been continued, not just continued but even extended. Percentage of reserved seats has drastically increased, and The Supreme Court need to interfere and put a cap, else it may have reached up to 70% in few states.
2. They wanted to uplift vulnerable communities who were inflicted with caste system, however the way reservation got used it created classes among caste groups. It is the rich, well-off, service class, business class people among these communities who are mostly making the use of quota, however those really in need of it are missing out due to lack of resources.
3. The Majority feel excluded and discriminated against as the allocation of jobs and positions in academics and PSU’s that is based on a quota system (reservations).
4. In India, the political parties play with reservations and increase the quotas to gain vote bank and the majority feel acutely sidelined.
5. The system of reservation was meant to last for a decade or so, but this issue is raised to an extent upon which even Indian Government is inexplicable.

All this lead us to a discriminated society with some unanswered questions which serve as a major drawback of Affirmative Action in India.

1. In 21st century, is caste really a proper term used to define backwardness?
2. Does government need to provide affirmative action/reservation to all the generations of disadvantaged group?
3. Does people who really deserve affirmative action are being benefitted?

VIII. Methodology
Affirmative action seems to be a democratic measure to end discrimination in society. However, despite its best intentions, it has been severely denounced and faced criticism due to its flaws and loopholes. It is worth noting that B. R. Ambedkar, the chief architect of the Constitution of Independent India, who ensured that affirmative action was constitutionally mandated, himself did not see it as a sovereign remedy. He said “...my ideal would be a society based on Liberty, Equality and Fraternity... the caste system means a state of slavery... a society in which some men are forced to accept from others the purposes which control their conduct...”. He was constantly engaged with the question of strategies and instruments which would lead to the eradication of caste altogether. The methodology in this research study is multi-dimensional. Some of the suggested amendments are

1. Reservation alone is not a solution to solve this issue of injustice. If government really want to uplift the backward, apart from playing politics upon them, then it must provide the marginalised section with the best of primary education, at just with no cost. And again to avoid discrimination, education must be free for all (general as well as reserved). As in a metalmiller’s son can be a well-reknowed metallurgical engineer if we guide him and provide him with the best of education but through reservation we are just directing him towards government jobs as low as clerks. Backward classes must be prepared for a competition, as a warrior, rather than giving them providing them with a shield of reservation. We have to change the mentality of society and reservation alone did nothing but just differentiated the society as “Quota wala’s” and “Non Quota wala’s”.

2. Reservation is one of its solution but not the ultimate solution, we do need some add ons to it. Caste must not be the ultimate criteria to allot reservation, else reservation should inclusively based upon economic status and area to which the candidate belong as well. A fresh percentage of reservation must be amended upon these factors and up to 35% reservation must be provided to the deserving masses. Government should make a new governing Service Commission “IRC (Indian Reservation Commission)”, which should directly be a central government post, having powers similar to that of the level of Election Commission of India, and is answerable directly to a bench of retired Supreme Court Judges and that to The President Of India. State Government has no role to play in it. The main aim of “IRC” is to allot reservation to the deserving candidates and perform a check on regular intervals.

3. Government should bring in a “descendants clause” in the Indian Constitution through an amendment act and IRC officers will ensure that one, who has been benefitted, in their respected constituencies, their next generation will not be eligible and must not be provided with affirmative action. Reservation will be provided to two consecutive communities in extreme cases and once a candidate earn a pay of 8Lakh per annum than he/she will be out from this reservation race.

All this will be beneficial for ST/SC people also as it will ensure that benefits are distributed in the society instead of repeated few and families that are already affluent.

IX. Conclusion
Reservation today, is doing the same injustice, with non-reserved caste communities, which was faced by the marginalised group for thousands of years earlier ago. Reservation alone, may provide opportunities but it proves as a complete failure to change the mentality of society and as a whole, up to some extent, the country stands on the same path as it was nearly just after the years of independence.

References
[1] Supreme Court Judgement in Indra Sawhney vs UOI Writ Petition (Civil) No.930 of 1990
[6] Article “Reservation or affirmative action?”, The Hindu, India
[7] Reservations in India: Myths and Realities by Mukhand Savanbhai Rana
[8] Creating the people: Caste-based reservations need to be recast for the sake of a fairer society, The Times Of India, Inia
[9] Reservation politics in India by Gopal Singh