



E-ISSN: 2706-8927
P-ISSN: 2706-8919
www.allstudyjournal.com
IJAAS 2020; 2(2): 278-280
Received: 11-02-2020
Accepted: 06-03-2020

Dr. Shailendra Nath Jha
Hanuman Ganj, Mishratola,
Lalbagh, Darbhanga, Bihar,
India

Right to equality and reservation policy under the constitution of India: A case study

Dr. Shailendra Nath Jha

Abstract

In the American Declaration of Independence, it is said that “All men are created equal, that they are endowed by their creator with certain unalienable rights.” This notion of inalienable rights and their equal distribution has emerged in the early 16th century in the works of the social contractors- Hobbes Locke and Rousseau. John Locke said that the right to life, liberty and property are natural rights which are enjoyed by everyone alike and are not separable from the person. This gives us an idea that the right to equality is more basic than natural law itself. Thus in its creation, the state is obliged to provide for this right, not just legally but functionally.

The preamble of India constitution contains the phrase: “Equality- social political and economic”

Keywords: Right to Equality, Constitution of India

Introduction

Right to Equality is the first fundamental right assured to the people of India. Article 14-18 of the Constitution guarantees this right to every citizen of India. Equality is one of the magnificent corner-stones of the Indian democracy. “In other constitutions generally this right embodied in Article 14. As such this right was considered to be a negative right of an individual not to be discriminated in access to public offices or places or in public matters generally. It did not take account of the existing inequalities arising even from public policies and exercise of public powers. The makers of Indian Constitution were not satisfied with such type of undertaking. They knew of the widespread social and economic inequalities in the country sanctioned for thousands of years by public policies and exercise of public power supported by religion and other social norms and practices.”

This gives us an idea that the right to equality is more basic than natural law itself. Thus in its creation, the state is obliged to provide for this right, not just legally but functionally. The preamble of India constitution contains the phrase: “Equality- social political and economic” These are different types of equalities and the state has to ensure that its citizens are provided with each and every one of these. Social equality is the most common in pluralistic societies but no provision of law can be made in this regard. So, it is done by means of the other two categories- political and economic. Political inequality materializes from the said social inequality but as politics is a government functionary, legislations are made to guarantee this right. On the other hand economic inequality is a very practical phenomenon and thus active steps can be taken to empower all people economically. This, in retrospect, hampers social inequality because economic status is closely connected with social status. Thus, the state has a burden to justify, through its legislations and its implementation that equality is sought to be achieved and only in doing so will it realize true equality.

Indian law for equality

The constitution of India says, “The state shall not deny to any person, equality before the law or the equal protection of the laws within the territory of India.” This is the article 14 of our constitution which is construed as one of the fundamental rights of the people living under it. The provision is very clear. The phrase “equality before law” is an adaptation of a postulate of the rule of law followed by the equity courts in England. It is the quintessential principle to be set down before exercising any authority on a group of people. Even when the British ruled over India, this was a prominent legal provision. The glaring inequality that was followed under the British rule is widely known. So equality as a concept is not debated upon but it is also very complex and although every single country in the world which has a

Corresponding Author:
Dr. Shailendra Nath Jha
Hanuman Ganj, Mishratola,
Lalbagh, Darbhanga, Bihar,
India

constitution provides for this right, the implementation of this right varies. Some states follow formal equality as they have a more homogenous mixture of population like the communist countries. Other states follow substantive equality where there are already huge inequalities prevalent. The important thing to note is that equality is a value that every government believes in but the interpretations are varied and none of them have been proved wrong.

Reservation policy in India

In the case of India, the reservation policy has been adopted for alleviating inequalities in the political and economic spheres. This is a method of achieving substantive equality. India is a pluralistic society where main forms of discrimination are caste and religion. India being a male dominated society, sex is also an important basis for inequality. The constitution swears not to discriminate on any of these grounds and hence we have a reservation policy for the protection of the interests of all discriminated groups. The problem arises in targeting this group and meeting the ends for which reservation is created. In law, there are two principles that have to be complied with before legislating it. First, there should be a rationale for creating the said law and second, there should be nexus between the law and the goal sought to be achieved. The rationale has been justified time and again by our legislators and people have come to terms with the fact that there is no other way to subdue discrimination than reservations. But is there a direct link between the provisions of this policy and the ultimate goal of equality? The answer to this question keeps changing from time to time and that is what we are trying to analyze in this paper.

The minorities in India started getting recognized by law through the provision of communal electorates. This was seen as one of the reasons for the partition of India and Pakistan, but from the viewpoint of equality, this was one of the first efforts to bring about political equality and avoid discrimination against minority communities. The reservation policy in the basis of caste started when the Simon Commission came to India with the rule of separate electorates and reservations for depressed classes. But a concrete legislation was passed only later on after independence when Dr. B.R. Ambedkar fought for the rights of the SC's, ST's and OBC's. During the constitutional assembly debates, he supported the cause of backward castes time and again and believed that reservation policy is the only way to eradicate these disparities. However, the reservation policy was always a provisional one and not permanent. For years now, the time limit has been increasing as the government did not feel that the required amount of equality has been achieved in the social, economic or political life of people.

The rationale of the present reservation system

The question we need to ask is if the present reservation system is a true reflection of the altruistic persuasions of the legislators or that of their political interests and/or political pressures. The truth is that inequality is prevalent everywhere in different forms. The constitution only provides for or recognizes a part of them. For example, disability is also grounds for discrimination. However, the limited reservations made for them are never objected or extended. In public sector, 3% is the reservation for disabled persons where as it is 27% for OBC's when in fact; the

percentage of disabled people in India is more than the percentage of OBC's. Why is this so? Law is subject to the interpretation of the courts and the dynamic nature of law finds its sanction in the opinion of the judiciary. But, courts regularly deal with cases regarding reservations for SC/ST's or OBC's or women, and not for the disabled. Does the meaning of equality change in every context? To provide "equal opportunities" to the oppressed classes means, to help them acquire their maximum potential- not to make things easier for them. This is a lesson one should learn from the history of independent India.

The other issue under the system of reservations is that of the creamy layer. The distance that we have travelled after enacting reservations has eliminated certain disparities. Caste no longer can be the sole criterion for detecting socially backward classes because some of them have achieved economic status, thereby finding a social standing as well. Thus, in the Mandal commission case, the court has observed that this particular strata of the society which they termed as the "creamy layer" should be eliminated from such reservation policies as it is hampering the goal of the provision. However, what goes beyond my comprehension is that if a creamy layer exists despite being a socially backward class, maybe the objective is achieved. The law has different reasoning to support this policy from time to time but how would we identify the situation where the "goal" is truly reached. Waiting for absolute equality is not practical as it is only a utopist situation. Meanwhile resistance is offered by the classes which are not socially backward, also for the reason of discrimination. In such a situation what kind of help is the government providing with the reservation scheme? This is the dilemma that is struck the entire policy down.

Reservation issue on the right to equality

The issue of reservation is one of the debatable topic among the realm of constitutional scholars. When contrast with the notion of equality, it seems to a layman, that it is an arbitrary exercise of power and violative of the right to equality. In India the issue of reservation is not only a constitutional talk but also it generates political nature. Nowadays it is understood, to a common man, a key to success i.e. through which a person can achieve what he cannot if he remains a candidate of non-reserved category

The Constitution of India, under chapter three, provides and guarantees the Right to Equality i.e. Article 14 to 18 and it can be said that right to equality is the cornerstone of the Indian democracy. Article 15 of the Constitution is a non-discriminative Article, it provide that state shall not discriminate on the ground of religion, race, caste, sex, place of birth or any of them. But Article 15(4) of the constitution provides that the state can make special provision for the advancement of the socially and educationally backward classes and for the schedule caste and schedule tribe. Escaping the ever ending debate on equality and reservation, it is better to come to the topic which this project would be dealing.

From the above it is crystal clear that the state can make reservation for the schedule caste and schedule tribe. The case of E.V. Chinnaiah versus State of Andhra Pradesh is unique in itself, it deals with the issue that whether the schedule caste can further be sub-divided so that the benefit of reservation can reach to the outreach.

The seed of the case of E.V. Chinnaiah versus State of Andhra Pradesh were sown in the case of Indira Sawhney versus Union of India where the Hon'ble Supreme Court had involved the concept of creamy layer. It means that those individual who are relatively wealthier and more educated members of the 'other backward classes' shall not be permitted to have the benefit of reservation. In the case of chinnaiah the issue was that among the schedule caste of the state there were some groups which were enjoying the benefit of the Government sponsored reservation and some groups were not able to get the benefit of reservation. Thus the State Government feels it necessary to make reach the benefit of reservation to those deprived sections of the society.

Conclusion

The question of reservations on grounds of social and educational backwardness has assumed great significance and received considerable political attention in recent years. Intense pressure has been exerted for providing reservations for various classes and groups besides the scheduled castes and scheduled tribes. It is important to remember that while in the case of the scheduled castes and scheduled tribes, reservation is provided in legislative seats also, the reservations for OBCs as at present are intended to be confined to government jobs and admission to educational institutions.

The main issue which was involved in the chinnaiah case was the legitimacy of the Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000. The hon'ble Supreme Court had to decide that whether the above mentioned enactment stood firm on the parameters of the notion of equality, and that whether the state Government had enough of legislation to enact such enactment.

It must be acknowledged that basically any reservation would be discriminatory for it would violate the principle of equality and give a lower priority to merit, thus causing frustration to many deserving candidate. The validity of any reservation could therefore be tested on whether it was based on any rational and relevant criteria.

References

1. Basu Durga Das. Introduction to the Constitution of India: Prentice Hall of India. New Delhi 1993, 39.
2. Pylee MV. India's Constitution. New Delhi: Chand S, Company. Bombay 199, ISBN 81-219-1907-X.
3. Basu Durga Das. Shorter Constitution of India. New Delhi: Prentice Hall of India Prentice Hall of India, New Delhi 1988, 61.
4. Pylee MV. India's Constitution New Delhi: S. Chand and Company. Bombay 199, ISBN 81-219-1907-X.
5. Pylee MV. India's Constitution. S Chand and Company. Bombay 1967, 101.