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THE DIFFERENTIAL METAMORPHOSIS OF ARTICLE 15

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ABSTRACT

The rudimentary principles behind the provisions of reservation seem to be the part of totalitarian's belief of rights, after independence due to the prevalence of the caste system in India the architects of the constitution gave birth to the scheduled castes and scheduled tribes and made equality clause an exception in itself. We are living in the country of believers of an egalitarian State and confronting the same with social inequalities or 'social exceptional equality' in the present era. This article focuses on the need of the society and the everlasting conflict between the judiciary and executives. The changing dimensions of reasonable classification have either made the procedure of Amendment too flexible or have made the judiciary crippled within the terms and conditions of executives. Absolutism is not perfect but the practice of the non-absolute terms with absolute reasonability, is it not a concern? or is that again a question of fact depending upon the circumstances of the case. Acknowledgment of Gandhian principle is not wrong but applying it with the perspectives of the precedent independence methodology is hard to petrify and retrieve it with present ideologies of the State and interpretations of the judiciary. Reservation is purely not wrong but the undue practice practices underneath are, and certainly, that must be surveillance in terms of false opportunities and promotions, thus, only providing provisions as to who is scheduled castes and scheduled tribes under the Constitution is not enough, the provisions must be justifiable on the part of all those who are being affected by the amendments of such provisions.

RESERVATION: A SEED OF THE CONVENTIONAL INDIA

During the constitutional debates, Dr. B.R.Ambedkar said that reservation is of compensatory nature and has been established for the welfare and upliftment of the once who have been discriminated against. We the people of India the very startings lines of the preambles do even give a bit idea about the changing norms of equality that is orderly prescribed in the constitution of India from Article 14 to 18, which would have been enervated by many.

It directly or indirectly the plants of conventional seeds of the past as a result of which division of caste in India. After a person's family it is his caste which defines his loyalty, we all are familiar with the conceptual hierarchy of brahmins, kshatriyas, vaishyas, and Shudras, this classical differentiation of people on the basis of there work as the Brahmins who were mainly teachers and cognitive and came from Brahma's head. Kshatriyas, or the conscript and rulers, came from his arms. Vaishyas, or the traders, were created from his groin. At the bottom were the Shudras, who came from Brahma's feet, and lately the sub-castes emerged later due to intermarriages between the 4 varnas. The proponents of this traditional theory cite Purusha Sukta of Rigveda, Manusmriti, etc to support their stand. Varna system mainly based on the division of labor and occupation which is prevalent in the Vedic period. This particular hierarchy comprising a pyramid of assigned moral duties is now given a different composition and form and has divided each and every stratum of that varna in more complicated and in a less significant way which is a pseudo-reality conceptualized in a frame of dharma and humanity.

COMMUNAL AWARD, POONA PACT, AND ITS EFFECT

The communal award was announced by the British prime minister, Ramsay MacDonald, on August 16, 1932. "The communal award was hinged on the findings of the Indian franchise committee which had established separate constituency and reserved seats for minorities, including the depressed classes which conceded with seventy-eight, reserved seats", this award ceded separate electorates for several communities residing in India i.e. Muslims, Sikhs, anglo Indians etc.depressed classes, and even to the Marathas for some seats in Bombay, the award was discerned by national leaders led by the Congress as another manifestation of the British policy of divide and rule.

It should be noted that Dr. Bhim Rao Ambedkar in the past, in his testimony to the Simon Commission, had stressed that the 'depressed class' should be treated as a distinct., independent minority separate from caste Hindus. Even, the Bengal 'depressed class' association had influence for the separate constituency with seats reserved according to the proportion of depressed class members to the total population as well as for the adult franchise. But the Simon commission rejected the proposal of separate electorates for the depressed classes, however, it retained the concept of reserving seats,

In the second round table conference held in London, Ambedkar London raised the issue of separate electorates for the depressed classes . “primary in the conference, Ambedkar had attempted to compromise with Gandhian reserved seats in the common electorate, but Gandhi, who declared himself as the sole representative of India's oppressed masses, rejected Ambedkar's proposal and denounced the other delegates as unrepresentative”. At a greater distance, Gandhi, who attempted to deal with music, reassured to support their demands as long as the Muslims voted against separate electorates for the depressed classes. But despite such efforts, census on minority representation could not work out among the Indians delegates. In the wake of such a situation Ramsay Macdonald, who chaired the committee supported his condition the other members of the committee supported this decision and, the outcome of the mediation was the communal Award.

Gandhi saw the Communal Award as an attack on Indian amalgamation and nationalism. According to him, it was harmful to both i.e. the Hinduism and the depressed classes since it provided no answer to the socially degraded position of the depressed class of people as if once the depressed class was treated as separate electorate than the question of abolishing untouchability would get undetermined, while different electorate would ensure the untouchables in perpetuity. He said that what was provided was not protective in the part of the so-called depressed class but root and branch eradication of untouchability.

Gandhi called out the depressed to be elected through joint and if possible a wider electorate if possible through universal adult franchise and to press his demand he went on an infinite fast in September 1932. Now leaders of various persuasions, including b.r.ambedkar, M.C. Rajah, and Madan Mohan Malaviya got together to hammer out a trade-off contained in the Poona Pact.

IMPACT OF POONA PACT ON DALITS

The Poona Pact in spite of giving certain political rights to the depressed classes, could not achieve the desired goal emancipation of the depressed class. it enabled the same of the Hindu social order to continue and gave birth to many problems. The Pact made the depressed classes leaderless as the true representatives of the classes were unable to win against the stooges who were supported by the Hindu organization. The depressed classes under this pact became just a political tool by the majoritarian Hindu organization. This led to the depressed classes to submit to the status quo in political, ideological, and cultural fields

and not being able to develop independent and genuine leadership to fight the Brahmanical society.

Thus the Poona Pact put obstructions in the way of an ideal society based on equality, liberty, fraternity, and justice rather it was running on a political mindset. By refusing to recognize the Dalits as a separate and distinct element in the national life, it pre-empted the rights and safeguards for the Dalits in the Constitution of independent India.

ARTICLE 15

It was in the median of 1970s where a new gratification was done to article 14 i.e. The Doctrine of Reasonability through E. P. Royappa vs State Of Tamil Nadu & Anr [1]

where justice P.N.Bhagwati in his Coinciding judgment reserved "equality is a dynamic concept with many aspects and facets and it cannot be cribbed, cabined and confined within the traditional and doctrinaire limits, from a rationalist point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the whim and caprice of an absolute monarch where one act is arbitrary, it is unalloyed in it that it is unequal both according to political logic and constitutional law and it is therefore violative of Article 14". Chiefly Article 14 tried to abolish arbitrariness that it carried on its back due to a lack of judicious surmise. But enlarging the concept of equality took a new meaning when clause 4 was added to article 15 in the year 1951 through the constitutional(first amendment) Act 1951.

In categorizing the basis and benefit for weak sector of the society the makers of the constitution forgot that they themselves are making provision which is going to give life to the loopholes of arbitrariness and it must be noted that it subsequently took to take the face of a giant degrees of equality flaws, which by and by made people violent in order to obtain what they think they deserve. The legislature with their reasonable amendments tried to help the once in need but at the same time neglected the once who were not benefitted a bit. The reasonablity could have lied in not affecting the one's who are not the part of those provisions but rather the reverse happened . It affected many privileged individual without any cause . Without knowing about what is wrong and what is right people involve in riot, though the legislative authorities may know about the after effects of the provision when it would be

[1] 1974 AIR 555, 1974 SCR (2) 348

enforced but hardly any one cares for the same. In recognising the fate of social equalities and inequalities in amongst one nation has divided the country into-

1.socially privileged and legally unprivileged ;and

2.socially unprivileged and legally privileged members of the society.

And allegedly this is not what is the demand of laissez-faire state. This makes the provision a more of the privileges and less about the protective discrimination. The terms which have eclipsed the drawbacks of the provisions could have been enumerated in a larger wide term which could make every meaning in a specified way.

The reformulation of article 15 did make a change to the stature of article 14 which never allowed class differentia but it came to be recognized on the terms of adequate representation. In The State Of Madras vs Srimathi Champakam [2] The Supreme court's literal interpretation where the hon'ble court held the law void and violative of article 15 clause 1 where the madras government reserved seats on the basis of caste and religion . after this decision of supreme court The Constitution (First Amendment) Act 1951 inserted clause 4 in Article 15 . After this amendment, the article 15 was not the apropos of article 14 rather it was equality which was determined on the basis of Article 15 and it came to materialize as to "what is egalitarianism in accordance with article 15".Clause 4 of article 15 enlists the State for making a reservation on the grounds as prescribed by the clause 4 but these classes cannot compel the State for making provision for reservation for their caste or community but an antecedent of which was the massive jat reservation protest in 2016,and as a result of that protest the Haryana government mandated the Haryana backward classes (reservation in service and admission in educational institutions) bill on 29 march 2016 the bill enumerated the jats of Hindus, Sikhs, Muslim Bishnoi's tyagis and rors in the backward class category but later the Punjab and Haryana high court quashed the validity of the bill.

Judiciary is not only the belief but the most legitimate authority,

According to Max Weber -

> "A legitimate authority is that which is recognized as legitimate and substantiated by both the ruler and the ruled"[3]

[2] 1951 AIR 226, 1951 SCR 525

[3] Max weber's conception of the State

and the contrary is right for the executives who lack one or the other essential elements of weber's definition. It's logically not true every time but it was, with the advent of independence, and the lattice of which are found now and then.

The main problem arises in the applicability and in the interpretation of the newly formed statue. The reservation under clause 4 of article 15 shall be reasonable and there is no provision for categorization of backward and more backward class but backward must be both socially and educationally, the test for social backwardness can be made solely on the basis of caste. The same interpretations were kept by the court while giving the judgment in M. R. Balaji And Others vs State Of Mysore[4], the supreme court quashed the order made by the Mysore government in the admissions in engineering and medical colleges, which enunciated a reservation of 68% for socially and economically backward classes, scheduled castes, scheduled tribe, and not only this socially and economically backward classes were divided into backward and in more backward class and for the first time the ceiling limit was confined to be less than 50%.but later the same was overruled in Indira Sawhney's[5] case where the apex court held that -backward class can be defined by taking caste into consideration and secondly categorization of backward class and more word class is valid in law. The interpretation of the judiciary was not as to who is desirable for reservation but the interpretation was about who is eligible for getting a reservation. was the only caste which had to be determined or the poverty or the place of habitation, well the situation was much clear now till 1993.

on 12 august 2005, the supreme court gave a judgment in P.A. Inamdar & Ors vs State Of Maharashtra & Ors[6] that the state could not promulgate its reservation policy on minority and non-minority unaided private colleges together with professional colleges. This decision was an attempt to clarify the previous 2 judgments i.e. in the T.M.A. Pai Foundation and others v. State of Karnataka and others[7] and Islamic Academy Of Education vs State Of Karnataka And Others[8]. Now this judgment was a direct slap on the policies of the executives and thus in order to nullify this decision parliament enacted the 93rd amendment, 2005 which inserted clause 5 to article 15-

[4] 1963 AIR 649, 1962 SCR Supl. (1) 439
[5] AIR 1993 SC 477, 1992 Supp 2 SCR 454
[6] 2005 (5) BomCR 52, 2005 (3) MhLj 1067
[7] (2002) 8 SCALE 1: AIR 2003 SC 355
[8] AIR 2003 6 SCC 697

> "Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30"

which is partly a rendition of clause 4 of article 15.what is sustainable for the development for the country is known to all but is practiced just by handful. Every provision cannot be absolute either in its positive impact or in its negative impact , the mid thin line that differentiates the two is merit to one in in need , the adversity of the provisions lies in this particular aspect only and thus it would be vulnerable to lead a critic opinion on the one aspect and favour the other.

The irony lies as to it is only those people who are not yet known to their rights , are not even known to the policies made for their benefit.

103RD CONSTITUTIONAL AMENDMENT

The 124th amendment bill was passed by the Parliament, which added clause 6 to article 15 and clause 6 to Article 16 of the constitution of India. The amended act mandated a 10 % reservation in both government colleges and jobs, some called it ruse of 2019 elections for the present Bhartiya Janta party government to come into the rule, though talking about the intentions behind this amendment would be vague and would limit the legal aspects of this content. The amendment holds a 10% reservation for economically weaker sections from the upper caste.

The bill takes its genesis from article 46 of the Indian constitution i.e. a directive principle of state policy which states the Promotion of educational and economic interest of SCs STs and other weaker sections. The Indra Sawhney[9] The verdict struck down this provision which was brought up by this 103rd amendment, but this time the righteousness was held up with the prominent legal aspect. This amendment was even challenged by a writ petition by the

[9] Indra Sawhney Etc. Etc vs Union Of India And Others, AIR 1993 SC 477, 1992 Supp 2 SCR 454

"youth for equality" on the ground that it violated the basic structure doctrine but later on all the disconcerns were detached soon.The advent of this amendment in the Indian Constitution made upper castes at legal war with the customary provisions which was available only to the SCs, STs and other backward classes. This pertinaciously unveils how equality is comprehended in our progressive country.

Not only this but even article 16 led to major undergoing changes, its preferably not the executives who have been denied the rule of just, fair and reasonable test, but in the recent supreme court judgment in 2019, in B.k. Pavitra and others v. Union of India,the apex court upheld the Karnataka Reservation Act 2018 on the grounds that "the State has furnished sufficient records to exemplify both that SC/STs are inadequately represented and that the promotion policy would not Adversely affect the efficiency. The 2018 act introduces consequential seniority for SC/STs in the State government services". Further, the court introduced a new definition of the administrative efficiency under article 335 of the Constitution Of India. The new definition balances the merit with ensuring adequate representation also it can be cited over here that the state failed to apply the creamy layer test introduced in Jarnail Singh[10]. The court reasoned, that the test can be only applied at the stage of reservation in promotion and not of consequential seniority.

CONCLUSION

The conflict between the executives and the Judiciary is as primordial and unarguably the advent aspect of the legal history of the country, the social equality clauses are even in its legal phraseology are called as" protective discrimination" discourse the major importance of impact on the society. The "Grassroots justice" that Mahatma Gandhi plowed seems to be an impossible task in between this conflict. The utility and effectiveness of a provision on the population and the reaction of the ones who are adversely affected by it whether in positive or in a negative way is the standard unit that marks the impact of significance of the amendments as such made. The sovereignty of the country does not only come from the commanding authority but how equally men are treated in the most suitable unequal situation is what marks the sovereignty of the nation.

[10] Jarnail Singh vs Lachhmi Narain Gupta

It's majorly paramount to make the de jure practices of the judiciary at an equal stance to the de facto values of the legal thesis. It's particularly not only about reservation which has accomplished a major part of the flaws in the education system of the country but also the other related provisions that are equally endangering to the sovereignty of the country which is more or less making political programs prima facie asked to be engineered by the judiciary.

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