RESERVATION IN SCIENTIFIC FIELDS: A CRITIQUE OF NARESH CHAND CASE

I Introduction

KUDOS IS often given to Indian culture and its heritage. But the shadows of discrimination and separation they have created are more often than not forgotten. It is an indisputable fact of Indian cultural heritage that the scheduled castes, scheduled tribes and other depressed classes had been dehumanised in the India of the past. Their upliftment was one of the slogans heard and reheard on the various fora of freedom struggle. The national leaders gave much regard to the restoration of full personhood to these downtrodden and to protect their economic and social interests together with their rightful share in all spheres of the democratic process. Protective discrimination in the nature of reservation was one of the ways, they thought, by which the various interests of the depressed classes can be satisfied. With this end in view the founding fathers of the Indian Constitution fondly added certain imperatives into the Constitution which enable the government to make reservation in favour of the scheduled castes, scheduled tribes and other backward classes. The need for providing reservation and its application for the last four decades are to be examined in this background.

II Constitutional prescriptions

There are five provisions in the Constitution having a direct bearing on reservation for the backward classes. Article 15(4) in the Constitution[1] permits the state to make special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. Provision is also made in article 16 (4) 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. Article 46[1a] directs the state to promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the scheduled castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation. Though not part of the fundamental rights, article 335 provides that the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration in the making of appointments to services or posts under the union or states, with due regard to the efficiency of administration. There are also provisions for reservation of seats in the House of the People and Legislative Assemblies of the states in favour of scheduled castes and scheduled tribes.[1b]

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1. Pt. III.

1a. In Pt. IV.

1b. The Constitution of India, art. 332

Provision for job reservation as well as reservation in educational institutions are left to the discretion of the concerned government. Whereas reservation of seats in the House of the People and State Legislative Assemblies are made mandatory, though for a limited period.[2]

III New challenge and judicial perception

Privileged sections of the society, precluded from the benefits of reservation had often challenged the implementation of the constitutional provision providing reservation. When the wisdom of the framers of the Constitution was thus put under forensic analysis in the name of "equality", "efficiency" and "merit", the result was, many a times, disappointing. The recent judgment of the Allahabad High Court in *Naresh Chand* v. *District Inspector of Schools, Ghaziabad*,[3] shows the highwater mark of such disappointment.

The facts of the case are as follows. The petitioner Naresh Chand was appointed as an *ad hoc* lecturer in chemistry in Sri Saraswati Inter College, Hapur. The post of lecturer in chemistry was a reserved post for a scheduled caste candidate. The petitioner does not belong to that category. When this fact came to the notice of the District Inspector of Schools, he issued an order cancelling the petitioner's appointment. This order was challenged by the petitioner. The Allahabad High Court speaking through Justice M.Katju, held that the post of lecturer in chemistry cannot be validly reserved for a scheduled caste candidate, for, it is a scientific subject and in scientific subjects (including medicine and engineering) caste based reservation is arbitrary and violative of article 14 of the Constitution. The court further added that the above rule is applicable in admissions to medical and engineering colleges also. Thus the court quashed the order of the District Inspector of Schools and allowed the petitioner to continue in the post.

The decision of the Allahabad High Court is open to objection on many points. Reservation is a constitutionally assigned function of the government. If the government is of opinion that in any service or posts under the state, the representation of backward classes of citizens is inadequate, it can validly make provision for reservation to such posts or services. Similarly it is the constitutional function of the government to decide as to how long the policy of reservation should continue and to what all fields it should extend.[4] To decide it by the judiciary is an encroachment upon the constitutionally assigned function of the executive government and thus unconstitutional. As such the opinion arrived at by the court to abolish reservation in certain services under the state has no constitutional sanctity.

IV Public interest argument: the pitfall

It is an established rule that the interest of the republic is the supreme law. The court also gave much reliance on this rule But in finding out the interest of

2. *Id.*, art. 334.
3. 1992 Lab.I.C. 2613 (All.).
4. *State of Punjab* v. *Hira Lal*, A.I.R. 1971 S.C. 1777 at 1780

the republic the court overlooked many important considerations and arrived at the conclusion that protection of high standards of efficiency in the scientific field is the sole interest of the republic. India is now undergoing its critical days. The forces of disintegration are gathering momentum day by day. One of the reasons for this is the discontent created in the mind of the people because only certain classes of people are snatching lion share of the social and stately benefits. In this exploding situation, is it not keeping the country united at any cost more important than keeping high standards of efficiency in the scientific field? Moreover the denial of reservation in scientific and technological fields will virtually create a monoply of service for the forward classes. Will it be constitutionally permissible? In *State of Maharashtra* v. *Chandrabhan*,[5] Justice Varadarajan aptly cautioned against the creation of such monoply and observed:

> [P]ublic employment being property of the nation ... has to be shared equally subject of course to the qualification necessary for holding the office or post.... [I]t should not be monopolised by any particular section of the people of this country in the name of efficiency....[6]

In an equally plausible language, Justice Chinnappa Reddy observed that in the name of efficiency we cannot introduce the vestiges of the doctrine of laissez-faire and create a new oligarchy.[7]

V Is inefficiency a birthright?

Some of the observations relied on by the court in *Naresh Chand* make a general proposition that inefficiency and disqualification must necessarily be associated with members of the backward classes and efficiency and merit are the innate qualities of a handfull of forward groups. It is based on this proposition that the court in *Naresh Chand* came to the conclusion that if caste based reservation is effected in scientific field it will lead to total annihilation. It is submitted that this proposition is quite unscientific and futile. Is there any empirical evidence in support of such outrageous claims? On the contrary, history proves that the backward classes are genetically as potential as the rest of the people. For *e.g.*, centuries back *adidravidas*, who by birth untouchables, in the former state of Madras were converted into Ayyangar brahmins by the great Ramanujacharya. Now they are as good brahmins as the rest. Pointing out this, Justice Krishna Iyer opined that the genetic potential of the depressed class is as good as that of forward communities. For exploding the bubble of the elite's argument of genetic potential, Justice Iyer further raised the question: "who by descent (myth or truth) was Vyasa or Valmiki? Was not Ambedkar one of our great jurists and Sanjivayya one of our fine chief ministers?"[8] These examples are illustrative and not

5. A.I.R. 1983 S.C. 803.

6. *Id.*, at 808.

7. *Id.* at 804.

8. V.R.Krishna Iyer, *Justice in Words and Injustice in Deeds for the Depressed Classes* 10-11 (1984).

exhaustive.[9] The fact is that for centuries the genetic potentials of the depressed classes were criminally suppressed and they were kept away from the main stream of our national life. This sapped their moral fibre. It is to get rid of this social ostracism, special provision in the nature of reservation is provided in the Constitution.

VI "May be" mania

One of the important findings of the court in *Naresh Chand* is that application of reservation in scientific field is equal to adding impurities into the pure science. The learned judge prophetically clamoured that this process "may" lead to deterioration of the quality of science and this "may" result in foreign invasion and foreign invasion "may" lead to total annihilation. Mystic "may be's" are not unknown in the realm of reservation. Attempts to subvert reservation imperatives by building up prophesies had been frowned upon in many occasions than once. In *State of Punjab* v. *Hiralal*,[10] it was argued that if reservation is effected in higher echelons of civil service, it may frustrate the promotion hope of the forward class employees and this may lead to chaos. The Supreme Court repelled such arguments as "hypothetical" and held that reservation cannot be struck down on hypothetical grounds or imaginary possibilities.[11] Again, in *A.B.S.K.Sangh (Railway)* v. *Union of India*,[12] the Supreme Court ruled that hypothetical results which the application of the reservation rule may yield in the future should not be a hindrance in the implementation of reservation.[13] Thus it is impermissible and in fact unconstitutional to peep into the future 'maybe's' and strike down reservation.

VII Twentieth century decision with eighteenth century reasoning

What is the object behind reservation? Is it to induct more *harijans* into public service as *safiwalas*? Is our educational institutions an asylum for training the *dalit* youths to become class IV employees? The Supreme Court in *A.B.S.K. Sangh*,[14] has categorically answered these questions in the negative. Disapproving an argument against reservation in higher echelons of civil service, Justice Krishna Iyer observed:

> Article 16(4) was not designed to get more harijans into Government as scavengers and sweepers but as 'officers' and 'bosses' so that adminstrative power may become the common property of the high and low, homogenised and integrated into one community. Social stratification, the bane of the caste system, could be undone and vertical mobility won not by hortative exercise but by experience of shared power.[15]

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9. For further details about efficiency argument, see, P.S Soman, "Reservation in Isolated Posts: The problems of Quantum Rule", *Cochin Univ. L. Rev.* 242 (1992).

10. *Supra* note 4.

11. *Id.* at 1781.

12. A.I.R. 1981 S.C. 298.

13. *Id.* at 328-9.

14. *Supra* note 12.

15. *Id.* at 313.

But the court in *Naresh Chand* failed to consider the real object behind reservation and deprecated reservation in the field of science and technology. In fact this decision sets the clock a century back where the depressed classes were not permitted to recite or hear *Vedas* which was a virtual monopoly of the high caste.

VIII Desperate search for precedent

After deprecating reservation in the field of science, medicine and technology the court wandered for reasons in order to justify its stand. Citing seven Supreme Court decisions in one full paragraph (para 13) the court held that there is no Supreme Court decision to bless reservation in the field of science, medicine or technology. With great respect to the learned judge, it is submitted that the Supreme Court of India as far back in 1971 itself had considered this issue in *A.Periakaruppan* v. *State of Tamil Nadu*,[16] and held that reservation for backward classes is permisssible in admissions to Medical Colleges. In this case, the petitioner argued that reservation of seats for the backward classes and the consequent exclusion of better qualified and competent students from the medical colleges will adversely affect the interest of the nation. Repelling this, Justice Hegde observed:

> Undoubtedly we should not forget that it is against the immediate interest of the nation to exclude from the portals of our medical colleges qualified and competent students but then the immediate advantage of the nation have to be harmonised with its long range interest. It cannot be denied that unaided many sections of the people in this country cannot compete with the advanced sections of the nation. Advantages secured due to historical reasons should not be considered as fundamental rights. Nation's interest will be best served - taking a long range view - if the backward classes are helped to march forward and take their place in line with the advanced sections of the people.[17]

In *Dinesh Kumar* v. *Motilal Nehru Medical College, Allahabad*,[18] the question of reservation for backward classes in Medical colleges was again considered by the Supreme Court. The court held that the state can validly reserve seats for backward classes. Moreover the court refrained from limiting the reservations available to scheduled castes/scheduled tribes and other backward classes to 50 per cent and held that it is open to state governments to decide the quantum of reservation.[19] These cases undoubtedly laid down the proposition that caste based reservation is permissible in the field of medicine. But the Allahabad High Court, without noticing these cases, ruled out reservation in the field of medicine. In this respect the decision is quite unusual.

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16. A.I.R. 1971 S.C. 2303.
17. *Id.* at 2309.
18. A.I.R. 1985 S.C. 1059.
19. See, *Dinesh Kumar* v. *Motilal Nehru Medical College, Allahabad*, A.I.R. 1986 S.C. 1877 at 1883.

IX Efficiency argument: an exploded myth

Upon a persual of the decision it can be seen that the court is against caste based reservation only. Under the Indian Constitution special provision in the nature of reservation is available not only to scheduled castes, scheduled tribes and other backward classes but also to minorities, women, children, sportsmen *etc.* Under article 30, minorities have the right to establish and administer educational institutions of their choice. They can appoint their own men to any teaching post which is reserved for their community.[20] They can also reserve seats for students belonging to their community.[21] Similarly, article 15 (3) permits the state to make special provision (including provision for education) for women and children. There is also provision for reservation in the medical and engineering fields to outstanding sportsmen and children of political sufferers.[22] Reservation is also permissible on the basis of residence or on institutional preference.[23] Again, admission in most of the private medical and engineering colleges are made not on the basis of academic merit alone but on one's capacit to pay the required capitation fee. In all the above cases the so called "merit" is being diluted. Will it not adversely affect the standards of science and technology and thereby the national interest? Did the court find anything wrong in this kind of dilution of merit? It seems that the court's only quarrel was with regard to reservation given to backward classes. This shows the judicial ambivalence. The decision is a clear instance of unwarranted exercise of judicial power.

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20. *D.A.V. College, Jullundur* v. *State of Punjab*, A.I.R. 1971 S.C. 1737; *State of Kerala* v. *Mother Provincial*, A.I.R. 1970 S.C. 2079.

21. *St. Stephen's College*, v. *University of Delhi*, A.I.R. 1992 S.C. 1630.

22. *D.N. ChanChala* v. *State of Mysore*, A.I.R. 1971 S.C. 1762.

23. *Jagdish Saran* v. *Union of India*, (1980) 2 S.C.C. 768.

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