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Compensatory Discrimination In favour of Scheduled Castes & Scheduled Tribes Under Indian Constitution – A Study with Special Reference to Inter-State Migrants

- Prof. G. Laxman
  Dayanand College of Law, Latur.

Introduction

The Story of Reservation goes back to the era when the Nation was still to make its “tryst with destination”, as India’s independence came to epitomise in Jawaharlal Nehru’s words, and to that critical time when it was on the brink of a trifurcation in to three separate Nations: One for the Hindus, Second for the Muslims and Third for Backward Community – before it could get complete sovereignty, for such was the devised formula devised by the British.¹

In reality, Dr. B.R. Ambedkar, never intended to achieve the reservations, benefits, concessions etc. for the dalit people. The concept of reservation policy was conceived by the M.K. Gandhi for Scheduled Castes and Scheduled Tribes.

Why Dr. B.R. Ambedkar was initiated the battle? In reality, what was the stand of the Dr. B.R. Ambedkar to achieve for the oppressed classes?

The reservation is burning subject matter in India. It is in existence more than eighty years. Compensatory Provisions engrafted under Indian Constitution with an intention to protect oppressed classes. Indian Society suppressed them economically and socially from generations to generations.

Oppressed classes are untouchables, such as Scheduled Castes and Scheduled Tribes as designated under the Indian Constitution.

¹ Asst Prof of Law, LL.M., NET Qualified in Law, Research Scholar of Osmania University, Faculty of Law, Dayanand College of Law, Latur, Maharashtra, India. Research Article is prepared and published on account of Minor Research Project (MRP) granted from the University Grants Commission, (UGC), Financial Aid Provided, by File No. 23-753/09(WRO) for Research Project entitled “Compensatory Discrimination in favour of Scheduled Caste & Scheduled Tribes Under Indian Constitution – A Study with Special Reference to inter-State Migrants.

Untouchability has been practised more than 3000 years. It has a tragic condition that no one has taken efforts to eradicate the out dated unscientific practises of caste system, on the other hand, majority people of India have faith in the practicing the out dated and unscientific caste system. aid

Dr. B. R. Ambedkar was a remarkable National leader, the Champion of Dalit people, he who realizes about the status and rights of the oppressed people in India. He had resolutely fought against discrimination also for the rights of the untouchables. He was a brave, learned Philanthropist and an intellect being became a great outstanding Dalit leader, even though the Congress dominated by Hindus. Moreover, he emphasizes for social democracy rather than democracy.

Ambedkar himself an untouchable, he distress that if Gandhi’s suggestion were transformed into political reality, the untouchables would have to give up the initiative of fighting for their own rights. He had reflected the reality of double standard of Gandhi.

In the great struggle, under the leadership of Dr. B.R. Ambedkar, Dalits were succeeded a Communal Award for them. However, injustice caused to the Dalits, Reservation Benefits were arranged to them in place of a separate electorate, actually, what they got in the struggle of Round Table Conference(s). In other words, Hindus by showing Reservation in one hand, with another hand, they had snatched away their achievement of separate electorate. This kind of Reservation Benefits is meagre and as good as nothing actually what they had lost. It was gimmick played by them. M.K. Gandhi went to fast unto death to modify the Communal Award.

Modification of Communal Award was undemocratic, discriminatory and unjust. However, injustice caused to the Dalits, Reservations were made available to them in place of a Communal Award. In actual, what they got in the struggle of Round Table Conference(s) that was lost. In reality the trick played against the rights of Dalit. It is the record of the people, how they succeeded.

After independence, the Constituent Assembly continued the prevailing definition of Scheduled Castes and Tribes, and gave (via articles 341, 342) the President of India and Governors of States responsibility to compile a full listing of castes and tribes, and also the power to edit it later as required. The actual complete listing of castes and tribes was made via two orders The Constitution (Scheduled Castes) Order, 1950,\(^2\) and The Constitution (Scheduled Tribes) Order, 1958\(^3\) respectively.

\(^2\) *The Indian Constitution (Scheduled Castes)1958*

\(^3\) *The Indian Constitution (Scheduled Tribes)*

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Since the Indian Constitution came into force in 1950, Scheduled Castes (SCs) and Scheduled Tribes (STs) have been guaranteed political representation in the Lok Sabha (the lower house in parliament) and in state legislative assemblies through political quotas ('reservations'). According to the Indian Constituent Assembly Debates, SCs/STs were given electoral quotas 'apparently and clearly on grounds of their economic, social and educational backwardness'.

A dream of the framers of Indian Constitution is to establish an egalitarian society. In exercise of this ideology, the provisions are incorporated in our Constitution to exterminate unscientific evils of caste system of chaturvarna, also reservations are provided to the weaker sections with intention to uplift and make the equivalent with other people society.

Since the 1850s these communities were loosely referred to as Depressed Classes, or Adivasis ("original inhabitants"). The early 20th century saw a flurry of activity in the Raj assessing the feasibility of responsible self-government for India. The Morley-Minto Reforms Report, Montagu-Chelmsford Reforms Report and the Simon Commission were several initiatives in this context. A highly-contested issue in the proposed reforms was the reservation of seats for representation of the Depressed Classes in provincial and central legislatures.

In 1935 the British passed the Government of India Act 1935, designed to give Indian provinces greater self-rule and set up a national federal structure. The reservation seats for the Depressed Classes was incorporated into the act, which came into force in 1937. The Act introduced the term "Scheduled Castes", defining the group as "such castes, races or tribes or parts of groups within castes, races or tribes, which appear to His Majesty in Council to correspond to the classes of persons formerly known as the 'Depressed Classes', as His Majesty in Council may prefer". This discretionary definition was clarified in The Government of India (Scheduled Castes) Order, 1936, which contained a list (or Schedule) of castes throughout the British-administered provinces. This discretionary definition was clarified in The Government of India (Scheduled Castes) Order, 1936, which contained a list (or Schedule) of castes throughout the British-administered provinces.

The scholastic study perceived the gaps, problems and complications in the implementation of reservation policy. It clearly, appears that implementation of reservation policy of is not sincerely done by the Union Government, State Government also Supreme Court has not...
extensively made their decisions fill up the gaps and to overcome with the problems and complications.

Statement of Legal Problem

Inter-State Migrants of Scheduled Castes & Scheduled Tribes described as dalit people of Indian States migrating from the birth place to another Indian State(s) within the home land is known as Inter-State migrants of Scheduled Castes and Scheduled Tribes.

Migration of Schedule Castes and Scheduled Tribes when they cross the borders of his original birth State and enters in the Indian neighbouring States[ Or] otherwise it can be posed as Inter-State(s) Migrants of Schedule Castes and Scheduled Tribes are not allowed reservation benefits or concessions within homeland, which result into a Socio-Economic, Socio-Legal, Multifaceted, Controversial issue(s) generated across the Nation.

In this correlation, it is observed that there is adverse affect to his Constitutional rights, Human Rights and Rights of Indigenous Persons.

Therefore, it is angled issues as when a person belonging to Scheduled Caste / Scheduled Tribe of one State migrates to another State what happens to his benefits of reservation and what happens to his caste status?

Scheduled Castes/Scheduled Tribes for each State are indicated in the Notifications issued by the President of India under Article 341 of the Constitution of India for each State. The castes that are notified in such Notifications are treated as Scheduled Caste / Scheduled Tribe in the concerned State. In other words, a caste which is not notified as Scheduled Caste / Scheduled Tribe in the Presidential Notification issued for the concerned State will not be treated as a Scheduled Caste / Scheduled Tribe in that State even though the very same caste finds a place in the Presidential Notification issued for another State.

Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas.

A Scheduled Caste / Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as person belonging to the Scheduled Caste / Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State. A person
belonging to the reserved category in one State cannot ipso facto claim the same benefit on his migration to another State. If a State makes a provision to the effect that the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such in relation to that State then such a provision would be perfectly valid. Therefore, unless the caste of the migrant is notified in the Presidential Notification issued for the State to which he migrates he cannot claim the benefits of reservation in that State.

Thus, denial of reservation to members of Scheduled Castes and Scheduled Tribes is the fundamental problem, which reflects into Socio-Economic, Socio-Legal which leads to multi-dimensional complexion.

The foundation of reservation benefits is the basis of the Scheduled Castes and Scheduled Tribes as it appears in the Article 341 and 342 of the Indian Constitution of India.

Articles 341 Scheduled Castes & 342 Scheduled Tribes of the Indian Constitution are the Index of the Scheduled Castes or Scheduled Tribes in order to confer Reservation Benefits to them but imposing irrational restrictions upon the sons of the soil. Furthermore, Miss-interpretation and Strict Interpretation of the respective provisions of the Indian Constitution is carried out in order to arrive the ideology the framers of our Constitution. There is a general rule for the interpretation of these provisions, which is a Beneficial and Harmonious Construction shall be allowed to achieve the intention of the framers of our Constitution.

Significance of Research

It is a difficulty suffered by the Migrants of Scheduled Caste and Scheduled Tribes from long back. In this regard, neither the Centre nor the States pay heed to exterminate the problem. Furthermore, where the globe advanced into the Global Village, the Indian Constitution has unenthusiastically violated like anything. It is the crisis in almost all the states in India. Day by day, it is becoming attractive and strengthening like anything in the existing global village. Moreover, dimensional decisions of the Judiciary are also not favored, in this context; Judiciary is manufacturing bricks to build the Berlin Wall among the Indian States to split the Dalit people.

Besides, the Art, 15, says that the State shall not discriminate on the grounds of religion, race, caste, sex, or place of birth. Articles 341 & 342 of the Indian Constitution are the Nationalized Index of the Scheduled Castes or Scheduled Tribes in order to confer Reservation Benefits to them but not otherwise imposing irrational restrictions upon the sons of the soil.
In addition, in India prohibition of Reservation Benefits to the Inter-State migrants of Scheduled Castes and Scheduled Tribes is violating the fundamental rights, Articles 14,15,19(1),(d),19(1)(e) & 21 of the Indian Constitution.

In this connection, Judicial response is also not in favour, as in case of Marri Chandrasekhar Rao vs. The Dean of the Medical College, Maharashtra. It is a Land Mark Judgement of the Supreme Court.

Therefore, I preferred this sensible area for the research work because In India, Reservation Benefits are provided under the Indian Constitution in favor of Scheduled Castes, Scheduled Tribes are not enforceable in respect of Inter-State Migrants from one state to another state. So, it is observed as Nationalized Burning Problem. Moreover, it is level-headed spot to smash up the integrity of the Nation and destruction to the development of our country.

Scope of the Research

The foundation of research is based on the legal research, and the main roots are being connected with the part of the Indian Constitution, which directs to the States and the Centre to follow the Reservation Policy in matters of service and contest in the politics for welfare of the Scheduled Castes and Scheduled Tribes positively, statutory provisions, Human Rights, the rights of Indigenous persons, including decided product of the High Court as well as Supreme Court in this context.

Limitation of Research Work

Research work is limited to the following aspects: my research work is emphasizing on the reservation provisions of Indian Constitution as well most-important decided products of the Supreme Court and High Courts with regard to admissibility of reservation benefits to Inter-State Migrants of Scheduled Castes and Scheduled Tribes in their homeland. Therefore, I wish to confine the area for my research work within the certain parameters.

Aims and Objectives of Research

Research has been carried out on the topic of the Compensatory Discrimination in favour of Scheduled Castes and Scheduled Tribes under Indian Constitution – A study with special reference to Inter-State Migrants with the following among other objectives ---

01. To elaborate the concept of Reservation Policy.
02. To spectacle the origin and expansion of the reservation policy.
03. To study and draw attention, the problems of the members of Scheduled Castes and Scheduled Tribes especially with regard to Inter-State Migrants with in India.

04. To analyze and elucidate the causes and proper Implementation of the Reservation Policy.

05. To highlight the short coming of the Indian Constitutional, Statutory as well as decided product for the purpose of application.

06. To examine the actual position of the existing Reservation Benefits and its Implementation, more particularly in relation to Inter-State migrants of Scheduled Castes and Scheduled Tribes, who migrates from one State to another State of his/her origin.

07. To scrutinize the nature of the various segments of policy of Reservation as and when Controversies came before the Court and manner in which the Court advanced and upheld the Policy of Reservation for their application and other allied directions of the Apex Court.

08. To propose the modification of the Indian Constitution in relation to the application of “Uniform Reservation Policy” by the Centre and including in the all States Irrespective of language barriers, residence, and origin of the birth State etc.

09. To ignite the glow on the Nationalized Burning Problem of the Inter-State Migrants of Scheduled Castes and Scheduled Tribes and to aware & alert the targeted group of Migrants of Scheduled Castes and Scheduled Tribes in India.

10. To suggest the steps, that must to be taken for the Uniform Reservation Policy in all over India, Parliament has to take necessary steps to annihilate Nationalized Burning Problem. Moreover, recommend the necessary measures for improving the system, parliament ought to wake up and realize their duties in order to modify the Indian Constitution and to make a Central Legislation and to shape the Uniform Reservation Policy.

Hypothesis of the Research

Foundation of the targeted research work is based on the proposed hypothesis. It has been angled for the study that the legal problem relating to the denial of reservation benefits and concessions in favour of Scheduled Castes & Scheduled Tribes as in the case of inter-state migrants in India. Projected hypothesis is in the light of research exploration is as following: -

H.1. Poverty and innocence are the fundamental evils which are made them to be vulnerable Scheduled Castes and Scheduled Tribes everlasting in the Society.

H.2. Reservation benefits and Concessions in favour Scheduled Castes and Scheduled Tribes in India as an affirmative action.
H.2. Execution of Reservations is carried by the both Union and State(s) Governments but not positively attracts the Protective Provisions of the Indian Constitution and negatively implemented to achieve the ideology of the Reservation Policy.

H.4. Denial of Reservation Benefits or Concessions is against to the Inter-State Migrants of Scheduled Castes and Scheduled Tribes and Discrimination, and exploitation is overtly causing, against the vulnerable members of Scheduled Castes and Scheduled Tribes of the Inter-State Migrants in their homeland.

H.5. Socio Economic Policies are not intensified for the Scheduled Castes and Scheduled Tribes, which result into violation of Human rights and Rights of Indigenous Peoples.

H.6. The Laws made by the Legislature are defective in nature to confer the rights in favour of Inter-State Migrants of Scheduled Castes and Scheduled Tribes with in the homeland and collapse to provide protective shield from the evils.

H.7. There is no affirmative approach of the Indian Judiciary to fill up the gaps and fails to confer the preferential treatment in favour of Scheduled Castes and Scheduled Tribes for safeguarding them from all indecent forms.

H.8. Modification of the Indian Constitution is stringently needed, Permitting Uniform Application of the Reservation benefits in all the States.

Methodology of the Research Work

The Subject matter of Legal Research compact with the fundamental principles of law. Research work is based on the Doctrinal Methodology. However, Doctrinal Method is insufficient to achieve the result of this research work. Therefore, it is keeping in view that some extent of Empirical Method is badly needed to achieve the positive result of this work.

This kind of subject matter of legal research is more accurate and reliable tools of research, discovery of new fundamental facts regarding group and working of social institutions is possible.

This research work is concerned with the second branch of Affirmative Action, namely, the Reservation policy. Keeping in view, the nature of the work, the investigator has adopted the Historical, Analytical Methods of Research.

Suggestive measures and conclusion : Guidelines for the Uniform Reservation for Scheduled Castes & Scheduled Tribes They must be

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allowed to move more freely and settle any where in India with Benefits of Reservation or any Concessions.

- Let them to carry out any profession and allow them in any State Government services in their Homeland with all Reservation Benefits.
- With in the territory of India, there shall not be cramped by imposing barriers on the Reservation Benefits.
- Providing only State wise Reservation Benefits to Scheduled Castes or Scheduled Tribes is discriminatory and very harmful to the Nation, and violating the fundamental rights of our Constitution. Furthermore, it is harmful to the Unity and Integrity of the Nation as well as violation of human rights.
- Articles 341 & 342 of the Indian Constitution are the Nationalized Index of the Scheduled Castes or Scheduled Tribes in order to confer Reservation Benefits to them but not otherwise imposing irrational restrictions upon the aboriginal of Scheduled Castes & Scheduled Tribes.
- Articles 341 & 342 of the Indian Constitution are the framework for the Nationalized Index of the Scheduled Castes or Scheduled Tribes in order to identify them National wide and confer Reservation Benefits to them but not otherwise imposing residential based reservation in their own homeland upon the aboriginal of Scheduled Castes & Scheduled Tribes.
- Article 16(4) of the Indian Constitution is neither sword nor axe to cut off the necks of the same brethren of the other state(s). Article 16(4) shall be exercised by the state with care and caution. Moreover, constantly keep in the minds and hearts about the Unity and Integrity the Nation at large. India is more federal than state.
- Article 352 (1) (24) of the Indian Constitution, Scheduled Castes Means such castes or tribes or parts of or groups within such castes, races, or tribes as are deemed under Article 341 to be Scheduled Castes for purpose of this Constitution.
- Article 352 (1) (25) of the Indian Constitution, Scheduled Tribes Means such tribes or tribes communities or parts of or groups within such castes, races, or tribes as are deemed under Article 342 to be Scheduled Tribes for purpose of this Constitution.
- The Unity and Integrity is the spirit of Indian Constitution by which it possible to generate the patriotism and goodwill among the people of India. Moreover, unity and integrity is the basic structure of the Indian constitution. In this connection, the legislature and the judiciary shall not ignore it, grasp the ideology of the Indian
Constitution, suppress the mischief, and advance themselves to protect the integrity and make Nation Building in the welfare State.

» In the case of N M Thomas vs. State of Kerala, SC has held that Art 16(4), which the prime source of compensatory discrimination, is not an exception to Art. 16(1) but only an instant of classification. It further held that reservation could do even without art. 16(4) and under Art. 14 that reasonable classification.

» In the case of Indira Sawhney vs. Union of India, the Supreme Court has upheld the view given in NM Thomas case. Thus, such provisions do not go against principles of equality. In the case of Pushpa and others...

» Extending Reservation Benefits to the Inter-State Migrants of Scheduled Castes and Scheduled Tribes is not an offence. However, it is only a just necessity.

» Scheduled Castes and Scheduled Tribes so designated must have right under Article 14, 19(1) (d), 19(1) (e), and 19(f), in as much as these are applicable to him in his area whereas he migrates or where he goes. The expression ‘in relation to state’ would be nugatory if in all states, the special privileges or the rights granted to Scheduled Castes and Scheduled Tribes are carried forward. Though it will also inconsistent with the whole, propose of the scheme of Reservation.

» There must be uniform Reservation Benefits for Scheduled Castes Scheduled Tribes in the State(s) and Centre without any discrimination on the ground of Religion, Race, Caste, Sex, or Place of birth.

» Nowhere it is clearly mentioned or directed, in the Indian Constitution that the cessation of Reservation Benefits by migration of Scheduled Castes and Scheduled Tribes. It is an innocent interpretation of the Constitution. Such kind of approaches against the members of the Scheduled Castes and Scheduled Tribes are the enormous insult to the Democratic, Welfare State. It should have a common sense that, the Reservation Benefits are targeted to such people, who are depressed by the orthodox society from generation to generation all over the country.

» The Lawmakers, the Judiciary, the Executive, and the people of India must be kept in their minds and hearts that, the Scheduled Castes and Scheduled Tribes in India are the aboriginals/son of the soil and rest of them are the actual migrated.

» In order to realize the aims and objectives of the Reservation Benefits, Harmonious and Beneficial Constructions of interpretation are invited but not strict interpretation is allowed or followed.
Supreme Court of India having no Constitutional power to impose any restrictions on the conferring Reservation Benefits and it cannot fix the boundaries or any limitations on the Reservation.

Supreme Court of India covers in the light of “State”, it requires to uphold the human rights and the rights of indigenous persons as guardian people of Dalit.

Providing reservation and concessions to the Inter-State Migrants of Scheduled Castes and Scheduled Tribes is not an offence. It is an obligation of the Welfare State, Purpose of Reservation Policy and Pledge of Indian Constitution.

At the last, but least, suggestive measure is that the Indian States are not created on grounds of the CASTE or CATEGORY. Caste person cannot cease/finish by the act of migration of within there home land. However, it is to be noted that the States are came into the light on the basis of the Language.

**Conclusion**

The burning issue is that there is a noticeably legal discrimination against the Inter-State migrants of Scheduled Castes & Scheduled Tribes and Reservation benefits.

It would, therefore, be necessary and perhaps desirable for the legislatures or Parliament to consider appropriate legalisations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Caste and Scheduled Tribes by virtue of the portions under Article 341 and 342 of the Constitution. This is a matter, which the State legislature or the Parliament may appropriately take into consideration.

At the last I want to bring to close it now, as per above located reasons, it is necessary to modify the Indian Constitution with view to achieve the Uniform Reservation Formula for the betterment and to offer full growth of scheduled castes and scheduled tribes in India. In addition to it is alarming situation to overcome with the constricted concept of reservation.

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