

Legal Justification of Reservation Quota Right to Education Act

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ABSTRACT

The Constitution of India provides for Affirmative action through reservation system to protect the interests of traditionally backward and downtrodden classes of society. Even after 70 years of pursuing the reservation policies for the disadvantaged sections of the society, there has been just marginal improvement in their lot. This explains why these policies are still being practiced. On one hand, these policies have not been successful in total amelioration of social inequality and poverty and on the other hand, the pace of national development suffers when merit is not the sole criteria for appointment and promotions in public services. The paradox of reservation based on caste backwardness is baffling as even if a caste community aspires to be de-notified/taken out of the scheduled categories, there are vested interests within the community itself blocking the process.

Keywords: Education, Reservation, School, Right

I INTRODUCTION

The genesis of the idea of reserving seats as one of the provisions through Section 12 of the Right to Education Act, 2009 in India can be traced to the Unnikrishnan Judgement where it is submitted on behalf of the central government that admissions to educational institutions within all groups and categories should be based on merit. There may be reservation of seats in favour of the weaker sections of the society and other groups which deserve special treatment. This is the first instance where the central government used the language of reservation based on socio-economic status and not expressly based on caste. The Judiciary being the protector of the Constitution when finally interpreted the right to Education flowing from the right to life; it also recognized that more emphasis has been placed on merit. Moreover, if poverty is the main culprit of low educational enrolment and completion of schooling, the problem of poverty is to be tackled and not caste system. It is the wisdom of the judiciary to assess that after more than 60 years of writing the Constitution, caste-based reservation is not required in promising the Right to Education.

II A DISCUSSION ON FREE EDUCATION AND FEE CHARGING

It was the pious aspiration of the national leaders that education would be most important to make for a united, socially cohesive, and egalitarian India. At the time of Independence in 1947, In fact, till almost 1970's the government schools had pupils from middle-class as well as the less-privileged studying together.

The quality of education was also not as bad as it became after increased privatization of schools during the 1990's. The provision of 25 per cent reservation at the first standard level in all schools to the disadvantaged and weaker sections of the society is a step to partially

implement the Common School concept recommended by the Kothari Commission. Also, the concept of Neighbourhood Schools was seen justifiable. The main discussion was about whether each Neighbourhood School would have to admit "all" children "free". One view was that "all" children in the country will get free education which means that parents have no option of sending their children to fee-charging schools and also that fee-charging schools cannot be given recognition. If the parent sent child to fee-charging schools the child's right to education is forfeited but if the child is sent to school providing free education, the right to education is restored. If all Neighbourhood Schools must admit "all" children without fee, then charging fee would be outlawed and private schools would have to be closed down. The committee concluded that this would be politically impossible.

So, after a long discussion it was decided that 25 per cent children from the neighbourhood will be admitted in fee-charging schools for free education. Thus, the provision was introduced for first time in 2005. Right to Education Bill was prepared by the CABE Committee and the final bill passed as the Right to Education 2009 Act. The chronological order of the events related to Right to Education campaign, starting from the Unnikrishnan Judgement to the various bills drafted suggest that as closure of all the private schools was not found plausible and practical and the government school system was not equipped to provide free education to all in near future, the idea of roping in as well as promoting private sector's participation in the goal of providing free and compulsory education as a right through the provision of 25 per cent reservation was devised.

III RECOMMENDATION OF THE LAW COMMISSION

The origin of the provision of 25 percent reservation can be found in the 165th Law Commission report, 1998. The report categorically stated that the unaided schools cannot be expected to impart free education. Initially, the report recommended that all recognized schools admit and impart free education to 50 per cent of the students as a condition for affiliation or for permitting their students to appear for the government/board examinations.

Under Section 12 of the Free and Compulsory Education for Children Bill, 1998 recommended by the Law Commission, every recognized school shall impart free education to 20 per cent of the students admitted to any class up to and inclusive of 8th standard. In Delhi, the unaided schools that were allotted land at subsidized rates were made to ensure admission to the students belonging to the weaker sections to the extent of 25 per cent. In 2004 Supreme Court judgement, the Director of Education was instructed to examine whether this provision was followed and found that only few schools even tried to institute such quota. JBJ Tilak also commented while examining the budget, one fifth or one fourth of the total expenditure on elementary education goes to private schools as aid.

The 25 per cent reservation has been the most contentious issue in the policy backrooms and evolved over a period of time. The 2004 Bill put this criteria as not exceeding 20 percent of the total strength of the school but applicable to any class; only children from families below the poverty line were eligible; the 2005 Bill increased the figure to at least 25 per cent and applicable to children admitted to class I until they complete elementary education; the 2009 Bill retained this clause and added the 'disadvantaged' groups to the eligibility criteria.

IV NEED TO REGULATE PRIVATE SECTOR IN EDUCATION

Though many provisions had existed previously, private schools were not enforcing them. The enactment of elementary education as a fundamental right and providing explicit reservation in the private sector seems to be an effective way of making the private sector accountable towards the education and bear the social responsibility it was vested with after being allotted land to establish schools at subsidized rates and aids in other forms. This reservation could have been only for the economically weaker sections but for the fact that socially disadvantaged groups face exclusion even after the state taking affirmative action for last 70 years. The inclusion of socially disadvantaged groups in the eligibility as a criterion indicates at the institutional recognition of the multifaceted nature of exclusion.

The private sector is being regulated or the "high-end suppliers are fostered further exclusion and reinforce class differentiation". The provision of reservation in education also gives an opportunity to the private sector to participate in nation-building. As per ancient tradition of India which believes in 'Vidya Daan, Maha Daan', means that education is the biggest charity, thus, private sector also can contribute with the national effort of education for all. Looking at the size and variety of problems regarding need to education facing India, the private sector cannot just work for monetary profits and make education system a money-minting machine. The provision of reservation, the private sector can participate in the capacity building approaches of the government. Also, "quotas potentially create an instrument around which to organize democratic action, as civil society organizations such as Social Jurist, the RTE Task Force, Institute of Social Studies Trust, and the IIM-A RTE Resource Centre, among others have done".

V CONCLUSION

It is clear from the above discussion that the Law Commission considered the Unnikrishnan judgement and promoted the idea of reservation. After long debate drafting committee considered 25 for free education under Right to Education. Provision of Right to Education serves the interests of the poor. In fact, number of such reservation were brought in earlier, there was necessity of reserving jobs in government services to uplift socially and economically backwards as education could uplift the disadvantaged people and enable them to compete with the people from upper castes. Reservation in jobs is playing role of crutches for weaker communities and making them feeble but reservation in education is setting a new mile stone of equal opportunities and enabling weaker sections to stand on their own.

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