

PHILOSOPHY OF RESERVATION

1. Introduction

The policy of reservation as it is practiced in India sets out certain quotas of jobs, positions and seats in educational institutions for scheduled castes, scheduled tribes and other backward castes to be allotted on the basis of merit among them without any means test. The practice of this policy has suddenly divided the country in two opposite camps. The so called pro-reservationists are resisting any introduction of means test, accepting caste as legitimate criterion for preferential treatment and demanding ever increasing percentage of reservation in vacancies. The so called anti-reservationists are questioning the wisdom and constitutionality of caste-based preferential treatment, demanding introduction of means test at some stage and reduction in the percentage of reservation in vacancies. The two camps have fought the issue not only through newspapers, magazines and journals but also on the streets. The violent debate is likely to raise its ugly head once again in the next general election as some national leaders have raked up the Mandal Commission Report in their public utterances. This is the impasse we find ourselves in. And intellectuals like by-standers unanimously point their accusing fingers at politicians for this mess. In my opinion it is the intellectuals in India who from the very beginning looked at the issue of reservation from a wrong perspective and thereby misled the politicians as well as the public to the garden path.

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If we look at the debate we find three significant propositions either asserted or accepted implicitly as premises in the perspective from which intellectuals in India have seen the issue of reservation. Firstly, the objective the reservations seek to achieve is the equality of status and opportunity. Secondly, positive discrimination becomes necessary by government when certain groups have been disadvantaged or made backward by the present or past behaviour of society. And lastly, if backwardness is not due to any action of society at large but some failing in the individual or group, there is no obligation on society to confer favours on that individual or group; nor can governmental action cure the defects which cause this backwardness. To me it appears all these three propositions are wrong.

II. Critique of Equality of Opportunity as the Legitimate State Purpose Behind Policy of Reservation

If the purpose of reservation is to achieve equality of opportunity then the criterion of preferential treatment i.e., caste (scheduled or backward) runs afoul of equality clause as it suffers from ill-fit as it is a suspect classification. Not only there are people not belonging to the preferred caste, who suffer present competitive disadvantage but also there are members of the preferred caste who suffer no such disadvantage. Can this ill-fit of the alleged purpose for which the policy of reservation is adopted and the criterion on the basis of which reservation is made be justified on ground of administrative convenience? The answer again is in the negative. For, administrative convenience will not serve as a defense when the so-called upper caste rather than the backward castes are the preferred caste. So why should this defense be accepted in one context and not another? Will not this be perceived as discriminatory? Of course one may like to argue that the society is taking one step at a time, today the society is removing the competitive disadvantage of some people,

tomorrow it will remove the competitive disadvantage of some other people. This defense at best can justify why some people, who are at a competitive disadvantage, have been left out, but it cannot justify why some people are given preferential treatment who suffer no competitive disadvantage.

It is precisely this belief that the benefit of preferential treatment is going to the affluent among the preferred caste that has flared up the emotion of the anti-reservationists and led justice Chandrachud to say, "It is ... necessary to apply the 'means test' at some stage in order that the benefits of reservation are not monopolized by affluent families."¹

Not only this, one step at a time argument is acceptable only on administrative grounds and not on political grounds. Hence, the inexorable logic of the defense proposed in the first proposition leads one to perceive that persons who should have been receiving preferential treatment to achieve equality of opportunity have been left out because they could not muster enough political pressure while persons who should not have been receiving preferential treatment have been included because they have been able to put political pressure. It is this argument that critics are alluding to when they point out that preferential treatment policy is a "poll gimik" or that it aims at creating "vote banks" etc.

The proposed defense creates, as shown above, the feeling that reservation is against the constitutional provisions of equality and its constitutional validity can be saved and in fact has been saved, according to many, by making the policy of reservation an exception to the equality. No doubt to many this saving of the constitutionality of the reservation policy appears to be ad-hoc arrangement devoid of any sound theoretical justification. Articulating this opinion of the section of the citizens Girilal Jain wrote, "As is well known, the constitution is based on the

concept of the individual being the basic constituent of the political order. It does provide for an exception in the case of scheduled castes and tribes. This was an expression of a sense of guilt on the part of the Hindu intelligentsia towards these communities. This sense of guilt has by now worn pretty thin and most Hindus would love to see the social preferences for the scheduled castes and tribes to be abolished.²

If the critics of the present reservation policy find the argument from the goal of achievement of equality of opportunity handy to cast doubt on the legitimacy of the caste based policy of reservation and to support their demand for introducing means test, the pro-reservationists also find it suitable for their demand for increasing the quantum of reservation. Their argument is straight forward. The inequality of opportunity that a candidate from the scheduled castes or backward castes faces is due to the existing low level of employment among them compared to the level of employment among other castes and groups. The low level of employment prevents the children of these castes to get nutrition, education, medical care etc. comparable to forward castes and hence they lose out in competition to them. So equality of opportunity can be achieved only if the level of employment of the scheduled castes and backward castes is raised to the level of the forward castes. Now it is a matter of simple calculation that given the low percentage of vacancies in government jobs per annum, given the high level of unemployment among the scheduled castes and backward castes, it will take not less than another century to raise the level of employment among forward castes if we continue at a low rate of reservation. So no doubt the pro-reservationists are demanding a very high level of reservation to shorten the period of coming to the level of equality of opportunity.

So the current demand of the reservationists to raise the level of reservation and the current demand of the anti-reservationists to impose means test follow from the same justification which is accepted by both. So it appears to me it is an impasse we have reached because we started with a very wrong justification of the policy of reservation to give it a lofty image.

III. Critique of Rectification of Past Injustice as the State Purpose Behind Reservation

Probably it is this realization that has led the Indian intelligentsia to include another defense in the second proposition. This defense appeals to principle of compensatory justice. Since the members of scheduled castes and backward castes have been the victim of injustice and oppression for centuries, not only justice but also decency demands that some amends be made by the members of the dominant caste now. This argument is equally wrong headed. If the argument is from past or present injustice done to individuals, then all the victims of injustice, irrespective of the caste to which they belong, should get the preferential treatment, and no person who has not suffered injustice even if he belongs to the preferred caste, should get the preferential treatment. To put it in a nutshell, the caste as a criterion of preferential treatment even on this new justification suffers from ill-fit due to under-inclusion as well as over-inclusion and the entire argument of the last section down to the last line can be run over once again for this new justification too.

This second justification suffers from additional problems too. For argument's sake, even if it is assumed that all the members of the presently preferred castes and only the members of these castes have suffered past injustice, even then preferential treatment is unsatisfactory way of compensation. As is well known compensatory justice must satisfy proportionality principle,

which says that the compensation received must be commensurate with the injury suffered. But preferential treatment by setting quotas and awarding them on the basis of merit among the members of the preferred caste violates the proportionality principle. For no connection has been made out between merit of the members of the preferred caste and the amount or degree of injustice or injury suffered by them. Not only that, that the burden of the compensation is paid by individuals of the upper caste who are marginally qualified for admission or jobs. It is they who pay the compensation by losing the job or the seat due to preferential treatment policy being pursued. Why should they bear the burden? Why should all the members of the advanced castes not pay the compensation? These questions will inevitably arise once we accept past injustice as ground for compensation through preferential treatment. One wonders whether these alleged justifications are advanced to support or ultimately discredit the entire reservation scheme.

Of course any body who advances the argument from compensatory justice may defend his position against these awkward questions by the following reply.

The meritorious candidates of the preferred caste are selected for the reserved seats and jobs, because it is they who have lost the most by past injustice. The members of preferred caste, high in the scale of merit, who otherwise would have got job or admission, have been denied these benefits now as effect of past injustice. The members of the preferred caste, low in the scale of merit, could not have received the job or could not have got admission even if there had been no injustice.

Similarly, it may be argued that the marginally qualified members of the non-preferred caste pay the compensation because it is they who benefit the most due to past injustice. Had there

been no past injustice and no lowering of the merit of the members of the preferred caste as consequence, the marginally placed individuals belonging to the non-preferred group could have got the jobs or admission. So they must pay the compensation.

Unfortunately this reply will presuppose the principle of desert which says that every individual has a right to be judged by his merit or the quality he naturally possesses and that he must get the reward for his merit. I think it is this principle that the persons with greater natural endowment deserve greater share in the distribution of goods in society, that lies behind the third proposition accepted by the Indian intelligentsia.

But a liberal democratic society is not a scheme of competition designed to reward the naturally endowed. For, no one deserves his place in the distribution of natural endowment as it is arbitrary from a moral point of view. It is merely a chance outcome of the natural lottery. Liberal democratic society is a co-operative venture in which the natural endowments of persons are seen as common assets to be made use of by society for mutual advantage. But for the society the abilities and talents of an individual cannot develop and take a particular form. Individuals of course will not be willing to make use of their greater natural endowment for the sake of benefit of others because of their limited sympathy and because of the autonomy of the individual society is prevented from making use of force to make the naturally endowed person to work for the benefit of others. Hence, the society gives incentives by allowing them to have a larger share in the social benefits, so that they will be willing to work for others. So the greater share in the benefits is given to the naturally endowed not because they deserve greater share and not because they must be rewarded for greater talent, but because

they must be given incentive to make use of their talent for achieving the goals of society.

Hence, the principle of desert is a wrong principle to appeal to for saving the policy of reservation from the charge of violating principle of proportionality, if the aim of reservation is to compensate past injustice.

IV. Critique of Group Equality as a Ground of Policy of Reservation

The search for the legitimate state purpose to justify the caste based reservation policy has been in vain so far. The failure to find this legitimate state purpose has led many thinkers question the very understanding of the equality in the constitution.

The understanding of equality principle in the constitution as prohibition of discrimination has great appeal to individualistic temperament in whose opinion our constitution is based on the ideal of individualism, understood not merely in the sense that all rights are vested in individuals, or that individual is the basic constituent of the political order, but in a strong sense that the claims and interests of individuals merit consideration in society in their own right and not because the individual belongs to this or that group. According to individualism group membership is irrelevant to the worth of the claims that individuals make on society. Anti-discrimination interpretation of equality does not determine the permissibility of classification on the basis of natural classes, where 'natural' refers not to be biological origins of the class, but rather to the fact that it is not formally created by the law in question to further the interest of the individuals. Anti-discrimination principle is not in any way dependent on recognition of social classes or groups. It has avoided making of groups the basic societal unit or giving weight to the interest of individual because of his membership to some class or group.

Thinkers like M.P. Singh question the wisdom of understanding equality in individualistic terms. Rather, he will like it to be understood as group equality. To be fair to M.P. Singh it must be mentioned that he has not clarified whether he wants equality to be understood as group equality or he will like the group to be the legitimate state purpose retaining the individualistic understanding of the equality clauses in our constitution. His claim that "right to equality is always an individual right is not wholly true"³ and that "group concept of equality is clearly implicit in the very principle of proportional equality that equals are to be treated equally and unequals differently"⁴ put pressure towards interpretation of article 14 as group equality. But there are many passages and the very tone of section F of his essay "Jurisprudential Foundations of Affirmative Action..." give the impression that he accepts group equality as legitimate state retaining the individualistic understanding of equality.⁵

The strongest argument that M.P. Singh gives is that our constitution uses group terms like "women" "castes", "Tribes", "class", "sections" etc. Hence, the group concept is not alien to Indian constitution and hence there can be no objection to group equality since special provisions are made for these groups in the constitution.⁶

To me it appears use of group terms is not sufficient to say that our constitution accepts group rights. Here this information is pertinent. During the period of slavery there were many laws in America which were clearly formulated in individualistic terms. For example, the Slave Trade Clause provides : "The Migration or Importation of such persons as any of the state now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each person". (Article 1, Section 9,

Class 1). See also Article 1, Section 2, Clause 3 ("three-fifth of all other Persons") and Article IV, Section 2, Clause 3 ("Person held to service or Labour"). In spite of the fact that these laws were formulated in individualistic terms, they were interpreted as group laws. Even while adopting these laws the issue of circumlocution was debated in the original convention in connection with the Slave Trade Clause, some arguing that the generality of the word "person" would have unintended effects⁷. What I intend to point out is that *group* laws were adopted and formulated with full knowledge in individualistic terms. If this could happen in America, is it far fetched to look for *individualistic* interpretation even though the constitution apparently used group terms like 'children' 'women' etc. in India? In fact our constitution is based on the political morality based on individualism and hence these groups must be seen as permissible classifications to achieve legitimate state purpose retaining the individualistic understanding of equality. But no doubt it puts us under a burden to discover the legitimate state purpose to justify these classifications, which is yet to be achieved.

We cannot accept group equality as the legitimate state purpose behind reservation for it will require that all groups and castes except the one which is most advantageous be given reservation benefit so as to achieve equality of groups. No doubt something like group equality is behind the Karnatak government policy of granting reservation benefit to all but a few castes so as to include almost 90% population as the beneficiary of reservation.

If group equality is accepted as legitimate state purpose and all but a few castes must enjoy the benefit of reservation to achieve equality of groups, we will have to grant almost 100% reservation in vacancies for another century or so to achieve the goal, which is a priori not acceptable.

I think it was this implication for policy that has prevented M. P. Singh to look for implemental aspects of his affirmative action theory in his paper. He writes, "We have carefully avoided the implementational aspects of such action, not because they are less important but because we did not want to mix up the two."⁸ Why not? The preposterous nature of the theory can be exhibited by the unacceptable implementational aspects. If we go by M. P. Singh's theory then I do not know if we will achieve the desired goal but we will surely lead India to destruction.

As the survey of the alleged justification of the policy reservation shows it is not politicians but the intellectuals who have opined on the policy of reservation are leading India to brink by their misguided analysis of the issue of reservation.

V. An Alternative Analysis of the Policy of Reservation

The common thread uniting all the approaches to the policy of reservation surveyed so far is that the entire policy of reservation has been seen as aiming at benefiting the persons of the backward castes and scheduled castes who get the reserved job or seat. Both pro-reservationists as well as anti-reservationists look at the policy of reservation in this light and draw conclusions favourable to them. But seen in this light it is nothing but a sort of charity, requiring means test in the eyes of anti-reservationists. In my opinion the persons who get the reserved jobs do benefit but the aim of reservation policy is not primarily to benefit the recipients of the reserved jobs or seats. The situation is similar to any other job, like medical profession. The persons who become doctors do benefit but the primary aim of medical establishment is not to give jobs to the doctors but to provide medical service to people. There we require no "means test" to make some one a doctor. So there is no question of any "means test" to fill the reserved job or seat.

So the question that needs to be emphasized is : What is the service the scheduled caste and backward caste members who occupy reserved posts provide to the society at large ? The answer is this. Their very presence in these jobs and seats will help in reducing the caste prejudice. This is based on the principle of social psychology that group prejudice can be reduced by putting members of the group against whom there is prejudice, in roles incongruent with their social stereotypes. So the category of reserved job is like any other service in the society. But the very nature of the goal which is being sought to be achieved i.e., the reduction of caste prejudice, is such that it can be achieved by reserving jobs for scheduled castes in various other services. So the reserved jobs themselves are like any other service in society. And now we can see why the demand for " means test " is simply out of place, as it is inapplicable in selection for other services.

The social goal itself determines what endowments are to be recognized as merit for the purposes of giving incentive. The natural or social endowment that helps in achieving the desired social goal is the merit recognized. Merit may be greater medical knowledge in doctors, ability to teach in teachers, smartness and beauty in air hostesses and if in future we have computers which can be triggered by particular type of smell of the persons then that smell of the person in computer operators will be counted as merit. There is no a priori recognition of some endowment as merit. Not only some endowments hitherto unrecognized as merit may be so recognized and given incentive in future, some endowment now recognized as merit and given incentive may be derecognized and given no incentive in future. This is the reason why some talents highly prized in past get hardly any incentive now.

So the vital question that must be asked is : Can't 'caste' be recognized as 'merit' and given incentive? Is caste necessarily irrelevant to achieve any social goal? I think the answer is in the negative. When there is wide-spread prejudice against the scheduled and backward castes and the aim of society is to remove this caste prejudice, the 'caste' of the individual is not irrelevant to achieve the social goal.

It may be a good policy not to notice an undesirable trait in a child to allow it a natural extinction, but that is not the case in the case of society. The policy of turning the Nelson's eye to the caste prejudice and adoption of formal caste-neutral standards for admission and jobs, will not make caste less important in society; rather it will aggravate the situation. So persons of that caste against which there is prejudice must be placed in high visibility, high paying jobs incongruent with the social stereotype of that caste to reduce caste consciousness in society.

It is the failure to see this point that has led to the dominant interpretation of the preferential treatment clauses as exception to equality clauses in the constitution. But this is erroneous. If my argument so far has been correct then there is no ill-fit between the caste as criterion of benefit and the desired social goal and hence the preferential treatment by way of reservation on caste criterion does not offend the equality clause and hence these are not exceptions. In my view the interpretation advanced by Justice V. R. Krishna Iyer in state of Kerala Vs. N. M. Thomas⁹ is correct as against the dominant interpretation. In words of justice Iyer, "Article 16 (4) serves not as an exception but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for free competition the forward sections are ordinarily entitled to. True, it may be loosely said that Article 16 (4) is an exception but,

closely examined, it is an illustration of constitutionally sanctified classification... Article 16 (4) need not be a saving clause but put in due to the over-anxiety of the draftmen to make matter clear beyond possibility of doubt."

This defense of the 'caste' as merit will invite a chorus of protest that it amounts to compromise in the standards of expertise in doctors, engineers and other professions, which undermines efficiency. First of all, efficiency is not the only desired virtue in a social system. The social goal to decrease the caste prejudice against backward caste may require compromise with efficiency. In fact, if we have a choice between efficient but caste prejudiced society and a society which is not caste prejudiced but less efficient it is not a forgone conclusion that the choice must be the most efficient society irrespective of other features in it.

Secondly, there is always compromise with standards in one service or industry whenever some other service or industry is in demand. And we realise that talent available for teaching is less than adequate because they are going to medicine or administration etc. But this falling standards in academics cannot be an argument to stop administration or medical services. Similarly, falling standards in some service cannot be an argument to scrap the policy of reduction of caste prejudice in society.

And thirdly, efficiency is goal-relative. A Society may be efficient in eradicating caste prejudice with some compromise with efficiency in providing health service, administration etc. In fact it is the realization that statutory prohibition of discrimination on the basis of caste, statutory abolition of untouchability, remedial measures like special training programmes, or tutoring and financial support will not help in removing the loss of self esteem, self confidence, motivation, and ambition in the members

of the backward castes that policy of preferential treatment is adopted. The policy of reservation is based on the belief that by providing more backward caste members as classmates for forward caste members, the prejudice against the former among the latter can be reduced through professional association, that by providing examples for future backward caste aspirants, their motivation for achievement can be sustained. It is the realization that reservation is the only efficient method to remove the caste prejudice that it was accepted.

One must add to this defence that the charge that the effect of reservation on the efficiency of the public services is marked, is itself an outcome of prejudice that the policy of reservation seeks to remove. So far we have had no systematic study of *in service record* of the efficiency of those who come through reservation or competition. At the most this charge is based on a priori argument that since people with lower marks in examinations come to the services through reservation they may be blamed for all the falling standards of efficiency that we observe or this charge is based on a few personal experiences without any backing from systematic inquiry into the inservice record through out India or a representative sample of the service population in India. Of course, I do not claim that the reservation will have no effect on efficiency, but to have categorical assurance of the truth of the proposition and the magnitude of inefficiency it causes, we need systematic evidence and not a priori conviction born out of prejudice.

Does this policy of reservation violate any one's moral or constitutional right? My answer is in the negative. It may be argued that it is not only constitutionally but also morally wrong to discriminate on the basis of caste alone. Those candidates who belong to non-preferred caste, who might have been selected on the basis of merit had there been no policy of reservation,

but were rejected due to the existence of reservation, have been victims of discrimination on the basis of caste alone. In other-words, the policy reservation amounts to reverse discrimination. This argument, although on the face of it appears as formidable, is in fact unsound. Those candidates marginally meritorious who might have been selected had there been no policy of reservation were in fact rejected not because of their caste alone, but because their exclusion is necessitated by the social goal of reduction of caste prejudice. They were not rejected on the basis of the caste alone, for had they been more meritorious like the more fortunate members of their caste, they would have been selected. So the alleged exclusion on the basis of caste in the context of reservation is no different from exclusion on the basis of intelligence, age etc., which is not considered as discriminatory.

And of course exclusion on the basis of intelligence itself may become discriminatory if intelligence is irrelevant in the particular context. Consider for example inoculation of children with high intelligence only or granting of personal liberty to intelligent persons only. So, it all depends on whether caste is irrelevant or relevant in determining the inclusion or exclusion from certain benefit. If my justification given before is correct then caste is not irrelevant to remove caste prejudice.

It may be argued that by accepting reservation on the basis of caste I myself am going against individualism on which our political order is based. Individualism prohibits any subordination of the right of the individual to an alleged right or interest of the collective entity like caste, race or nation. Reservation policy, it may be argued, subordinates the right of an individual to the interest of some caste.

Any criterion of admission or selection for jobs will exclude some individuals who fail to satisfy the criterion. Since 'caste' being relevant to achieve a social goal, exclusion on the basis of caste does not violate any one's rights. Why do we want to remove caste prejudice for which 'caste' is very relevant? It is because the individuals who happen to belong to the backward castes suffer the consequences of prejudice and in fact a society without caste prejudice is better in the sense in which a tolerant society is better or a society with high literacy is better etc. This argument is similar to the reason one will give to answer the question why should society provide medical service? It is to alleviate the suffering of the unhealthy persons and a society with a healthy population is better. Had the argument for reservation been on the basis of superiority of the backward caste, or intrinsic worth of the backward castes, then it would be dangerous inviting the charge of anti-individualism. But this is not the reason behind reservation policy.

It may be argued that even though the preferential treatment to backward castes is intended to decrease and in the long run to eliminate caste prejudice, this policy in fact has harmed the goal more than it has advanced it as it has been indicated by the caste conflict that has erupted in some parts of India, and the caste tension that prevails in other areas, and the sustained chorus of protest that the policy of reservation has invited from the forward castes.

Before we evaluate this argument it must be noted that recently in India we are witnessing an ever increasing tendency of the people to take recourse to agitation and thereby to increase the cost of pursuing a policy disliked by it, beyond its benefits, to force the hand of the government to abandon it. In

a democracy it is the democratically elected representatives to the legislature who have the responsibility to decide policy issue. Even if a section of the public thinks the policy to be utterly wrong and ineffective in achieving its goals, even then it has no right to agitate to increase the cost of the policy it does not like, to force the hand of the government, unless some very important principle of right is involved or a matter of conscience is involved. This is not to claim that the section of people have no right to express their resentment against the policy but it must be done in a manner to persuade the government and not to escalate the cost of the policy. If we accept the legitimacy of the agitation of some to escalate the cost of policy to force the government to abandon it we are conceding in principle that some minority rather than the majority must in the end decide the policy issue which is contrary to all democratic norms.

If we keep the above fact in mind then the fact of agitation has to be discounted in ethical evaluation of the policy to the extent that some people are agitating to escalate the cost of policy to force the government to abandon it. If the agitation has majority support then it must wait in keeping with the democratic norms, till the next election to change the government. Be it noted that my argument does not apply when people adopt persuasive strategies but applies when people adopt strategies to escalate the cost of policy. In a democracy they have the right to persuade but no right to force. The above argument depends on the fact of the cost increasing agitation and not persuasive symbolic demonstration.

The second factor that we have to keep in mind is that the policy of reservation has two tendencies. It has the positive tendency to reduce caste consciousness by giving opportunity of professional association between the forward and backward castes, it raises the aspiration of the backward caste by giving

examples for achievement which they lacked before which is so vital for progress and it instills confidence among the backward castes that the society cares for them which again is necessary for integration of them in the mainstream. But the policy of reservation has also simultaneously exactly opposite tendency. Since the reservation policy recognizes 'caste' as 'merit' and gives it incentive it has the inherent tendency to maintain caste consciousness. Since 'backward' castes are given incentive the policy inherently generates pressure to include more and more castes as backward castes. Now there is a critical level of reservation upto which the positive tendency dominates the negative tendency but if reservation is pushed beyond that percentage it is the negative tendency that overtakes the positive tendency and wipes out all the benefits of the policy of reservation.

Now critics are correct to point out that the policy of reservation has done harm to the goals it seeks to achieve. That is because we have been all along having a very high percentage of reservation guided by wrong analysis of what the reservation policy is all about and we have not only wiped out expected benefits but also have succeeded in escalating caste consciousness. So, if we want to operate the policy of reservation to reduce caste consciousness we have to remain below the critical level, in fact much below the critical level so that the negative tendency remains below the positive tendency. I am no social psychologist. It is for them to suggest what exactly is the level of reservation that we must pursue. But my hunch is that it will be quite low. It cannot be as high as 50% or above,

It may be argued that the above analysis of the policy of reservation makes use of controversial empirical hypothesis regarding the various tendencies of the policy of reservation and their strength. It is of course impossible to attain the certitude of laws of physics in matters social. The above analysis makes

use of the hypothesis regarding the causes and consequences of group prejudice as advanced by social psychologists and the hypothesis regarding supply and demand as advanced by economists. But it is true that it is not yet clearly established what is the optimum level of reservation to reduce caste consciousness. Nor is it clearly established that there is such an optimum level of reservation. But it is also certainly true that Indian experience is no guide for the establishment of the absence of the optimum level nor is it sufficient to show that at all levels of reservation the negative tendency dominates the positive tendency.

So there is a need to have further research about the impact of the reservation policy on the social psychology of group prejudice. Unfortunately those working on this issue of reservation so far guided by wrong analysis of the policy tend to collect data regarding whether the reserved jobs have gone to the affluent among the backward castes or not, which simply is irrelevant to the cost benefit analysis of the policy. But pending a definite answer to the question of whether the policy of reservation benefits or harms the society, there is all the more reason why the issue must be settled by a democratic process and not by forcing the issue on the streets.

My emphasis that the issue of reservation be allowed to be settled by democratic political process will probably be objected to. It may be claimed that the motivation for the ever increasing reservation is not the benefit of the ostensible beneficiaries but is purely political. Increasing the quantum of reservation and including an ever widening number of castes in the definition of backward is of electoral benefit to the political parties. The first objection from the failure to benefit the ostensible beneficiaries is of course, as argued before, dependent on the wrong view which somehow has come to be espoused by many that the reservation is primarily aimed at benefiting those who

receive the reserved jobs or seats. The second objection that ever increasing reservation is for political benefit is simply wrong. If intellectuals justify reservation by appealing to equality of opportunity, compensatory justice or group equality etc. which require high level of reservation with means test included and if politicians implement that how can we blame them? It may be remembered that in Andhra Pradesh the government increased the level of reservation with means test included as required by kind of justification generally advanced by intellectuals as examined in the first half of this essay. Thirdly, it is not possible to understand what is the force of the argument from electoral benefit. If political parties do not aim at electoral success by formulating policies which will win them the maximum vote within the limits of the constitution what else is democracy? I firmly believe that democratic process is good enough to yield sound decisions provided intellectuals feed proper suggestions for democratic decision. The new analysis which I have tried to outline in this essay can be a basis of such a democratic decision in future.

Before I conclude, an objection must be considered. The objection is that by rejecting justification of the policy of caste-based reservation on the grounds of lofty ideals like equality of opportunity and appealing to only mundane goal of removal of caste prejudice, I am lowering the ethical importance of the policy of reservation. But this objection is mistaken. Although I did not mention it in the paper the important aim of legislation is the ethical requirement of raising the welfare of the least off in the society. But at the level of policy this primary ideal is translated into many subgoals. One of the subgoal is the removal of the structural barriers in the society that prevent the raising of welfare of the least well off. One such structural barrier is the prejudice against certain castes. So the subgoal mentioned above,

again, is translated partly into the goal of removal of caste prejudice. Now when the society justifies a classification as required by the understanding of equality clauses, it is not required to appeal directly to the ultimate goal, for that may lead to many practical difficulties and misunderstandings. What state is required to do is to appeal to the appropriate subgoal for which the legislation is intended. Hence, my appeal to the removal of caste prejudice does not lower the ethical importance of the policy of reservation.*

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NOTES

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5. *Ibid.*, pp. 56-59.
6. "Jurisprudential Foundations of Affirmative Action..." p. 57.
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8. "Jurisprudential Foundations of Affirmative Action..." p. 65.
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