



Rethinking Caste Reservation Policy: The Case of the Scheduled Tribes and the Scheduled Castes in Rajasthan

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Abstract

The State of Rajasthan witnessed a huge dispute between Gurjars and the State Government regarding admission of Gurjars in the list of Scheduled Tribes. This was greatly protested by Meenacommunity who are already having the status of Scheduled Tribe. There was a very complicated tripod created when even the Jats of Rajasthan started agitating. This scenario has raised the eyebrows of even other castes like Brahmins, Rajputs who were demanding reservations earlier. This development has taken place when the public memory is still fresh regarding the AIIMS Doctors' strike against reservation when the Union HRD Ministry's proposal of 27% reservation for OBC students in Centrally-funded universities has re-ignited the merit versus caste debate in the education sector, reviving the furore the Mandal commission recommendation raised in 1991. The 77th Constitutional amendment was passed to undo the effect of the judgment of a nine-judge bench of the Hon'ble Supreme Court in Indra Sawhney v. Union of India (1992), wherein it was held that the reservation in promotions is not permissible. However, the subsequent court decisions have diluted the amendment's effect and have also introduced other restrictions on reservations. This article highlights the flaws, irregularities, constitutional misinterpretation, and inconsistencies in the reservation system in India.

Keywords: Reservation, Creamy layer, Efficiency backwardness, Supreme Court, Constitution.

Introduction

“Issues surrounding caste based reservation and related policy initiatives have been the central theme of long-standing discourse in India, with people in favour of increasing the percentage of seats reserved in public educational institutions and public employments in this country, in order to compensate, to whatever degree possible, for the atrocious human rights violations against an

average member of the scheduled community, even today.”¹ There have been agitations in the state of Rajasthan from a long time as well for providing reservation to certain categories of communities.

1. Demography of Rajasthan

As per the State wise list of Scheduled Castes, there are 59 Scheduled Castes notified by the President u/ a 341 for the State of Rajasthan.² The Scheduled Castes population in the State of Rajasthan as per the 2011 Census is 1,22,21,593³ out of the total population of 6,85,48,437 which accounts for 17.83% of the total population. 18.5% of the total SC population belongs to the rural areas whereas 15.7% belongs to the urban areas.⁴ Hanumangarh’s (district of Rajasthan) population comprises of more than 25-30% SCs whereas Ganganagar’s (district of Rajasthan) population comprises of more than 30-40% SCs.⁵ Rajasthan’s percentage share of SCs to the total slum population in India is 28.2%.⁶

Only 59.7% of the total population of the SCs in Rajasthan is literate. Even though the male literacy rate is comparatively higher at 73.8%, the female literacy rate is very poor, being merely 44.6%.⁷ Out of notified Scheduled Castes, Kalbelia, Sopera have a literacy rate of just 22.5%, Bidakia have a literacy of 27.9% and Koochband, Kuch Band have a literacy rate of only 25.0%.⁸ In the year 2015-16, the Gross Enrolment Ratio (GER) for higher education was merely 15.2%.⁹

During 2016, 12.6% of the total crimes committed against the SCs in the entire country were committed in Rajasthan alone, out of which 42% were cognizable crimes.¹⁰ Till 2011, 14,892 SC households are engaged in begging, charity and alms collection.¹¹ The total number of Scheduled Caste beggars and vagrants stood at 10,026.¹²

On the other hand, 12 Scheduled Tribes have been notified u/ a 342 of the Constitution for the State of Rajasthan.¹³ The Scheduled Tribes population in the State of Rajasthan as per the 2011 data is 92,38,534¹⁴ out of the total population of 6,85,48,437 which accounts for 13.48% of the

¹RanjitSau, “Reservations and Minorities”, *Economic and Political Weekly*, Vol. 35, No. 4, (2000).

² Scheduled Castes in Rajasthan, available at <https://sje.rajasthan.gov.in/Default.aspx?PageID=65> (last visited on April 2, 2021).

³State/ UT-wise SCs Population, 2011, available at <http://socialjustice.nic.in/UserView/index?mid=76663>(last visited on April 2, 2021).

⁴Demographics and Statistics, available at <https://rajasthan.gov.in/AboutRajasthan/DemographicsAndStatistics/Pages/default.aspx> (last visited on April 2, 2021).

⁵*Id.*

⁶Census of India, 2011.

⁷*Id.*

⁸*Id.*

⁹All India Survey on Higher Education, 2015-16, Department of Higher Education, Ministry of Human Resource Development.

¹⁰National Crime Record Bureau, 2016.

¹¹Socio-Economic and Caste Census, 2011 (Rural), Ministry of Rural Development.

¹²*Supra* Note at 10.

¹³Scheduled Tribes in Rajasthan, available at <https://sje.rajasthan.gov.in/Default.aspx?PageID=66>(last visited on April 2, 2021).

¹⁴*Supra* Note at 8.

total population. 16.9% of the total ST population belongs to the rural areas whereas merely 3.2% belongs to the urban areas.¹⁵ During 2016, 18.2% of the total crimes committed against the STs in the entire country were committed in Rajasthan alone, out of which 12.9% were cognizable crimes.¹⁶ In the year 2014-15, the Gross Enrolment Ratio (GER) for higher education was merely 15.2.¹⁷

As on 31 March 2018, 69 castes have been notified in the Central List as Other Backward Classes in Rajasthan.¹⁸ 47.3% of the population belongs to the Other Backward Classes.¹⁹

2. Caste-Based Reservation In Rajasthan And Challenges Thereto

2.1 The Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008

The reservation on the basis of caste was given a statutory recognition in the state of Rajasthan with the enactment of the “*Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (Rajasthan Act No. 12 of 2009)*”. The Act came into force on July 30, 2009.

Even prior to the Act of 2008, reservation was provided in the educational institutions and the public employment of the state, which stood as following-

- | | |
|--------------------------------|------|
| a) Scheduled Castes..... | 16%; |
| b) Scheduled Tribes | 12%; |
| c) Other Backward Classes..... | 21%. |

However, certain backward classes *viz.* the Banjaras, GadiaLohars, Gujars and Raikas(Rebari/ Devasi) were extremely socially and educationally backward and needed special attention. In addition to the above, economically weaker sections of the society were also considered as those in need of reservation. Therefore, through the Act, the Gujars, Banjaras, Raikas (Rebari/ Devasi) and GadiaLohars were provided reservation as a separate Special Backward Class along with reservation to the economically backward classes. It is important to note here that the Banjaras, GadiaLohars, Gujars and Raikas (Rebari/ Devasi) were already being given reservation under the Other Backward Classes category.

Section 3 of the Act reserved a total of 68% of the total seats in educational institutions in the state for the for the Scheduled Tribes, Scheduled Castes, Economically Backward Classes,

¹⁵*Id.*

¹⁶*Supra* Note at 14.

¹⁷*Supra* Note at 13.

¹⁸Annual Report 2017-18 Department of Social Justice & Empowerment, Ministry of Social Justice & Empowerment.

¹⁹NSSO Report No. 563: Employment and Unemployment Situation among Social Groups, 2011-12.

Backward Classes and Special Backward Classes. The 68% reservation was categorised at follows-

- a) Scheduled Tribes..... 12%;
- b) Scheduled Castes 16%;
- c) Economically Backward Classes 14%;
- d) Backward Classes..... 21%;
- e) Special Backward Classes 5%.

Creamy layer among the Backward Classes, Special Backward Classes and Economically Backward Classes were excluded from the benefit of reservation.

“Appointment and posts in services under the state were reserved for the Scheduled Tribes, Scheduled Castes, Economically Backward Classes, Backward Classes and Special Backward Classes vide Section 4 of the Act.” The reservation was categorised at follows-

- a) Scheduled Tribes..... 12%;
- b) Scheduled Castes 16%;
- c) Economically Backward Classes 14%;
- d) Backward Classes..... 21%;
- e) Special Backward Classes 5%.

“Thus, 68% posts in services under the state were also reserved for the Scheduled Tribes, Scheduled Castes, Economically Backward Classes, Backward Classes and Special Backward Classes.” Again, Creamy layer among the Backward Classes, Special Backward Classes and Economically Backward Classes were excluded from the benefit of reservation.

Through its Notification dated 25.08.2009, issued by the Department of Personnel, Government of Rajasthan, the ceiling financial limit for creamy layer was increased from 2.5 Lakhs to 4.5 Lakhs.

2.2 Gurvinder Singh and Ors. v. State of Rajasthan (2010)

The Act, 2008 as well as the Notification dated 25.08.2009 were challenged before the Hon’ble Rajasthan High Court in *Gurvinder Singh and Ors. v. State of Rajasthan*.²⁰

It was argued that the Act and the Notification were in violation of the Apex Court judgements in *Indra Sawhney v. Union of India*²¹, *M. Nagaraj v. Union of India*²² and *Ashok Kumar Thakur v. Union of India*.²³ Through the above judgements, the Apex Court had laid down that the reservation shall not exceed 50% of the total seats/ posts available. Reservation beyond 50% can only be made in very exceptional circumstances and the same has to be evaluated on the facts and circumstances of particular case. “It was further laid down in *M. Nagaraj* and *Ashok Kumar Thakur* that the foremost need for providing reservation in excess of 50% is identification and

²⁰(2011) 1 ILR (Raj) 693.

²¹1992 (Supp) 3 SCC 217.

²²(2006) 8 SCC 212.

²³(2008) 6 SCC 1.

collection of quantifiable data showing backwardness and inadequacy of representation of that class in public employment, keeping in mind the mandate of the Constitution of maintaining the overall efficiency of the administration u/ a 335.”

It was contended by the petitioners that no such exercise of collection of quantifiable data was ever undertaken by the State Government nor anything was ever done to ascertain whether any particular caste was actually socially backward or not. “It was further contended that the State had no reliable and up-to-date data regarding the representation of the different classes in the public employment.” The provision of reservation as a separate class to the Banjaras, Gadia Lohars, Gujars and Raikas (Rebari/ Devasi) was only to pacify the Gujjars because of the massive protests staged by them in Rajasthan in 2008.

In reply, it was argued by the State Government that Gurjar community had been held as most backward caste/ class by the Kaka Kalelkar Commission (1953). The State itself had also appointed a Commission headed by Justice J.R. Chopra for looking into the demand of Gujjars for granting them the status of Scheduled Tribe. The Commission reported that Gujjars are socially and educationally backward and they are inadequately represented in the services of the state. It was on the basis of this report of the Chopra Commission that the Government had enacted the Act of 2008.

However, it was further contended by the petitioners that the point of reference to the Chopra Committee was whether Gujjars should be included in the ST category. It was not whether a Special Backward should be created. Further, the Committee did not consider it apt to include Gujjars within the ST category. No specific study was undertaken by the Chopra Committee with respect to Gujjars being given the status of Special Backward Class (SBC) when they were already included with the OBCs.

The Hon’ble High Court of Rajasthan held that the State did not undertake any study nor did it collect any quantifiable data before increasing the reservation to 68% by creating a separate category called as SBCs and providing reservation to the Economically Weaker Sections within the unreserved category. The High Court therefore “stayed the operation of Sections 3 and 4 of the Act of 2008 and also the Notification dated 25.08.2009. It directed the matter to be referred to the Rajasthan State Backward Classes Commission and also directed the State Government to collect the necessary quantifiable data to be placed before the Commission before increasing the extent of reservation beyond 50%.”

In November 2012, under the Chairmanship of Justice I.S. Israni, the Rajasthan State Backward Classes Commission submitted a report, wherein it recommended reservation to the Gujjars, Banjaras, Raikas (Rebari/ Devasi) and GadiaLohars under the SBC category. Therefore, the state restored the 5% reservation to the SBCs under the 2008 Act vide Notification dated 13th December, 2012. The above notification was challenged in *Mukesh Solanki v. State of Rajasthan and Ors.*²⁴ The Division Bench of the Hon’ble High Court stayed the operation of the Notification dated 13th December, 2012.

²⁴2013 SCC OnLine Raj 278.

2.3 The Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015

During the pendency of the petition in “*Mukesh Solanki*, the Government of Rajasthan enacted the *Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015* which came into force vide Notification dated October 16, 2015.” As a result, the petition in *Mukesh Solanki* was rendered infructuous and was disposed of as such.

The State Government opined that the Gujar/ Gurjar, Banjara/ Baldiya/ Labana, Raika/ Rebari/ Debasi, GadiyaLohar/ Gadoliya and Gadariya/ Gadri/ Gayari were extremely backward both educationally and socially and therefore “they must be given special treatment with regard to their admission in educational institutions of the state and appointment and posts in services under the state. The Act defined ‘Special Backward Classes’ to mean the following castes/ classes”, namely-

1. Gujar/ Gurjar
2. Banjara/ Baldiya/ Labana
3. Raika/ Rebari/ Debasi
4. GadiyaLohar/ Gadoliya
5. Gadariya/ Gadri/ Gayari.

Therefore, 5% reservation under the SBC category was provided to the Gujar/ Gurjar, Banjara/ Baldiya/ Labana, Raika/ Rebari/ Debasi, GadiyaLohar/ Gadoliya and Gadariya/ Gadri/ Gayari community in educational institutions²⁵ in the state and in appointments and posts²⁶ under the state. Creamy layer among the above castes was excluded from the benefit of such reservation. The reservation to different categories after the Act of 2015 stands as follows:

A) Scheduled Castes.....	16%
B) Scheduled Tribes.....	12%
C) Backward Classes.....	21%
D) Special Backward Classes.....	5%

“The provisions of the Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (Act No. 12 of 2009)”, in so far as they related to the reservation of Special Backward Classes were also repealed by virtue of the 2015 Act.

²⁵Section 3, Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015.

²⁶Section 4, Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015.

2.4 *Gurvinder Singh and Ors. v. State of Rajasthan and Ors. (2016)*

A challenge was made to the “Notification dated October 16, 2015 and the Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015 in the case of *Gurvinder Singh and Ors. v. State of Rajasthan and Ors.*”²⁷ In the case of “*Sharvan Singh Tanwar v. State of Rajasthan and Ors.*”²⁸, the report submitted by the Other Backward Classes Commission (OBC Commission) recommending five castes for Special Backward Classes with 5% reservation was challenged as unconstitutional”. Challenge was also made to the Justice Chopra Committee Report dated December 15, 2007 in the case of *Kanaram Dhayal v. State of Rajasthan and Ors.*²⁹

The petitioners in the above petitions contended that “the recommendation of the Commission for 5% reservation to the SBCs as well as the Act of 2015 are violative of Articles 15 and 16 of the Constitution as well as the judgement of the Apex Court in *M.R. Balaji and Ors. v. State of Mysore.*”³⁰ According to the petitioners, if the Act of 2015 is given effect in appointments and posts in the services of the State, it would violate the constitutional mandate of Article 16(4B).

The Hon’ble High Court held that in light of the Apex Court judgement in *Indra Sawhney*, the ceiling of 50% on reservation is the general rule, but in extra-ordinary situations, this rule can be relaxed. However, such a relaxation is only warranted in extra-ordinary circumstances and the Government has to exercise extreme caution while exceeding the reservation beyond the ceiling of 50%. The Court also held that reservation should not be based solely on the basis of caste.

As regards the report of the SBC Commission, the Hon’ble High Court ruled that no extra-ordinary situation could be explained by the State Government and the SBC Commission for creating a new category of 5 castes. The extra-ordinary circumstances are only for namesake and the study is based on incomplete data. “All the 5 castes were already getting the benefit of reservation under the OBC category and it was not the situation that the Gujjars/ Gurjars and others were having no representation either in the educational institutions or in services. In the absence of collection of relevant quantifiable data”, the High Court ruled that the findings of the SBC Commission were perverse.

Therefore, “the High Court quashed the report of the SBC Commission and also struck down the Notification dated 16th October, 2015 issued by the State Government and the Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015.”

The Government of Rajasthan challenged the decision of the Hon’ble High Court before the Hon’ble Supreme Court by filing a Special Leave Petition. The Supreme Court vide its order³¹ dated November 13, 2017 ordered “status quo” in the matter, thereby restraining the State

²⁷2016 SCC OnLine Raj 8306.

²⁸D.B. C.W.P. No. 1511/ 2016.

²⁹D.B. C.W.P. No. 2795/ 2016.

³⁰AIR 1963 SC 649.

³¹*The State of Rajasthan and Ors. v. Ganga Sahay Sharma*, SLP(C) 30936/ 17.

Government from taking any decision which would have the effect of increasing the total reservation beyond 50%.

2.5 The Rajasthan Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2017

The State Government enacted the “*Rajasthan Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2017*” which received the assent of the Governor on November 8, 2017”.

The Act of 2017 again provided for reservation for the Gujar/ Gurjar, Banjara/ Baldiya/ Labana, Raika/ Rebari/ Debasi, GadiyaLohar/ Gadoliya and Gadariya/ Gadri/ Gayari communities, this time under the category of “more backward classes”. Through this Act, such percentage of the seats would be reserved for the “more backward classes” in the educational institutions³² in the state and in appointments and posts in services³³ under the state as may be notified by the State Government. Creamy layer among the “more backward classes” were excluded from the benefit of reservation. In view of the “status quo” order passed by the Apex Court, the State Government notified “the reservation in educational institutions in the state and in appointments and posts in the services under the State for “more backward classes” to be 1% each³⁴, thereby bringing the reservation within the ceiling limit of 50%.”

The Act of 2017 also repealed the “*Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015.*”

But the 2019 Amendment to the Act of 2017 has reverted the position of reservation back to the state as it existed by virtue of Act of 2015. Sections 2 and 3 of the Amendment Act of 2019 amended the Act of 2017 and substituted Sections 3(1) and 4(1) of the Act respectively. “The amended Sections 3(1) and 4(1) now provide for 5% reservation each for the “more backward classes” in educational institutions in the state and in appointments and posts in services under the state”.

Conclusion

The present reservation in Rajasthan stands at 64% which is categorised as follows:

- a) Scheduled Castes..... 16%
- b) Scheduled Tribes..... 12%
- c) Backward Classes..... 21%
- d) More Backward Classes..... 5%
- e) Economically Weaker Sections..... 10%

³²Section 3, Rajasthan Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2017.

³³Section 4, *Id.*

³⁴Vide Notification dated December 21, 2017, Department of Personnel, Government of Rajasthan.

It is clear from the above that the reservation is in excess of the ceiling limit of 50%. Therefore, it is not a surprise to see the state of Rajasthan come up before the Supreme Court in the ongoing Maratha Reservation case³⁵ to remove the cap of 50%³⁶ as laid down by the 9-Judge bench in *IndraSawhney*.

However, it should be borne in mind that reservation is the not the only way to uplift the backward classes. Reservation should be not used excessively lest it perpetuates the differences based on caste instead of reducing it. It is also important to bear in mind that the chief architect of the Constitution Dr. B.R. Ambedkar himself stated that reservation should be limited to minority of seats. If the reservation stretches beyond 50%, it is no way limited to the minority of seats.

Justice Krishna Iyer in *State of Kerala and Anr. v. N.M. Thomas and Ors.* remarked³⁷:

Lastly, a lasting solution to the problem comes only from improvement of social environment, added educational facilities and cross-fertilisation of castes by inter-caste and inter-class marriages sponsored as a massive State programme, and this solution is calculatedly hidden from view by the higher "backward" groups with a vested interest in the plums of backwardism.

The reservation should not be politically motivated as it eventually results in caste based agitation, seeking to come to a bargain with the Government. The main object of reservation is to uplift the historically depressed classes and ensure a level playing field in the society. This is possible through providing financial and other assistance at the schooling level, by improving the quality of education given at the primary and secondary levels. At the basic level, it is the State's duty to provide such a level of education in its government schools which can match the level of education in private institutions so that when it comes to qualification exams for higher education, there is automatically a level playing field among the candidates belonging to reserved and unreserved categories. Obviously, such a level playing field at the educational level would pave a similar way at the employment level which will consequently minimize the need for reservation at further higher level. Awarding of scholarships at the educational level can be an effective way to provide access to equal resources instead of introducing reservation at every level. Training and vocational especially targeting the backward classes should be the government's objective moving forward so that the need for reservation can be gradually minimized and there is absolute equality of opportunity for all citizens.

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³⁵*JaishriLaxmanraoPatil v. Chief Minister, Maharashtra*, SLP(C) 15737/ 2019.

³⁶<https://www.hindustantimes.com/cities/jaipur-news/rajasthan-wants-50-quota-cap-to-be-removed-some-other-states-also-agree-101615914782665.html>

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