



Rethinking social justice: A critical study of mandal movement

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Abstract

India is the world's largest democratic country. The most valuable democratic right of every Indian citizen is 'equality before the law,' which is guaranteed under Article 14 of the Indian Constitution. Articles (15), (16), and (29) of the Constitution expound on this right and make it more precise. The Central Educational Institutions Act 2006, commonly known as Mandal II, provides 27 percent quota for socially and educationally backward classes (OBCs) at central government institutes. Subalternity can be defined in a variety of ways, with scholars from subaltern studies groups defining it in terms of caste, class, gender, and so on. This article defines subaltern classes in the context of India's constitutional provisions for underprivileged groups. The constitutional provisions of socially and educationally backward classes are highlighted in this paper. It also emphasises the significance of caste in identifying underprivileged social groupings in both Hindu and non-Hindu communities. As a research method, the paper employs an analytical and descriptive approach. The research is centred on three major universities: Jawaharlal Nehru University (JNU), Banaras Hindu University (BHU), and Delhi University (DU). The study highlights that many higher education institutions misunderstood the concept of merit and switched many reserved seats to the unreserved category.

Keyword: OBCs, reservation, CEIs Act 2006, mandal commission, subaltern classes

Introduction

The 'Right to Social Justice' can be defined as the constitutional right of marginalised people, such as the elderly and destitute, women, children, and others, to be protected by the state from the harsh competition of life. It aims to provide the required opportunity aid to the impoverished in order for them to have an equal chance in society with those who are further along in life's race. It's a collection of rights; in one sense, it's a carver of other rights, and in another, it's a keeper of other rights. It's a balancing act between the haves and the have-nots (Report of Backward Classes Commission, 1980:21).

Reservations for OBCs are based on their population's lack of representation in government services and higher education. Other Backward Classes (OBCs) are not a single entity; rather, they are a group of castes and social statuses split into higher and lower strata. According to the Government of India's Backward Classes Report, OBCs are socially and educationally backward based on a set of criteria. For identifying backward classes in India, each state has its own set of criteria. Although this community was not subjected to untouchability, their rank in the caste structure remained lower than that of the upper caste, and they were economically poor. Despite the fact that just a few castes of OBCs have political influence and are economically prosperous, a huge majority of OBCs are denied economic, educational, and political rights.

According to the 55th National Sample Survey Organization (NSSO), general category candidates received roughly 65 percent of seats in various graduate courses. Mandal II began with this survey (Deshpande, 2006:2438-2444) [6]. The UPA government granted a 27 percent reservation for OBCs in the Central Educational Institutes (CEIs) in 2006.

Constitutional Provision for OBCs

Articles 340(1), 340(2), 340(3), 15(4), 15(5), and 16(4) of the Constitution require the government to promote the welfare of Other Backward Castes. The Government of India is required by Article 340 to appoint a commission to investigate the conditions of the backward classes.

Article 340(1)

According to the first clause of Article 340, the president may appoint a commission, consisting of such persons as he deems appropriate, to investigate the social and educational conditions of backward classes in India's states and union territories, as well as the difficulties they face. The Commission also develops recommendations for the steps that the union or any state should take to address these issues and improve their situation. And, as to the grants that should be made, the order appointing such commission shall describe the procedure that commission shall follow (Chaturvedi, 2007:210) [5].

Article 340(2)

The second clause of this Article gives the government the constitutional power to appoint a commission. The work of the commission was to investigate the matters referred to them and present a report to the president setting out the facts as discovered and making such recommendations as they seem appropriate (Chaturvedi, 2007:210) [5].

Article 340(3)

In accordance with the third clause of this Article, the President of India shall cause a copy of the report so presented to be laid before each House of Parliament along with a memorandum outlining the action taken thereon (Chaturvedi, 2007:210) [5].

Article 15(4)

Nothing in this article or clause 2 of Article 29 (minority protection) prohibits the government from implementing special measures to support the advancement of socially and educationally underprivileged groups (Chaturvedi, 2007:7) ^[5].

Article 16(4)

Nothing in this article prevents the state from making arrangements for the reservation of appointments or positions in favour of any member of the under-represented backward class who, in the state's opinion, is employed in the public sector (Chaturvedi, 2007:8) ^[5].

Article 15(5)

Nothing in this article or subclause (g) of clause (1) of article 19 prevents the State from passing special legislation to advance any socially underprivileged citizenry classes, the Scheduled Castes, or the Scheduled Tribes. With the exception of minority educational institutions mentioned in Article 30 clause (1), the provisions concern their admission to educational institutions, including private educational institutions, whether aided or unaided by the state (Chaturvedi, 2007:7) ^[5].

In 1953, the Indian government established a commission to designate OBCs. This commission's report was submitted in 1955, but it was rejected by the government because caste was used to determine backwardness. Janata Party came to power in 1979, it appointed a commission to identify OBCs. This commission was chaired by B. P. Mandal. In 1980, this commission adopted specific criteria for identifying OBCs and submitted a report. The following are some of the criteria that this commission adopted.

Social, Educational and Economic Criteria for Identification of OBCs

It is vital to investigate the socioeconomic, educational, and cultural characteristics of OBCs. The Mandal Commission took into account the following criteria.

1. Castes/Classes considered to be socially backward by others;
2. Castes/Classes that rely heavily on manual labour for their subsistence;
3. Castes/Classes in which at least 25% of women and 10% of men over the age of 17 marry in rural areas, and at least 10% of women and 5% of men do so in urban areas;
4. Castes/Classes where the proportion of women in the labour force is at least 25% higher than the national average.
 - Three criteria were used to assess educational backwardness:
5. Castes/Classes where the state average for student dropout rates in the age range of 5 to 15 years is at least 25% higher;
6. Classes/Castes where the drop-out rate for students between the ages of 5 and 15 is at least 25% higher than the national average;
7. Classes/Castes with matriculation rates at least 25% below the state average.
 - For determining economic backwardness, the Commission established four criteria:
8. Castes/Classes where the average family asset value is at least 25% below the national average;

9. Castes/Classes with at least 25% more families residing in Kuchcha (rough) homes than the national average;
10. Castes/Classes where more than half of the families' drinking water source is more than half a kilometre away;
11. Castes/Classes where at least 25% more households are taking out consumer loans than the national average (Report of Backward Classes Commission, 1980:52).

Each group had a varied weighting for each factor, 3 points for social indicators, 2 points for education, and 1 point for economic criteria. The indicator received an overall score of 22. Castes with a total score of 50% (11 points) or higher were considered to be socially and educationally backward, while castes with lower scores were considered to be "socially advanced." Caste was deemed to be a significant problem by the Mandal Commission based on a number of indicators. Caste has a significant impact on backwardness in Hindu society.

The Commission found that caste is an extremely pervasive factor in Indian society, and that caste was practiced by communities other than Hindus. The Commission used various criteria in non-Hindu communities.

OBCs among Non-Hindus

Following conversion, Non-Hindu Communities (Minorities) retained strongly ingrained views about Indian social hierarchy and stratification. Hindu converts are inadvertently acting as Trojan horses of the caste system among highly egalitarian religions like Islam, Christianity, and Sikhism. Minorities who lived in pre-documentary Hindu India could not escape its stifling social and cultural influences. There was a sense of hierarchy among Muslims, but caste as a social relationship was drastically diminished and transformed. Indian Christians were likewise in a similar condition. Christians in Kerala are separated into different denominations based on their beliefs and customs, as well as different ethnic groupings depending on their caste. Hinduism regarded Harijans who became Christians as untouchables. Syrian and Pulaya members of the Church performed their rites in separate structures. Non-Hindus asserted that they do not believe in caste or untouchability, hence caste could not be used to identify those who are socially and educationally disadvantaged among them (Report of Backward Classes Commission, 1980:56) ^[2]. The following are some of the criteria used by the Commission to identify non-Hindus who are socially and educationally backward.

Occupational communities, recognised by their traditional hereditary and included in the list of OBCs by their Hindu counterparts; all untouchables who converted from Hindus to Non-Hindus religion; Dhobi, Teli, Dheemar, Nai, Gujar, Kumhar, Lohar, Darji, Badhai, and so on. The Commission relied on the Indian census of 1931 to determine the population of castes and communities. These were grouped together as a caste or religion under five major headings: Scheduled Castes and Scheduled Tribes, groups of non-Hindu religious communities, forward Hindu castes and communities, backward Hindu castes and communities, and backward non-Hindu communities. As a result, the overall number of Hindus and non-Hindus OBCs accounted for roughly 52 percent (43.70 percent + 8.40 percent) of the country's total population (Report of Backward Classes Commission, 1980: 56) ^[2].

Table 1: Percentage Share of Population of India by Caste and Religious Groups

S. N.	Name of groups	Percents hare of total population
I. Scheduled Castes and Scheduled Tribes*		
A-1	Scheduled Castes (SCs)	15.05
A-2	Scheduled Tribes (STs)	7.51
	Total (A Section)	22.56
II. Non- Hindus Communities (Minorities), Religious Groups, etc.		
B-1	Muslims (except STs)	11.19(0.02)*
B-2	Christians (except STs)	2.16 (0.44)*
B-3	Sikhs (except both SCs and STs)	1.67 (0.22)*
B-4	Buddhists (except STs)	0.67 (0.03)
B-5	Jains	0.4
	Total (B Section)	16.16
III. Forward (Upper) Hindu Castes and Communities		
C-1	Brahmins (including Bhumihars)	5.52
C-2	Rajputs	3.9
C-3	Marathas	2.21
C-4	Jats	1
C-5	Vaishyas-Bania etc.	1.88
C-6	Kayasthas	1.07
C-7	Other upper Hindu castes groups	2
	Total (C Section)	17.58
	Total (All three Sections A, B and C)	56.3
IV. Backward Hindu Castes and Communities		
D.	Remaining Castes/groups of Hindu which fall under the category of "Other Backward Classes (OBC)"	43.7
V. Backward Non-Hindu Communities (Minorities)		
E.	52percent of the religious groups under section B may also be treated as OBCs	8.4
F.	The estimated derived population of Other Backward Classes (OBCs) including Non-Hindu Communities (Minorities)	
	(Total D and E.) (near about)	52percent

Source: Report of the Backward Classes Commission, 1980, Vol.1, p. 56: **Note:** This is resultant figure, *Figure in brackets indicates the population of SCs and STs among Non-Hindu communities

According to the table, the combined population of Hindus and non-Hindus accounted for more than half of the entire population. The quantity of reservations was difficult to determine. The Commission considered the Court’s decision and included it in the Constitutional provision.

The Central Educational Institutions (Reservation in Admission) Act, 2006

On the 3rd of January 2007, the President of India approved the CEIs (Reservation in Admission) Act of Parliament. This Act provides for the admission of students from the marginalised sections (SCs, STs and OBCs) of society to educational institutions. Reservation regulations must be followed in the admission procedure at Central Educational Institutions, according to this act. 15% of seats in every branch and department of Central Educational Institutes must be reserved for Scheduled Castes, 7.5% of seats must be reserved for Scheduled Tribes, and 27% of seats must be reserved for Other Backward Classes, out of the annual permitted strength. This act established a number of provisions for OBC students, all of which are detailed in the Indian Gazette, 2007 (The Gazette of India, 2007) [8]. This decision of the UPA government was challenged in the Supreme Court on the grounds that the 93rd Amendment Act violated the Constitution's basic framework. The Supreme Court refused to lift the hold on OBCs receiving 27% reservation in elite educational institutions like IIMs and IITs on April 23, 2007. On April 11, 2008, the Court upheld the judgment in the case of A. K. Thakur versus Union of India.

Supreme Court Judgment in Case of A. K. Thakur vs. Union of India

The Supreme Court maintained the Centre's ordinance, ruling that the 27% OBC reservation in CEIs is constitutionally lawful. The Supreme Court ordered that it be implemented in prestigious universities such as IITs and IIMs. K. G. Balakrishna, Chief Justice of a five-judge Constitution Bench, paved the way for the Central Educational Institution (Reservation in Admission) Act 2006 to be implemented. It has to be implemented starting in the 2008-09 school year. The 93rd Constitution Amendment, which added Article 15(5) to the Constitution to allow the Centre and States to implement quota laws, was also upheld by the Court. According to the ruling, the 93rd Amendment Act does not violate the Constitution’s fundamental structure when it comes to state-run and aided educational institutions. Article 15 (5) was constitutionally valid and did not conflict with Article 15 (4).

According to Justice Pasayat of the five-judge panel, once an applicant has graduated from a university, he or she must be regarded as educationally advanced. Judges agreed with the decision to exempt minority institutions from Article 15(5). They claimed that minority educational institutions are a distinct class and their rights are safeguarded by other constitutional provisions. Reservation was utilised as a tool to maintain and promote the core of quality and thus did not infringe Article 14. It would assist marginalised groups in rising to the top of civil society. The Court further stated that it is the state's responsibility to support positive

measures to eliminate inequalities and enable varied communities to enjoy the freedoms and privileges provided by the Constitution (Venkatensan, 2008) [9].

“Any action that fosters the sharing of knowledge, information, and ideas and stimulates and improves learning among India’s very various classes warrants encouragement,” the court stated. Education is required to cope with the current world and its complexities, as well as troublesome problems, and it cannot be limited to a privileged few. Reservations provide an additional benefit to individuals who, without them, may only dream of pursuing a higher degree but will never be able to do so. As a result, this benefit is required” (Venkatensan, 2008) [9]. Aside from that, the Court issued some instructions for implementing the CEIs Act of 2006.

Guidelines of the Court to the Central Government

OBCs might be excluded if the Creamy layer was present. The failure to exclude the creamy layer was ruled unlawful by the Court. The 93rd Amendment did not apply to private, non-profit institutions. The 27% reserve for OBCs was legitimate, and parliament must be regarded to have taken all relevant conditions into account when setting the percentage. The Court ordered that the list of backward classes be reviewed after every five years, with the possibility of implementing the quota in the current year. The central government must consider whether or not it is necessary to set cut-off marks for OBC candidates. There should be assured that quality and merit are not compromised. Seats that remain vacant following the adoption of such rules and regulations will be filled by educational institutions from general categories. Following the Court's decision, the government agreed to raise spending on Central Educational Institutions. Some universities and institutions faced difficulties to implement the Act. Seats for SCs and STs were maintained at 50% of the annual strength, and those institutions were exempted from making any reservation claims for OBCs.

Some issues faced by CEIs, notably those in the northeast (predominantly tribal population), led to revisions at Babasaheb Bhimrao Ambedkar University (A Central University) in Lucknow, where 50% of seats are allocated for SCs and STs students (The Hindu, June 18, 2010). There are several arguments over merit and the Court's cut-off standards. Many misunderstandings about the cut-off resulted from the Court's decision.

K. Balgopal highlights that the five-judge panel's decision was not founded on empirical evidence. “To strike the constitutional balance, it is necessary and desirable to allow some number of seats out of the legal maximum of 27% for socially and economically backward classes,” said Arjit Pasayat and C. K. Thakkar. According to Dalveer Bhandari, the basis for quota must change to the economic behind after ten years. The Court recognised caste to be a significant component in identifying backward classes in the case of Indra Sawhney versus Union of India. The judges begin by requesting that the Central Government “consider the feasibility of determining cut-off marks in respect of applicants belonging to OBCs,” but then throw in the unwelcome suggestion that “five grace marks may be added to OBC students.” Then expressly state that any seats in the OBC quota that are unfilled would be filled by “candidates from the general categories.” As a result, it was discovered

that the top castes, who previously had much of the 100% to themselves, now have more than 100% (Balgopal, 2009:16-19) [3]. According to K. Balgopal's interpretation of the Court's cut-off marks, there were fewer benefits for OBCs but higher benefits for upper-caste pupils. In several circumstances, higher education institutions established their own cut-off marks when implementing OBC reservations.

Implementation of CEIs Act, 2006

From the 2008-09 academic year onwards, every institute was required to set aside 27% of seats for OBCs in admissions. Due to a lack of infrastructural development, several institutes did not reserve 27% of seats. In BHU only the faculties/institutions of business and Sanskrit Vidya Dharma Vigyan Sankaya have a 27% quota in the academic year 2009-10. In the faculties/institutions of engineering and technology and management studies, 18% of seats were reserved for OBC candidates. OBC candidates were given 15% of seats in faculties/institutions of arts, education, performing arts, social sciences, and visual arts. Only 10% of seats were allotted for candidates from Other Backward Classes in other faculties like Law, Agriculture, Science, Ayurveda, Dental Sciences, and Medicine (BHU, CRET, 2009-10). This demonstrates that before 2010, Banaras Hindu University did not provide 27% reservation for OBCs in every department.

S. Santosh and J. K. Abraham observed that Jawaharlal Nehru University (JNU) used purposeful admission policies to prevent OBC students from enrolling in the university. It was a breach of the OBCs’ constitutional rights. The Supreme Court ruled on October 14, 2008, that the cut-off marks for OBC candidates should be 10 points lower than those for general candidates. JNU has established its own admissions criteria for OBC students. The standard set by an open-category student determined an OBC-category student's standard. In the academic year 2009-10, there were 122 reserve spaces for OBC students at the M.A. and MPhil levels, but only 33 were accepted into the university’s various centres/departments. The remaining 89 seats in the OBC category were converted to the general category (Santosh & Abraham, 2010:27-29) [7].

The administrations of Jawaharlal Nehru University (JNU) and Delhi University (DU) misread the rules, converting more than 80% and 50% of seats from the OBC category to the general category, respectively. Many educational institutes at Delhi University (DU) reserved 27% of seats for OBC students in the academic year 2010-11. A total of 17,000 crores was spent on infrastructural developments to accommodate the increase in seats. On July 19, 2010, the Times of India reported that 50% of OBC seats remained unfilled. After August 6, 2010, these unoccupied seats were changed to general seating. The reason for this was not a lack of qualified candidates, but rather a misunderstanding of the Court's decision. “Five marks indulgence might be provided to such candidates below the minimum eligibility marks established for general categories students,” Supreme Court judges wrote in the Ashok Kumar Thakur Vs Union of India case. This remark relates to “eligibility,” not admission cut-off marks. “To maintain standards of excellence, cut-off marks for OBC should be set not more than 10 points out of 100 below that of the general category,” the judge recommended. There was no consensus among the various groupings on how much leeway should

be provided to OBC candidates. The Supreme Court stated in its response to P. V. Indiresan and others' writ in October 2008 that "the maximum cut-off grades for OBC students be 10% below the cut-off marks for general category students." It is almost certain that the 10% ceiling on the relaxation of the OBC cut-off line was not set on the basis of any empirical study. OBC seats remained vacant because they were unable to achieve the arbitrary fixed cut-off point, not because there were no qualified candidates (Babu, 2010:15-18) [1].

Creation of Surplus Seats

Assume that Z is the name of a research institute. If Z had 100 seats before implementing the OBC quota, the number of reserved seats would be 22 (15 for scheduled castes and 7 for scheduled tribes), and 78 seats remain unreserved. If institutes set aside 27% of seats for OBC students, the total number of unreserved seats will be 51. If Z is increased its seat by 54%, the total number of seats will be 154. Institute Z is now using a reservation system. The number of reserved seats will now be 76 (41 for OBCs, 23 for SCs, and 12 for STs), with 78 seats remaining unreserved. Because of the cut-off, if there are no eligible OBC candidates, the seat was filled by a general candidate. These extra seats for candidates will be allocated to the General category.

Conclusion

From the academic year 2008-09, numerous institutes such as B.H.U., J.N.U., and D.U. did not reserve 27% quota for OBCs in the name of infrastructure development. Extra seats are created as a result of infrastructure expansion, although unreserved seats are not affected. Because the cut-off was determined by the administration, there are surplus seats for general candidates. Upper castes have benefited from the extra seats. Many seats were converted from the OBC to the General category. There should be no cut-off marks for OBC applicants because the minimum eligibility conditions are sufficient. Reservation is a policy of representation and inclusion for marginalised socio-economic groups. It is unnecessary to convert seats from OBC candidates to General candidates. There is no need to compare the cut-off for OBC candidates with the cut-off for the general category.

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