

Merit, Caste, And Reservation: The Conundrum

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Introduction: Merit and Reservation a Ceaseless Debate

To quote Justice DY Chandrachud's, response to an argument relating to reservations and merit, "This is not a novel argument. There has been a longstanding debate over whether reservation for any class impinges on the idea of merit" (Neil Aurelio Nunes and Others v. Union of India, 2022).

Yet, nearly 20 pages of this very recent judgment were devoted to a prominent sub-section titled, 'The Merit of Reservation'. This reflects that despite being an 'old' debate, it is not one that is time-worn, antiquated or settled. Also, while the apparent essence of the contentions on either side may appear to be invariant, the dynamism of our socio-political realities kindle the spark of relevance of this seemingly ceaseless debate. The author also submits that simply the existence of widespread dissent- as is evident from diversity of thought in contemporary and historical scholarship alike - is, in itself, a legitimate and sufficient ground for the continued engagement with any system or thought. A recent newspaper article in reference to the same judgement as described above is titled thus – 'Supreme Court Just Destroyed The 'Merit' Argument Upper Castes Use to Oppose Reservations' (Bhaskar, 2019). This representation might convey that a long-standing and unjust argument has been permanently settled by this decision of the Supreme Court. Yet, a glance at the seeming ambivalence of the Supreme Court over the years itself reflects that the issue relating to reservations and merit cannot be said to have been completely resolved. Hence, an enquiry on the various stances taken over the years by the Apex Court on the conception of merit and caste-based reservations is outlined. The dissidence and dynamism within the supreme interpreter of the law suggests the significance of deeper inquiry into the subject, as is undertaken in the present paper. In 1963 (M. R. Balaji And Others v. State Of Mysore , 1963), the Supreme Court ruled that reservations were an exception to the principle to

equality and that a "wholesale reservation" of seats would preclude considerations of merit. In this case, the Court also distinguished between the seats as belonging to the 'reservation pool' and the 'merit pool'. The author points out that the nomenclature could, quite simply, have been that of a 'reserved pool' and an 'unreserved pool'. However, the linguistic choice of the SC reflects its wisdom on the subject then. In a 1973 ruling (Janki Prasad Parimoo & Ors. Etc. ... v. State Of Jammu & Kashmir & Ors , 1973), a five-judge panel of the court stated the following about merit, "It is inherent in the concept of reservation that a less worthy individual is to be favoured over a more meritorious individual." In 1992 (Indra Sawhney v. Union Of India And Others , 1993), the interpretation of equality of opportunity was stated to centre around the traditional value of equality of opportunity and that of equality of results. Thus, it attempted to strike a balance. Most recently, a dismissal of the binary of merit and reservation was seen by the Supreme Court in 2022 whereby it was quite unequivocally suggested that merit is not at odds with reservations.

I The Casteless society: How Merit and Reservation matters?

This section attempts to suggest that competition (and the resulting exclusion of some) is inevitable. It then proceeds to the perceived Constitutional goal of a caste-less society and how 'merit and reservations' affect the same. Finally, it briefly outlines the debate by presenting viewpoints from either side.

One of the most widely accepted principles of the natural sciences that offers much insight into the social order is the Darwinian theory regarding competition, natural selection and the survival of the 'fittest'. Though primarily a theory of evolutionary biology it has drawn the fascination and attention of social scientists as well. Social Darwinists (Claeys, 2000). Verbs such as 'guarantee' and 'secure' when used with rights or privileges offer a much needed sense of assurance

to citizens. Particularly in Part IV of the Constitution of India, Fundamental Rights, these play a particularly critical role. However, not all rights are 'Fundamental'. It is only an agreed and reasonable minimum that can be considered fundamental and hence universal. For that which is not fundamental or which cannot be universally granted there has to be rationing of resources on some agreeable basis.

Reflections on the Caste(less) Identity.

It is clear that the founding fathers of the Constitution and the nation wanted a country without 'caste'. Rather explicitly, all kinds of discrimination on the basis of caste are prohibited and strongly punishable. This perhaps points towards the intent of the state to achieve 'caste-less'ness. However, breaking free from the shackles of the past may not be as easy. There are some citizens who, when granted Constitutional and other safeguards, may want to assert their caste identity. India felt it had a responsibility to "abolish" caste as a modern republic, which motivated the State to pursue the competing social policies righteousness and caste blindness. As a result, the wealthy upper-class and castes have the ability to describe themselves as "casteless," while the less fortunate lower castes are compelled to strengthen their caste identities. This unbalanced division has ended the effective caste definition to an inferior caste, leaving them out of freedom for higher castes to monopolise by asking about the general category as citizens without caste (DESHPANDE, 2013). The merit debate accords true merit to the citizens who identify as the General Category, as they 'compete' without any patent additional or unfair advantage today Deshpande states that caste-quasi-caste has already yielded all that it can to these people and represents a ladder that can now be safely kicked away. Having encashed its traditional caste-capital and converted it into modern forms of capital like property, higher educational credentials and strongholds in lucrative professions, this section believes itself to be "caste-less" today (Deshpande, 2006). There have been several instances of the expression of a sentiment of being caste-less. Notably, when the Caste Census of 2011 was announced, several Indians (including Amitabh Bachhan) decided to state their caste as 'Indian' (Meri Jaati Hindustani). It is opined, however, that this was a reflection of the caste-sensibilities of the elite (The Economic Times, 2010). Thus, caste-assertion, therefore, has come to be, in many spheres, the stand of the people who

consider themselves disadvantaged by their (even if erstwhile) caste identity. Thus, the 'merit' of the General category not only connotes a historical material advantage but also 'moral merit' as being the torch-bearers of a caste-free-level-playing field in modern India.

Revisiting the merit debate in Higher Education

Higher education, unlike primary education, healthcare, and other "basic prerequisites," is not a fundamental right. No group or caste can become a doctor, engineer, or other highly educated people. Everyone has the right to aspire to this position and to be treated fairly and equally in the admissions process, in accordance with justice and equality standards. No one has automatic admission rights. Second, the nature of higher education is selective; elitism is not an aberration. Hence, from the standpoint of both efficiency and moral, higher education cannot be universalized. Regardless of any future changes in the social order, it is intuitively clear that only a tiny percentage of the population will ever be neurosurgeons, space scientists, judges, bureaucrats, ministers and the like. Their representation, therefore would always be insignificant in comparison to the total population. Given that these are aspirational positions, higher education and some posts of employment must remain selective or exclusive. This truth would remain unchanged even if India were to secure even a Utopian extent of egalitarianism cutting across all identified parameters of stratification. Indeed, selectivity is must not be made the basis for justifying discrimination. Hence, fairness in such a scenario requires that a level-playing field be provided for those who compete. Likewise, an assessment criterion that allows for the choice of the 'best' requires to be made. While 'merit' as a concept for the blissful academic deliberation of a social scientist may allow for enormous amplitude of inclusion and diversity, the practical constraints necessitate a mechanism whereby an 'exclusionary' mechanism is arrived at. Higher education admissions and apex governmental appointments are governed by scholastic tests and merit in the majority of nations and circumstances. Regardless of opinion on the validity of such a system, it may be agreed that this system of 'merit' at least legitimises a discriminatory system while maintaining the semblance of fairness (Deshpande, 2006).

II The Merit Debate: Locating Efficiency and Social Transformation

The debate primarily rests on whether or not merit and efficiency are affected by reservation-based appointments and enrolments that require (sometimes significantly) lower entry standards as compared to the standards for the general category applicants. The following sub-sections provide an insight into some of the prominent arguments made from either end.

Merit is affected by reservations

Perhaps the most obvious effect that emerges from reservations and its effect on merit is the denial of fairness to the 'general category'. Interestingly, Ashok Guha points out that reservations, though purporting to even out disparity in the society, are illegitimately usurped by the privileged among the large categories considered underprivileged. He states, "Reservations mortgage the future of India-not in the interests of social justice, not even for the uplift of the backward castes, but solely and simply for the benefit of the OBC elites. (Guha, 1990)" When people are given preferential treatment based on their membership in a specific group rather than their individual circumstances, those with more resources are able to access resources that were intended for those with less. Those within a caste who are more advantaged educationally and economically are more likely to benefit from caste-based reservations. As a result, it exacerbates existing disparities among already marginalised groups (Rao, 2008).

It has been argued that "compensatory discrimination" is ineffective and should be rejected as a policy. The policy, which has been in place for more than fifty years, appears to have "failed to produce the desired results, indicating that something was wrong with the policy both in its framework and implementation, though not in the true essence behind it". (Swamy, 1981) Reservation lower standards, which reduces efficiency. It is argued that the percentage of reservations should be limited in order to protect educational and government service efficiency while also being fair to the general population. Reservations which are intended to accommodate less qualified applicants, are preventing meritorious applicants from being accepted. As a result, reservations are skewed in favour of the inept and undeserving. (Deshpande, 2006)

Mr Shyam Divan, the counsel in the 'NEET' Reservation case (Neil Aurelio Nunes and Others

v. Union of India, 2022) presented arguments highlighting why merit was of paramountcy and in national interest especially in specialised higher education. He said that doctors at the PG and super-speciality levels must have a high level of ability and expert understanding in specialised fields. This is not a talent that everyone can learn. Reservations at this stage of specialisation are damaging to national interests. Citing that since the number of opportunities for such instruction is limited, they should be limited to only the most meritorious candidates.

Merit is not affected by reservations

With the help of reservations, a person from a lower social class can advance in their careers with relative ease. To the extent that a person's social backwardness is mitigated upon reaching the middle class, it remains. Nonetheless, his caste identity will cling to him and keep him in the minority within the class into which he has moved up. This is because, in addition to upper-caste casteism, the base of backward castes within the middle class is concentrated among a small number of castes and subsets within those castes. (Shah, 1991)

The Indian caste system not only disadvantages the lower classes economically, but also politically and culturally. As a result, members of the lower castes cannot compete effectively with members of the higher castes. As a result, overcoming them necessitates special privileges. Democracy retains its representative nature when people from all walks of life actively participate in the democratic process. Reservations are one method of giving marginalised groups in India a voice in government. In India, caste is an unavoidable reality. Those born into poverty will face discrimination for as long as it exists. Reservations are one of the most effective ways to ensure equality and prevent biasness. It not only draws attention to undiscovered talent, but it also contributes to more equitable economic conditions. (Deshpande, 2006)

Reservations, on the other hand, aid in the breakdown of the old social order as part of the social transformation process. Furthermore, it promotes the development of competencies and the accumulation of assets necessary for competition, they could now rely on merit. Eliminating reservations will not result in a more egalitarian society. Despite improvements, the number of qualified people from underserved communities continues to fall short of the number

of positions reserved for them. This refutes the claim that reservations are no longer required. (Deshpande, 2006)

No upper-caste academic has been able to demonstrate that OBC applicants admitted through the reservation system degraded the institutions' quality. They have not demonstrated that high-quality work is produced by elite universities. (Ilaiyah, 2006)

Countering the criticism that reservations are frequently abused by the upper crust of the lower caste or class must, however, Justice Chinappa Reddy offered a caveat (K.C. Vasanth Kumar & Another v. State Of Karnataka , 1985). The fact that some of the seats and positions set aside for the underprivileged classes are taken by the more fortunate ones among them does not mean that reservations are not required. In a society as competitive as ours, this is inevitable. On the same basis of merit that the top levels of society take away non-reserved seats, aren't the unreserved seats and posts taken away in a similar manner by the creamiest layers among them? How can taking away reserved seats and jobs by the upper crust of the underprivileged classes be harmful if taking such unreserved jobs away by the top crust of society is not negative?

Indeed, an understanding of merit based entirely on some defined and evaluable parameters, grades and qualifications is not sophisticated enough to wholly accommodate critical social realities and larger requirements. Hence, it is necessary to examine merit from a deeper and broader perspective.

III Locating the Constitutional / Legal Provisions on Efficiency and Merit

Article 335 of the Constitution deals with maintenance of efficiency of administration of the people belonging to the Scheduled Castes and Scheduled Tribes, in making of appointments for the Union and State government posts. While meritocracy is the norm in government, those from Scheduled Castes and Tribes require special consideration due to their historical marginalisation. Appointments to services and posts connected with the affairs of the Union or of a State must therefore take into account the claims of members of the Scheduled Castes and Scheduled Tribes, in accordance with Article 335, in order to maintain administrative efficiency. This means that before appointing members of the Scheduled Castes and Scheduled Tribes to positions of public trust, all governments have a constitutional obligation to investigate and address their claims. (Jain)

Article 335 requires the reservation of government jobs for Scheduled Castes and Scheduled Tribes, but it must be balanced with the need to keep government operations running efficiently. Administrative effectiveness is crucial under Article 335. Article 335 makes efficient administration an express constitutional limitation on the discretion vested in the state in order to ensure that the Scheduled Castes and Scheduled Tribes have adequate representation in government. (Ajit Singh II v. State of Punjab, 1999)

Judicial perspectives on Merit

The Court held that there is no merit in a system which brings about consequences causing prejudice to an entire section of a society. It questioned, if there was not great merit in a child of the scheduled castes, scheduled tribes or other backward classes who has been brought up in an atmosphere of penury, illiteracy and anti-culture, who is looked down upon by tradition and society, who has no books and magazines to read at home, no radio to listen, whose parents are illiterate secures the qualifying 40 per cent or 50 per cent of the marks at a competitive examination where the children of the upper classes who have all the advantages, may secure 70, 80 or even 90 per cent of the marks? (K.C. Vasanth Kumar & Another v. State Of Karnataka , 1985) Surely, a child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life. If spring-flower he cannot be, autumn-flower he may be. Why then, should be stopped at the threshold on an alleged merit-based principle?"

Citing Marc Galanter the Supreme Court pointed (B.K. Pavitra v. Union Of India , 2019) out three broad kinds of resources are necessary to produce the results in competitive exams that qualify as indicators of merit as

- (a) economic resources (for prior education, training, materials, freedom from work etc.
- (b) social and cultural resources (networks of contacts, confidence, guidance and advice, information, and
- (c) intrinsic ability and hard work

It was noted that the first two criteria are evidently not the products of a candidate's own efforts but rather the structural conditions into which they are born. By the addition of upliftment of SCs and STs in the moral compass of merit in government appointments and promotions, the Constitution mitigates the risk that the lack of the first two criteria will

perpetuate the structural inequalities existing in society. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed. (Kiran Sharma And Anr v. State (Panchayati Raj Dep), 2013)

IV Revisiting the merit argument

The meritocracy argument disregards the social and economic forces that produce "meritorious" candidates in the first place, namely the middle class's monopoly on a certain sort of cultural capital due to access to the top educational institutions and other social closure processes. This does not indicate that the industry participates in employment discrimination based on caste (or other factors). Certain social and cultural traits are viewed as essential for functioning in a "global" setting, making admission difficult for persons from rural areas and lower castes/classes. (Upadhyya, 2007) The language of merit, the morally upright credo of competitive capitalism, dominates the discussion by omitting the numerous forms of institutional discrimination and disinvestment that prevent all members of a society from competing on a level playing field. It assumes that everyone has an equal chance to succeed from the start, that everyone has access to similarly effective credentialing institutions (despite obvious inequalities in schooling that disproportionately harm the poor and low caste), and that everyone graduates from those institutions that are objectively ranked based on sheer quality. (Newman, 2007)

According to popular thinking, the "reservation applicant" is a product of their caste rather than their merit, whereas the "meritorious candidate" is a product of their merit rather than their caste. (Economic and Political Weekly,, 2006)

Privilege and Merit

What mechanisms enable the transformation of ancient privilege into modern merit? Politically, the term "merit" fulfils the same function as the previous discourse of "virtues and skills" among Republicans. The Indian meritocracy is just one example of a lengthy history in modern political thought that strives to reconcile universal equality with naturalised social hierarchy. Historiographers of the Enlightenment have demonstrated that philosophers and political writers concerned with

establishing a new society based on natural and logical principles focused on characteristics and capacities. (Carson, 2002) They believed a social and political framework founded on these ideas would best serve the expanding notions of the republican citizen and the enlightened society. Contrary to popular belief, Jefferson, Rousseau, Montesquieu, and Diderot all believed that hierarchies would continue to exist in a democracy, but they would be founded on legitimate differences rather than the legacy of family or rank. Despite the widely spread language of equality and universal rights, they believed that the "natural superiority" of some over others (men over women, adults over children, or Europeans over foreigners) made them the most equipped to rule. Variations in people's "natural" endowments meant that stratification would remain a prominent component of the social order, even for individuals such as John Adams who feared the replacement of an aristocracy of birth with an "aristocracy of skill". After the emergence of republican democracy, naturalised difference became a primary justification for ideologues of the eighteenth century to maintain social order. (Carson, 2002)

As in the eighteenth century, the nominal objective of equal citizenship in the new republic and entrenched social hierarchies provoked heated debates in post-independence India. Obviously, republicanism in India was considerably more extreme than its predecessor in the eighteenth century. The adult brand of Universal was a significant departure from being treated as a colonial subject. Moreover, post war statesmen and planners consciously attempted to overcome not only colonial "underdevelopment," but also the purported sociological obstacles to Indian modernity, breaking away from the explicit colonial invocation of caste as the organisational basis of society and economy.

Caste was a social institution that will be eradicated through state-led social progress, according to Indian modernization theory. Leading Indian individuals were also committed to compensating those whose lives had been negatively affected by caste. Deshpande correctly notes that the Constitution's provisions for abolition and redress were not accorded equal importance. While the Constitution guarantees freedom from discrimination and fair treatment as Fundamental Rights, remedy for caste disadvantages is only guaranteed as a Directive Principle. In addition, caste capital was largely changed into modern capital as a result of

constitutional processes that redressed historical injustice. Those who did not fit into the designated categories were categorised as "generic" or "casteless" to make apologies for previous injustices committed by denying them equal access to education and employment.

The view that the "general category" symbolises the constitutional goal of castelessness and the "reserved category" reflects a deviation from this ideal was reinforced by every court action challenging reservation, regardless of whether it was successful. The new Constitution "restricted victims of caste from claiming justice as a caste-marked exception, while empowering its beneficiaries to demand the protection of their privileges as a casteless rule". (DESHPANDE, 2013)

The relationship between "the general category" and castelessness is heightened in the context of higher education when "merit-based admissions" is substituted for "the general category." The fact that the terms "general," "casteless," and "meritorious" all have the same meaning supports the notion that persons who are deemed "generic" do so because of their own merit, as opposed to caste privileges they acquired.

Those who are considered "reserved" are so because of their social standing, or caste. The categorical difference between meritorious/casteless people and reserved/caste-based people has had a substantial impact on the educational equality issue in India. It has enabled the majority group to argue that the reservation system, rather than traditional caste privilege, creates inequality and threatens the modern republican ideal of equal citizenship by appealing to what Bourdieu calls a "imaginary universe of perfect concurrence or perfect equality of opportunity, a world without inertia, accumulation, heredity, or acquired properties". (Bourdieu, 1986)

Once top castes abandon caste markers and occupy the "meritocratic norm," the lower castes become "hyper-visible" as castes whose sheer presence and relationship to the state reveal India's defective democracy. (DESHPANDE, 2013)

Equality of the Pursuit of Merit

The pursuit of efficiency or merit is not limited to the upper crust; rather, it is fundamental to all spheres of human endeavour, from hard sciences such as defence and space to the more nebulous ones such as language and culture. The country's policy of making special accommodations for historically marginalised groups is one of the

most significant impediments to efficiency. (Shah, Job Reservations and Efficiency, 1991)

Article 335 demonstrates the Constitution's emphasis on efficiency. Many factors can contribute to inefficiency, but according to Article 335, if the government has a policy of reserving positions that contradicts efficiency requirements, this is a deliberate attempt to avoid efficiency. (Shah, Job Reservations and Efficiency, 1991)

Defense of upper-caste meritocracy

Both in India and internationally, the meritocracy of the upper castes has been aggressively defended against caste quotas. When discussing the achievements of IIT graduates in the United States, caste is hardly mentioned. On the other hand, it develops in response to the reputational threat posed by individuals from lower social classes. While the Indian Parliament debated whether or not to extend OBC quotas to IITs, a Silicon Valley alumni group named "Indians for Equality" organised online petitions, public rallies, and solidarity campaigns in opposition to the reservations, and even wrote letters to the Indian President.

This idea that outsiders from lower castes constitute a threat to an institution's brand is a beautiful demonstration of how cultural capital is translated into economic capital, or Brand's market worth. It is crucial to maintain relationships between IIT and the upper castes. In addition, upper-caste IIT graduates say that by appealing to a Western audience, they are increasing the value of "Brand India." As a result of the expansion of low-caste rights groups, some upper-caste individuals have begun to identify as such. (Subramanian, 2015)

Conclusion

There is a general perception that caste was a social institution that will be eradicated through state-led social progress. Leading Indian individuals were also committed to compensating those whose lives had been negatively affected by caste. Deshpande correctly notes that the Constitution's provisions for abolition and redress were not accorded equal importance. While the Constitution guarantees freedom from discrimination and fair treatment as Fundamental Rights, remedy for caste disadvantages is only guaranteed as a Directive Principle. In addition, caste capital was largely changed into modern capital as a result of constitutional processes that redressed

historical injustice. Those who did not fit into the designated categories were categorised as "generic" or "casteless" to make apologies for previous injustices committed by denying them equal access to education and employment. (Subramanian, 2015)

The view that the "general category" symbolises the constitutional goal of castelessness and the "reserved category" reflects a deviation from this ideal was reinforced by every court action challenging reservation, regardless of whether it was successful. The relationship between "the general category" and castelessness is heightened in the context of higher education when "merit-based admissions" is substituted for "the general category." Those who are considered "reserved" are so because of their social standing, or caste. The categorical difference between meritorious/casteless people and reserved/caste-based people has had a substantial impact on the educational equality issue in India. It has enabled the majority group to argue that the reservation system, rather than traditional caste privilege, creates inequality and threatens the modern republican ideal of equal citizenship. (SUBRAMANIAN, Making Merit: The Indian Institutes of Technology and the Social Life of Caste., 2015)

Using terms such as "merit," "efficiency," and even "class" and "economic deprivation," the upper caste discourse has successfully suppressed the notion of caste since the anti-Mandal uprising. However, modernist discomfort with non-secular and 'retrograde' categories provided the underlying logic within which the vocabulary of the higher castes took shape, making caste an unsaid subject that could not be openly discussed. (Nigam, 2000) Meritocracy as a level playing field is worthless as long as this degree of disparity prevails. This does not imply that a desire for competition is inherently wrong or undeserving of appreciation. This perspective is much superior to dogmatic ideas of racial, religious, or caste inferiority because it allows for the potential that greatness can be discovered in any group. Until institutional investments are spread equitably, policy solutions will be required to ensure that low-caste Indians and rural job seekers are not discriminated against owing to preconceived preconceptions. (Jodhka, 2007) The surplus generated by generations of undeserving individuals has led to the formation of the intellectual elite. The intellectual wealth of the few is largely attributable to the labour of millions of people who, for ages, were considered impure, untouchable, and backward, and were excluded from knowledge due to their background. Merit

grows as a result of exposure to learning and social opportunities. Given the right circumstances, anyone can achieve great things. (Ambrose, 1998) Arbitrariness is distinct from worthlessness and a lack of alternatives. It must be noted that exams and assessment criteria and benchmarks have moral weight although they suffer from limitations. Opponents of reservations who use emotive rhetoric such as "death of merit" use the moral power of merit to limit moderate responses while denying or disowning their own direct knowledge of merit discrimination. They rank using a "cut and paste" method, ignoring how minor differences can affect the final result. Empirical evidence supports the possibility of a "compromise" between a reservation scheme and merit. (Deshpande, 2006) The Supreme Court most recently clarified that binary of merit and reservation is superfluous as the principle of substantive equality as interpreted from Article 14, Articles 15 (1) and 16(1) has been recognised. Substantive equality -unlike formal equality- is dynamic must be elastic enough to adapt to the changing circumstances of the society and survives on constantly resolving conflicting claims. This debate, therefore, being one of society and not of an irreconcilable binary must be allowed to continue without attempts at 'destruction' of either perspective.

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