

Assessment, Evolution and the Politics of Reservation in Jammu and Kashmir

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Abstract

Jammu and Kashmir is a pluri-cultural, pluri-lingual and pluri-religious State of India. In a sense, it represents sub continental diversity. The diverse social groups are dispersed in diverse regions of the State. To a larger extent, Kashmir region represents a heterogeneous, ethno-culture, religious and linguistic identity, although there are some distinct linguistic and cultural groups also dispersed in different parts of Kashmir. The criteria for reservation has remain always been controversial and debatable. Either it has been adopted on caste basis, area basis or profession basis. While the criteria for the other backward classes have been based on the socio-economic and educational profile of the particular community, contrary to it, in the State of Jammu and Kashmir the RBA category has been included in the OBC list of the State. The Government of Jammu and Kashmir has appointed a number of commissions and committees to sort out the issues but yet the reservation policy is being amended day in and day out in their own way. Somewhere the reservation is being demanded on caste basis, which is antithetical to the State of Jammu and Kashmir, as it is a Muslim majority State. Islam believes in an egalitarian society, which does not recognize the caste system, but still the caste based reservation policy continues to exist, which does not differentiate between the millionaires and the poor of the same caste. The aim of this paper is to critically assess and evaluate the policy of reservation in the State of Jammu and Kashmir as well as to discuss the present politics in the State.

Introduction

Reservations are now been driven by vote bank politics. This has become soft options for political parties and has assumed the role of vote gathering devices. The whole purpose of bringing about an egalitarian society has got distorted and, often the problems of the genuinely poor and disadvantaged do not get addressed in real terms. The main objective of reservation has been, and is to redress inequality so that all citizens who surely require equality are assured, “the provision of a social minimum” or in other words, in the total social, cultural and economic milieu of the country “all boats are enabled to float” that, in real terms would imply moving towards inclusive growth. However, reservation has been increased in proportionately, the overall limit, as laid down by the Supreme Court of India, is 50 percent for all types of reservations put together. Various States have exceeded the limit considerably by various legal and administrative strategies. Political parties suggest measures, as devices for improving their election prospectus and often use it as a path to gain power and influence. It directly or indirectly encourages reservation agitations and utilizes such mechanisms in a way that the issue of reservation becomes surrogate for caste politics.

Criteria for Reservation

The practice has been there since the independence of the country, for which the pretext is given to up lift the economically weaker sections of the society. As per the statics, about 40 percent of total population of India is enjoying reservation on various grounds. The criteria for reservation have always remained controversial and debatable. Either, it has been adopted on caste basis, area basis or profession basis. On caste basis, entire population of

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scheduled castes of the country has been given the status of reserved category, keeping in view their bad economic condition in general and their social exclusion in particular. Similarly, some sections/tribes have been included in the list of schedule tribe categories and they have been also identified with their caste like Meena community of Rajasthan and Gujjar Bakkarwal of Jammu and Kashmir etc. While as some communities have been identified with their professions like Cobblers, Barbers, Carpenters etc., and these sections have been given reserved category status in the name of social castes in Jammu and Kashmir. Not only this, another formula has been adopted in the State of Jammu and Kashmir on the basis of geographical area, which is called Resident of Backward Area (RBA) or the area adjoining actual line of control. The irony of the fact is that while including these groups in the list of reserved categories, no barrier has been put between millionaires and the poor of the same group which was given the status of reserved category. Result, the poor of the group is still at the worst end while the millionaire of the community is enjoying the benefits of reserved category. While the criteria for the other backward classes have been based on the socio-economic and educational profile of the particular community, contrary to it, in the State of Jammu and Kashmir the RBA and ALC category has been included in the OBC list of the State.

Evolution of Reservation Policy in the State

The life of the common man in the State of Jammu and Kashmir has been worst hit itself from the beginning because the State was always in the clutches of slavery of rulers. Gradually people revolted against such atrocities by organizing certain movements. The rulers were pressurized by the agitations and were compelled to take cognizance of the problem of the people. So in the beginning of the first quarter of twentieth century, the government had to take steps by way of constituting committees and commissions from time to time. Firstly, it was in November 1931, Maharaja Hari Singh appointed a commission known as Glancy Commission to look into the matters of complaints and disabilities particularly the problems related to education and employment.¹ The Commission undertook a detailed exercise and observed that Muslims were inadequately represented in the services of the State. The Commission also recommended that there should be uniform standard for a particular job keeping in mind the legitimate interest of every community. The above recommendation provided a way for establishing a Recruitment Rule Committee in 1938 which recommended for holding a competitive examination for selecting the deserving candidates. But for higher ranks it was in October 1953 the Jammu and Kashmir Public Service Recruitment Board was constituted.²

The Constitution of India enshrined various provisions for adequate representation of every community.³ Special care has been given to socially and educationally backward sections of the society under the Constitution of the State of Jammu and Kashmir as well.⁴ Initially, not a single tribe of the state of Jammu and Kashmir was recognized as scheduled tribe under the Constitution of India. The State Government also could not device definite or clear cut criteria for identification and classification of backward classes. It was only in February 1956, that a notification was issued for certain classes recognized as backward classes which have been amended from time to time. It was in June 1956, the State Government issued the Jammu and Kashmir Civil Services (Classification and Appeal) Rules for making the reservation in Government services for backward classes which are inadequately represented in the services. In the same year a writ petition was filed in the Supreme Court for challenging the constitutionality of the above rule. The State Government submitted before the court that 50 percent posts are to be filled by muslims of the State because they are

inadequately represented and formed backward class and 40 percent posts are to be filled by Jammu hindus because hindus also formed a backward community in Jammu region and 10 percent were reserved for laddakh. The rule was declared unconstitutional on the basis of community wise distribution of posts and was whittled down by the Supreme Court of India in the case of *Triloki Nath v. State of Jammu and Kashmir and others*.⁵

The first Backward Class Commission was appointed in Mach 1955, which attempted to lay down criteria for the identification of backward classes but due to the diversified nature of the country a uniform formula was not possible so it was turned down in the *Balaji case*⁶ in which the Supreme Court held that the States are competent enough to classify the classes of backward people in their respective States. The State Government was stalking high for the formulation of concrete policy, so it was in 1967, that a commission of inquiry headed by Dr. P. B. Gajendragadkar was constituted to examine the recruitment policies and policy of admission to higher educational institutions and suggest measures for equitable distribution as well as equitable share of employment to various regions and communities.⁷ The Commission recommended that multiple criteria should be adopted for the determination of backward classes on the basis of economic, occupation, habitation and caste. It also recommended for constitution of a high powered committee for determining an identification of the classes on the basis of above mentioned multiple criteria. Pursuant to this recommendation the Government constituted a Committee under the chairmanship of Justice J.N.Wazir to consider the observation and recommendation of Gajendragadkar Commission.⁸ The committee undertook an extensive tour throughout the State and submitted its report on November 29, 1969. In its report the Committee identified and classified in explicit terms: a) weak and underprivileged section, b) residents of backward areas- i) bad pockets and ii) areas within eight kilometers of actual line of control.⁹ The State Government considered the suggestions of the Committee and framed two sets of rules.¹⁰ Under these rules the scheduled castes were provided 8 percent reservation and the backward classes were provided 42 percent reservation in the matter of appointment and promotions. The lacunas in the above mentioned rules have been challenged in the Supreme Court in the case of *Janki Prasad Parimoo and others v. State of Jammu and Kashmir and others*¹¹ wherein the court directed the State Government that the rules should not be given effect to till the defects were not cured.

The State Government reviewed the total gamut of things and decided to constitute a committee under the chairman ship of Justice A.S. Anand on 24th August 1976.¹² The Committee observed that the six categories made by the Wazir Committee could be cut down to two broad categories namely; a) 22 weak and underprivileged class and b) residents of bad pockets and areas near line of actual control. The Committee supported preferential representation for the backward classes without compromising the administrative efficiency. Finally the Committee submitted its detailed report in 1977, and on recommendation of the committee a notification¹³ was issued by the Government to provide following percentage of reservation: 1) Scheduled Castes - 8 percent, 2) Socially and educationally backward classes: a) Weak and underprivileged classes. i) Gujjar and Bakerwal- 4 percent ii) Other social castes 2 percent, b) Residents of backward areas: i) District Leh- 2 percent, ii) District Kargil 2 percent, iii) Other backward areas excluding Leh and Kargil districts 20 percent, iv) Areas near the actual line of control- 3 percent, 3) Children of freedom fighters- 2 percent, 4) Children of permanent residents of defence personals- 3 percent, 5) Candidates possessing outstanding proficiency in sports- 3 percent.

Due to the regional imbalance in employment the Government of the State was compelled to constitute another committee under the chairmanship of Justice S.M.Sikri in 1978, to review and examine the recruitment policy and recommend measures for equitable share to various regions and to ensure the equitable distribution of posts and the Committee submitted its report on August 25, 1980 and recommended that the reservation for scheduled castes should be made on the basis of population of the whole State not on the particular district.¹⁴ Meanwhile in the year of 1989, the president of India declared certain tribes of the State as scheduled tribe¹⁵ and consequently the state Government framed the rules¹⁶ for reservation of these tribes of the State.

At the national level with a view to determine the more comprehensive criteria for socially and educationally backward classes the Government of India appointed Mandal Commission under the chairmanship of B.P. Mandal on 1st January 1979. The Commission undertook a detailed study of the State also and identified 63 castes as socially and educationally backward in the State of Jammu and Kashmir and suggested 27 percent reservation for these castes. It is worth to mention here that Mandal commission had not recommended any reservation for “residents of backward area” or “area adjoining the actual line of control” in the State or in any part of the country. The recommendations of the Commission were challenged before the Supreme Court in the case of *Indira Sawhney v. Union of India and other*¹⁷ in which the Supreme Court directed the State Governments to constitute a permanent body within four months for entertaining, examining and recommending upon requests for inclusion and complaints of over inclusion in the list of other backward classes.

With a view to implement the above judgement the State Government reviewed its earlier policy and also amended the list of backward areas and also appointed a commission headed by Justice K.K.Gupta for identifying the creamy layer for purposes of disentitlement for reservation. On the basis of its recommendation the Government vide notification dated 28-6-1994 had framed the Jammu and Kashmir Reservation rules 1994.¹⁸ The modified reservation policy under this rule is as follows: a) Scheduled Castes- 8% , b) Scheduled Tribes-10%, c) Socially and Educationally Backward Classes- i) Residents of Area Adjoining Line of Actual Control- 3%, ii) Weak and Under Privileged Classes (social castes)- 2%, ii) Resident of Backward Areas-20%, a) Handicapped person- 2%, and b) Ex. Servicemen and Children of Defense Personnel- 5%.

In the year 1997, the State Government acted over the directions of the Supreme Court and framed the Jammu and Kashmir State Commission for Backward Classes Act. To implement the provisions of the Act, the Government appointed a permanent commission known as the State Commission for Backward Classes to examine the requests for inclusion of any backward class of the State and to hear the complaints of over-inclusion and under-inclusion in the list of backward classes and made a periodic revision of the list.¹⁹ The commission has submitted a report in 2006 for enhancement of reservation from 2 percent to 27 percent for other backward classes but till date no action has been taken by the State Government to include the other social castes in the list.

Finally, in 2004 the State Government passed the Jammu and Kashmir Reservation Act 2004 for reservation in appointment, admission in professional and educational institutions for the members of scheduled castes , scheduled tribes and other socially and educationally backward classes.

The Jammu and Kashmir Reservation Act, 2004

Further, in 2004, in order to ensure upliftment of the reserved categories by proper and effective compliance the State Government passed The Jammu and Kashmir Reservation Act, 2004²⁰ with an objective to provide for reservation in appointment, and admission in Professional Institutions, for the members of Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes. With the making of this Act the State of Jammu and Kashmir has achieved a rare distinction of being among the few States of the country that has a statutory cover for reservation policy that would go a long way in its effective implementation.

Chapter II of this Act make provision for reservation in appointment by direct recruitment. *The vacancies notified by the Government from time to time shall be reserved for appointment by direct recruitment from amongst the person belonging to Scheduled Castes and the Scheduled Tribes which shall not exceed the ratio and proportion as the population of each such category bears to the total population of the State as per the latest available census; and Socially and educationally backward classes, provided that the total percentage of reservation shall in no case exceed 50%, provided further that the Government shall exclude the services and posts, which, on account of their nature and duties are such as call for highest level of intelligence, skill and excellence, from operation of the Act.*²¹

Chapter III of the Act provides for reservation in Government service by promotion. The available vacancies notified by the Government from time to time, shall be reserved in any service, class, category or grade carrying a pay scale the maximum of which does not exceed the pay scale of the post of Deputy Secretary to Government, for promotion from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes, provided that total percentage of reservation shall not exceed 1[31%] of the available vacancies, provided further that the Government shall exclude the services and posts, which on account of their nature and skill are such as call for highest level of intelligence, skill and excellence, from the operation of the Act.²²

Further, chapter IV of the above Act provides for reservation in professional institutions. The Government shall reserve seats in the Professional Institutions for candidates belonging to reserved categories and such other classes and categories as may be notified from time to time, provided that the total percentage of reservation shall in no case exceed 50% and the Government shall prescribe the percentage for each category in admission in the Professional Institutions, provided that different percentage may be prescribed for different courses, provided further that 50% of the seats in each category including open category for admission to MBBS and BDS, shall be selected from amongst female candidates belonging to such category, provided also that the seats in any reserved category, which cannot be filled for want of candidates belonging to that category, shall be filled from amongst the candidates belonging to open merit category.²³

Jammu and Kashmir Reservation Rules, 2005

Consequently, in exercise in exercise of the powers conferred by section 23 of the Jammu and Kashmir Reservation Act, 2004, section 22 of J&K Persons with Disabilities Act, 1998 and all other relevant provisions of the law in this behalf, the State Government framed the Jammu and Kashmir Reservation Rules, 2005.²⁴ Rule 4 provides for Reservation in Direct Recruitment. It says that the available vacancies shall be reserved for direct recruitment in each service, class, category and grade in favour of permanent residents of the State

belonging to any of the below mentioned categories which shall, as nearly as possible, constitute the percentage of available vacancies shown against each: -

- | | |
|---|-----|
| (a) Scheduled Castes: | 8% |
| (b) Scheduled Tribes | 10% |
| (c) Socially and Educationally Backward Classes (other than Scheduled Castes and Scheduled Tribes): | |
| i) Weak and under privileged Classes (social caste) | 2% |
| ii) Residents of areas adjoining Line of Actual Control | 3% |
| iii) Residents of backward areas | 20% |
| (d) Ex-servicemen | 6% |
| (e) Physically Challenged Persons | 3% |

Rule 9 provides for Reservation in Promotion. Under this rule the available vacancies shall be reserved in any service, class, category or grade carrying a pay scale the maximum of which does not exceed the pay scale of the post of Deputy Secretary to Government, for promotion from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes:

- | | |
|--|-----|
| (a) Where the direct recruitment to a particular post is at 25% or less, the reservation shall be; | |
| i) Scheduled Castes: | 8% |
| ii) Scheduled Tribes | 10% |
| iii) Socially and Educationally Backward Classes | |
| a) Weak and under privileged Classes (social caste) | 1% |
| b) Residents of areas adjoining Line of Actual Control | 2% |
| c) Residents of backward areas | 10% |
| (b) Where the direct recruitment is more than 25% the reservation shall be: | |
| i) Scheduled Castes: | 4% |
| ii) Scheduled Tribes | 5% |
| iii) Socially and Educationally Backward Classes | |
| a) Weak and under privileged Classes (social caste) | 1% |
| b) Residents of areas adjoining Line of Actual Control | 2% |
| c) Residents of backward areas | 10% |

Rule 13 provides for reservation in professional institutions. It says, seats shall be reserved for Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes in each course of professional institutions which shall, as nearly as possible, constitute such a percentage of the available seats in that course as shown against each category or group hereinafter: -

- | | |
|---------------------|----|
| i) Scheduled castes | 8% |
|---------------------|----|

- ii) Scheduled tribes
 - a) Gujjars and Bakkarwals 6%
 - b) Residents of District Leh 2%
 - c) Residents of District Kargil 2%
 - d) Other than (a), (b) and (c) above 1%
- iii) Socially and Educationally Backward Classes (other than Scheduled Castes and Scheduled Tribes)
 - a) Weak and Underprivileged classes (social caste) 2%
 - b) Residents of area adjoining Actual Line of Control 3%
 - c) Residents of Backward areas 20%

Rule 14 provides for Other reservation. It provides that in addition to the reservations specified in rule 13, the following reservation is also made in favour of the following categories of the permanent Residents of the State to the extent shown against each:

- a) Children of Defence Personnel 3%
- b) Children of Para-Military Forces 1%
- c) Candidates possessing outstanding proficiency in sports 2%

In this context it is significant to note that the report of Commission for Backward Classes submitted in the year 2005-06 recommended for enhancement of reservation quota of social castes from 2 percent to 27 percent as per the judgment of the Supreme Court on Mandal Report.

Jammu Kashmir Civil Services Decentralization and Recruitment Act, 2010²⁵

On 9 April 2010, the State Assembly passed a controversial Bill which bans inter-district recruitment and provides a quota for Scheduled Castes in government jobs in all districts. With the passage of the Inter-District Recruitment Bill, a person can now apply for government jobs only in his own district while a person belonging to the Scheduled Castes community can apply in any of the 22 districts in the state, including the Kashmir valley. It says that person shall be deemed to be resident of a particular District or Division if he/she has resided in such District or Division, as the case may be, for a period of not less than 15 years before the date of applying for a particular post and is actually residing in the said area. But if the candidate is applying under Scheduled Caste category for any post in the Divisional or District cadre shall, irrespective of their place of residence in the State, be eligible for selection against the posts reserved for the said category at such selection.²⁶

Politics of Reservation

At the time of the partition of the subcontinent of India there has been a systematic division on regional, ethnic and communal lines in the State of Jammu and Kashmir suiting the political interests of the government of the time. Today the division has trickled down to Mohalla and village level. Firstly the divisions at province level are now significantly visible within the state. Jammu's Dogras and Laddakhi Buddhists stand against the Kashmiri speaking people of the valley. Muslim Paharis against Muslim Gujjars and Bakkarwals.

Sunni Musmils against Shia Muslims. Hindu Dogras against Hindu Rajputs. Hindus of Jammu Kuthwa against Muslims of Rajori Poonch-Doda. Buddhists of Leh district against Muslims of Kargil district. Kashmiri speaking Muslims of Doda Baderwah Rajori Poonch against Pahari-speaking Muslims of the same area. Another significant division is between well developed urban Srinagar and rest of the rural Kashmir.²⁷ The divisions are now deeply embossed in the mind of people. Now they are demanding autonomy which further had facilitated such divisions. The nefarious designs of such people got vent with the creation of Laddakh Autonomous Hill Development Council in 2003. In addition to it the State government were compelled to appoint a Regional Autonomy Committee for Jammu province. Recently, a new wave of division started for the creation of new district and Tehsils. The sole reason of the above divisions is the preference of exclusive party agendas over genuine decentralization model. The regional tension, divisiveness and the disparity existing in the State of Jammu and Kashmir is not new. It was way back in 1961 when some grievances arise in Jammu that led to the constitution of Gajendragadkar Commission which were also politically influenced, recommended the establishment of Regional Development Boards which sowed the seed of the communalism in the State.²⁸ To the end of 80's, almost all the State Government departments were bifurcated or trifurcated. Most of the state level posts were replaced by divisional level posts. The reservation for socially backward classes and ethnic groups created further social, regional and political divisions.

The issue of SCs

The introduction of the Inter-District Recruitment (Amendment) Act 2010 was the best example of the politically motivated action of the State Government. Despite enjoying the numerical majority in the State Assembly, the National Conference (NC) chooses to go by the Congress Party stand on the Bill. It shows how the State's politics is subservient to the preferences of Congress Party. The message conveyed was clear that State political parties can compromise their mandate for the sake of their bosses at the centre.

The Act in its amended form is bound to divide communities and groups on geographical lines. The Act is also unjust to the State's Muslims particularly those belonging to the Kashmir Valley. As per the amended Act, the scheduled castes that comprise of certain Hindus particularly of Jammu region will now enjoy 8 percent reservation in all the districts of the State. Whereas there are no scheduled castes in the ten district of the valley but they will enjoy their reservation too.²⁹ This is the best example of vested interests of the national parties in the State of Jammu and Kashmir who motivate to consolidate their vote banks in Hindu dominated areas at the expense of Muslims. The Act is not only against the Muslims of the State but also it has a potential to further divide the State on ethnic, religious and geographical lines. This Act raises some serious questions on the basic idea of reservation applicable to the State of Jammu and Kashmir.

The issue of RBA

The State of Jammu and Kashmir seemed to take reverse turn on the developmental path because more and more people are demanding the backward status for their areas. It is again the issue of misnomer work of the policy makers. It is only in the State of Jammu and Kashmir that geographical area had been made the criteria for granting reservation quota to backward and underprivileged classes. Besides it, in this backward area category there has been no ban or barrier between the poor and the millionaires but the only criteria is to be a resident of that particular area. Revenue records are sufficient to claim for resident of backward area (RBA) category. No matter, whether they are living in the cities or the posh

colonies of the metropolitan cities. We have hundreds of examples where the wards of high ranking officers are snatching the rights of those poor people who deserved to be given to special chance to excel but unfortunately the creamy layer of the community is only the beneficiary of the area based reservation policy. It has been established that granting the reserved category status is a major aim to bring underprivileged section of the society at par with advanced category but the “benign discrimination” has been misused or moulded to suit vested interests, as RBA status has been extended to areas which enjoy educational and other facilities at par with people of advanced categories. As a result, the State has been consigned to the hands of an incompetent administrative officers, undeserving doctors and unqualified engineers. The State Commission for Backward Classes is flooded with thousands of requests for inclusion and complaints of exclusion. In the State of Jammu and Kashmir a number of villages with all necessary educational facilities and high social status are enjoying the fruits of RBA status. The irony of the fact is that the tehsil headquarters with all facilities have been listed in the RBA category due to vote bank politics.

Implementing the Mandal Commission Recommendations, like all the States, Jammu and Kashmir too appointed a permanent body in order to include and exclude the areas and categories from the list of reserved categories. The Jammu and Kashmir State commission for Backward Classes (SCBC) was constituted in 1997.³⁰ The Act says that the Government should revise the list contemplated under section 2 (d) of the Act after expiration of every succeeding ten years period. The objective is to exclude from such lists those classes who have ceased to be backward or for including in such lists new backward classes.³¹ Fifteen years have passed when the Act was promulgated but there has been no exclusion of any area from the RBA list. According to justice Bhat, Chairman SCBC, in an Article published in *Kashmir Life*, “Upto March, 2009 there were 1755 representations pertaining to grant of RBA or reserved category status pending with the Commission. Out of it 1154 are from Kashmir and 601 from Jammu division”.

The Jammu and Kashmir Reservation Act, 2004³² says that the children of any person whose annual income from all sources exceeds Rs. 3 lacs or such amount as may be notified by the Government from time to time in accordance with the prescribed norms shall be excluded from the category of socially and educationally backward classes. However, the Jammu and Kashmir Reservation (Amendment) Bill, 2009 proposed that “the income ceiling shall not apply to a person who has lived and contemplated entire school education from an area identified as Backward or areas adjoining Actual Line of Control, as the case may be, and in case such schooling is not available in such area, from the nearest adjoining area.”

The issue of OBC

Another major issue confronting to the State of Jammu and Kashmir pertains to the other backward classes who always remain the matter of debate from the beginning. Due to persistent and stringent demand of the neglected socially and educationally backward classes, the Government of India appointed the first backward class commission “Kakasaheb Kalelkar Commission” on 29 January 1953. After a detailed ground work the Commission submitted its report on 30th March 1955, listed 2399 castes as socially and educationally backward class.³³ Pursuant to its criteria, the Government of Jammu and Kashmir also appointed a committee which recommended 50 reservations for Muslims of Kashmir, 40 percent for Jammu Hindus and 10 percent for Kashmiri pundits. This decision itself was flawed as it was done on communal lines, which was antithetical to the Constitution on India and was subsequently struck down by the Supreme Court in the case of

Triloki Nath v. State of Jammu and Kashmir.³⁴

The backward classes of the State were constantly ignored and discriminated. Notably first time the Gajendragadkar Commission in 1967, made some recommendations for determining the multiple criteria for backward classes like economic backwardness, occupation, place of habitation, student ration and caste in relation to Hindus.³⁵ It also recommended the fresh revision of reservation policy based on the above mentioned multiple criteria. So the Government of Jammu and Kashmir appointed a high powered committee (J.N.Wazir Committee) which took fresh revision. On the basis of its report, the new rules were framed, which provided for 8 percent reservation for Scs and 42 percent for backward classes including 2 percent reserved for Laddakh District. While the scrutiny of these rules, the Supreme Court while pointing out certain defects directed the State government to cure these defects. So again a committee under the chairmanship of Justice A.S.Anand was constituted in September 1976. The Committee submitted its report in September 1977, and recommended 2 percent reservation for social castes, and inclusion of RBA and ALC categories with 27 percent reservation in the broad category of socially and educationally backward classes. The atrocious system of reservation was followed by Mandal Commission in 1980. The Mandal Commission in its report submitted on 12 December 1980 identified 63 castes, communities as “socially and educationally backward classes” and recommended 27 percent reservation for them. The Commission had not recommended any reservation for “residents of backward area or areas adjoining the line of control” in the State of Jammu and Kashmir or in any other part of India.

Subsequently, the Mandal Commission recommendations were challenged before the Supreme Court in the case titled *Indira Sawhney v. Union of India*³⁶ in which the Court held that the States and Union Territories under section 123 (A) provides for constituting a permanent body within four months for entertaining, examining and recommending upon requests for inclusion and under inclusion in the list of backward classes.

Following the judgment of the Supreme Court, the Jammu and Kashmir Government which was under Governor rule at that time also appointed retired justice K.K.Gupta Commission, which prove mere an eye wash as the said commission worked only on the report of over ruled Anand Committee of 1977 whereas this fraud can very well be judged from the below :

a) SC-8%, b)ST-10%, c) socially and educationally backward class: 1) RBA-20%, 2) ALC-3%, 3) weak and underprivileged classes (social castes)-2%, d) handicapped person-2%, e) ex-servicemen and children of defense personnel-5%.³⁷

Formally, the State Government appointed a permanent State Commission for Backward Classes in 1997,³⁸ with eminent retired jurists but the Commission even after the passage of 15 years failed to provide 27% reservation to socially and educationally backward classes identified by Mandal Commission. The inclusion of backward area and area adjoining to actual line of control under section 2(o) of the Act and Rule 4(c) of the SRO of 2005 is against the provisions of Article 15(4), Article 16 (4) and Article 340 of the Constitution of India. The RBA and ALC people does not carry the stigma of social backwardness. In addition to it, Mandal Commission nowhere mentioned the area wise reservation on geographical basis. Further, the National Commission for Backward Classes, New Delhi, also does not accepted RBA and ALC reservations for central government services. Thus the backward classes not only discriminated in State but also are debarred from the reservation by the central government also because of the ambiguous policy of the State. Only mere 2% social castes of the State of Jammu and Kashmir get reservation in the centre under 27 percent reservation

quota meant for other backward classes.

The Gujjar-Pahari issue

As far as the contemporary internal conflicts in Jammu and Kashmir is concerned, the political and social clashes between the Gujjars and Paharis are perhaps one of the most serious challenges to internal peace at the micro-level and an emerging impediment to solving the Kashmir issue at large. This conflict between the Gujjars and the Paharis, transcends all regional boundaries and religions within Jammu and Kashmir and beyond. Historically, this fault line erupts several decades ago but the issue becomes sharpened in 90's when Gujjars have been included in the scheduled tribe list of the State. The situation has worsened when a similar demand had been made by number of ethnic groups and castes from muslims, hindu and sikh groups congregate under a pahari speaking community.

The controversy is taking much heat day by day on a large scale because the political parties extend selective patronage to one community against other for vote bank politics. It is only the political parties and the Government of the State who helped, directly or indirectly in escalating conflict between the two communities from time to time. This resulted in the tension between Gujjars and Paharis who nurse huge contempt for each other. In Rajori and Poonch district of Jammu provine and some parts of Baramulla, Kupwara, Bandipora and Badgam district of the Kashmir provine where these communities are predominant, the Gujjar Pahari divide becomes a dominant factor in all decisions- political and administrative, from selection of candidates for assembly elections, appointment of ministers in the cabinet, nominating office bearers of political parties to posting of Government officers at different levels in the districts, even identifying Government projects like schools, dispensaries, roads and bridges etc., is a major determining factor. Instead of resolving the issue, the political parties are playing the Gujjar and Pahari cards which further aggravate the situation and sharpen the conflict.

The issue of multiple ethnicities and diverse languages, which should have been a source of strength for the State, has become a disadvantage as it has become a constant point of friction among the diverse identities in the State. There are several historical facts behind the Gujjar-Pahari issue. In the early years of their arrivals the Gujjar of Jammu and Kashmir took direct confrontation with Rajput clans for political and strategic reasons. Rajput being the Zamindars employ Gujjars and tillers, domestic help and casual labourers for centuries. The tussle between Zamindars and tillers is an old story. Even today the social differentiation continues to be a major factor for the gap between Gujjar-Pahari inhabited areas. Thus there seems a huge potential for social unrest which is being proliferated by the political parties. The only possible solution for this conflict lies in the capabilities of the Government to alleviate the socio-economic profile of the two communities. Giving the ST status to Paharis would further aggravate the situation. It also warns of the risk of opening a Pandora's Box of similar demands from other ethnic group. It is strange to analyse that besides the demand of Paharis for ST quota, they already are the major stakeholders of 20 percent RBA category and 3 percent ALC category. Though, the reservation policy needs a fresh review in the light of the above burning issues, ranging from ethnic, regional, linguistic, communal social and political.

Conclusion

The reservations, though express some different perspective, but marked some purpose and objective is known by different names; benign discrimination, contemporary discrimination,

positive discrimination, protective discrimination, affirmative action and reverse discrimination. The only aim of the reservation is to ensure that no section of the society is deprived of its rightful place in a true democracy. Reservation is a right for participation in education, service and politics etc., but it is now easily available as soft option for political parties as their vote gathering device. Political parties use reservation as a device for improving their election prospectus to influence and gain power. The State of Jammu and Kashmir is not an exception to it, where reservation policy has always remained a tool in the hands of political parties to suit their vested interests. Every political party in power has amended the policy through their own unique criteria ranging from caste base, area base to profession base, ignoring the fundamental provisions meant for reservation enshrined in the Constitution of India. This negligence on the part of policy makers sowed the seeds of division at regional, linguistic, ethnic and communal lines which proved to be a tower of Babel in the State.

The Government of Jammu and Kashmir has appointed a number of commissions and committees to sort out the issues but yet the reservation policy is being amended day in and day out in their own way. Somewhere the reservation is being demanded on caste basis, which is antithetical to the State of Jammu and Kashmir, as it is a Muslim majority State. Islam believes in an egalitarian society, which does not recognize the caste system, but still the caste based reservation policy continues to exist, which does not differentiate between the millionaires and the poor of the same caste. The unconstitutional/illegal pattern of reservation resulted in a race in which every section and group is demanding reservation on self defining criteria aggrandized by the political parties sidelining the very purpose of reservation. In a diversified State of Jammu and Kashmir the only solution to all the above mentioned issues is the socio economic amelioration of the disadvantaged masses.

Notes & References

¹ R. C. Gupta, A Manual on Reservation for Selection to Professional courses and Appointment to Public Offices and Posts in Jammu and Kashmir, Jay Kay Book House, 1998, Jammu, p. 3

² Ibid

³ Part III and part IV of the constitution of India, which is equally applicable to the State of Jammu and Kashmir.

⁴ Particularly section 23,

⁵ 1 1969 SCR [1] 103

⁶ AIR 1963 SC 649

⁷ Dr. P.B.Gajendragadkar. Jammu and Kashmir Enquiry Commission Report, Ranbir Government Press, Jammu, 1967, p. 1

⁸ Government order no. 252- GD of 1969

⁹ Supra note 1, p. 14

¹⁰ Notification No. 37- GR of 1970 and Government order no. 60- GR of 1970

¹¹ AIR 1973 SC 930

- ¹² Government order no. 54-GR of 1976
- ¹³ Government notification vide SRO No 272
- ¹⁴ Balraj Puri, *Simmering Volcano, Study of jammu's Relations with Kashmir*, Sterling Publishers Pvt. Ltd., New Delhi, 1983, pp. 127-128
- ¹⁵ The Constitution (Jammu and Kashmir) Scheduled Tribes order 1989
- ¹⁶ Notification SRO 205 of 2/7/1991
- ¹⁷ AIR 1993 SC 477
- ¹⁸ Government Notification SRO 126 dated 28/6/1994
- ¹⁹ Act No XII of 1997
- ²⁰ Act No XIV of 2004
- ²¹ Chapter II, section 3
- ²² Chapter III, section 6
- ²³ Chapter IV, section 9
- ²⁴ Notification vide SRO 294 in October, 2005
- ²⁵ Act No. XVI of 2010
- ²⁶ Section 13
- ²⁷ Arjimand Hussain Talib, Omar Abdullah: *The Burden of Inheritance*, Apple Books, Srinagar, 2010, p. 132
- ²⁸ Supra note 7, p. 94
- ²⁹ Supra note 27, p. 13
- ³⁰ Supra note 19
- ³¹ Section 11,
- ³² Supra note 20
- ³³ Ashok Kumar Basotra, *O.B.C.s of J&K- Fighting for their Fundamental Rights Since Independence*, 10 October, 2008, p. 1 available at
- ³⁴ Supra note 5
- ³⁵ Supra note 7
- ³⁶ Supra note 17
- ³⁷ Supra note 18
- ³⁸ Supra note 19
