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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASTE AND JUDICIARY: REPRESENTATION OF DALITS AND SCHEDULED TRIBES

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Introduction: Caste and Judiciary

Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.

- Dr. Ambedkar

The caste system in India has been characterized by Dr. B.R. Ambedkar as a system of "graded inequality".¹ The concept of graded inequality posits that, barring those situated at the extreme ends of the caste system, each tier within the hierarchy is both preceded by a higher level and succeeded by a lower level.

Unfortunately, the constitution of the upper echelon of the judiciary reveals that the majority of judges are still selected from the segment of society that is plagued by long-standing social biases. The judiciary² is one of three crucial foundations of democracy. It only makes sense that the judiciary, the third pillar of democracy the body tasked with upholding the constitution, would adhere to the constitutional reservation when the executive and legislative branches are brought under its purview. Because numerous studies carried out in recent years have shown that there is a lack of representation of women, members of minority groups, Scheduled Castes (SCs), and Scheduled Tribes (STs) in positions of authority within the higher and lower judiciary.³

¹ Dr. Babasaheb Ambedkar, 'Castes in India: Their Mechanism, Genesis and Development, Paper presented at the Anthropology Seminar, Columbia University', New York, (1916) XLVI <http://www.columbia.edu/itc/mealac/pritchett/00ambedkar/txt_ambedkar_castes.html >accessed on 12 April, 2023.

² In India, the judiciary is structured into three tiers in an ascending hierarchical sequence, namely the lower-level judiciary encompassing districts and below, the High Court, and the Supreme Court of India.

³ P. S. Ashmi & Abhinav Kumar, 'How to Realize Representative Higher Judiciary' (2020) Supremo Amicus <http://heinonline.org.eresources.nls.ac.in/HOL/Page?public=true&handle=hein.journals/supami21&div=66&start_page=&collection=journals&set_as_cursor=1&men_tab=searchresults > 21 accessed 13 April 2023

Also, according to Bruce Ackerman, a scholar of constitutional law in the United States, he asserts that the involvement of Ambedkar as the leader of the drafting process conferred legitimacy upon the Constitution.⁴ But, here the inquiry pertains to the extent to which the Constitution has had an impact on the caste system over a period of more than seventy years since its inception. Did the Constitution effectively implement the reforms that Ambedkar had envisioned? So, in Ambedkar's view, 'the right of representation and the right to hold office under the State are the two most important rights that make up citizenship'.⁵ Because, he was well aware of the significant gap that separated the goals of the transformative Constitution and the social reality of India at the time. He thus warned, 'however good a constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot'.⁶ So, the Indian Constitution, despite containing punitive provisions, provides a restricted assurance. Though, the implementation of reservation policies in the fields of education and public employment has contributed to a reduction in the reliance of Dalits on individuals from higher castes, thereby facilitating a degree of social mobility. However, it is important to note that such progress has been relatively modest in scope.

Further, Dr. B.R. Ambedkar has discussed the deeply rooted nature of casteism and caste-based distinctions in his book *Annihilation of Caste* by depicting the status of a typical Indian village: *"Ask any village policeman in India what his job is and he will probably tell you it is to 'keep the peace.' That is done, most of the time, by upholding the caste system. Dalit aspirations are a breach of peace. Annihilation of Caste is a breach of peace."*⁷

The aforementioned quotation highlights a significant flaw in how individuals manage their daily lives. People's daily lives are impacted by caste in more ways than they might imagine. Such systemic discrimination is not limited to institutions of higher learning, as discussed it appears to pervade the higher judiciary as well. So, in order to ensure fair play, it is imperative

⁴ Ackerman, Bruce, 'Revolutionary constitutions: charismatic leadership and the Rule of law' (2019) Cambridge, Massachusetts: The Belknap Press of Harvard University Press <https://www.researchgate.net/publication/339383524_Bruce_Ackerman_Revolutionary_Constitutions_Charismatic_Leadership_and_the_Rule_of_Law_Belknap_Press_Harvard_University_Press_2019_472_pp_hb_2895_R_EVIEW> 62 accessed 13 April 2023

⁵V. Moon (Ed.), 'Dr. Babasaheb Ambedkar: writings and speeches vol. New Delhi: Dr. Ambedkar Foundation' <http://drambedkarwritings.gov.in/upload/uploadfiles/files/Volume_01.pdf> accessed on 13 April 2023

⁶ Anurag Bhaskar 'Ambedkar's Constitution': A Radical Phenomenon in Anti-Caste Discourse? (2021) 2 CASTE: A Global Journal on Social Exclusion < <https://journals.library.brandeis.edu/index.php/caste/article/view/282>> 127 accessed 14 April 2021

⁷ Dr. Babasaheb Ambedkar, *Writings and Speeches*, (Vasant Moon comp, Dr. Ambedkar Foundation, Ministry of Social Justice and Empowerment (2019) 1 <http://drambedkarwritings.gov.in/upload/uploadfiles/files/Volume_01.pdf> 43 accessed 14 April 2023

that all the major sections of the society are represented in the judiciary to have an equitable representation and also there is no bar to do so in our Constitution. According to author, Judiciary must have members who have first-hand knowledge and experience of the problems of the backward classes and have personal interest/sense of the involvement in solving them through the dispensation of justice. Such an esteemed institution ought to reflect the actual social setting that the judiciary has produced. It cannot exist in isolation and use judicial decisions to exempt itself from constitutional restrictions.

RESEARCH QUESTIONS

- 1) Why the representation of Schedule Caste and Schedule Tribe in higher and lower judiciary matters?
- 2) Whether the Indian Judiciary attitude endorses indirect discrimination in its judicial appointments and pronouncements?

Historical Background: Discrimination on the Basis of Caste in the Judicial System

Caste-based discrimination within the judicial system is a significant matter of concern in certain regions, particularly in South Asia. It pertains to the inequitable treatment or bias directed towards individuals on the basis of their caste or social stratification.⁸ In nations such as India, where the caste system has significant historical roots, cases of discrimination within the court system based on caste have been observed. This prejudice can present itself in a variety of ways, including biased judgements, uneven treatment of individuals based on their caste, and unequal access to the court system and justice.⁹

One of the most significant issues is that there are not enough people from lower-caste backgrounds holding positions of authority within the judicial system, this is also the core of the discussion of this paper. So, this lack of diversity can lead to a lack of awareness and sensitivity towards the unique difficulties encountered by marginalized people, which can in turn lead to a lack of understanding and solutions. And even, according to the World Justice Project's 'Rule of Law' index, India was positioned at the 77th spot out of 140 nations and the

⁸ Dr. Pramod J. Herode, 'Reservation of SCs/ STs and Judicial Responses in India: A Socio-Constitutional Analysis' (2020) 7 (11) JETIR < <https://www.jetir.org/papers/JETIR2011097.pdf> > accessed 14 April 2023

⁹ M. P. Singh, 'Securing the Independence of the Judiciary - The Indian Experience' (2000) 10 Ind Int'l & Comp L Rev 245 < <https://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf> > accessed 15 April 2023

recession is still continuing in this year also.¹⁰

Challenges in Representation of Dalits and Scheduled Tribes in the Judiciary

The concept of representation serves as a means of advancement for historically marginalized communities. The insufficiency of data collected to scrutinize the representation of Dalits in the legal profession, both as practitioners and judges, poses a significant obstacle to the advancement of equitable representation. But, throughout the duration of the Indian Republic, a mere six judges belonging to the Dalit community have been designated to serve on the Supreme Court.¹¹ The appointment of the first Scheduled Caste judge to the Supreme Court did not occur until the year 1980.¹² According to Gadbois, the Minister of Law provided testimony to Parliament in 1983 indicating that out of approximately 400 High Court judges, a mere six were from the Scheduled Castes, and there was a complete absence of representation from the Scheduled Tribes.¹³ In the year 2000, Justice KG Balakrishnan, who belongs to the Dalit community, was appointed as a judge of the Supreme Court. Subsequently, in 2007, he made history by becoming the first ever Dalit chief justice of India.¹⁴

So, the underrepresentation of Dalits poses a significant challenge for both the community and the legal system, particularly the judiciary. Though as a result of Ambedkar's endeavours, the practise of reservation was firmly established in the constitutional text, thereby rendering it impermeable to direct judicial intervention. Conversely, a broader discourse was established and disseminated targeting Dalits and Adivasis, wherein they were deemed incapable and inadequate for inclusion in public services and academic establishments.¹⁵ For a considerable duration, the Indian Supreme Court maintained that reservations have a tendency to diminish efficiency to a certain degree. Despite the lack of empirical evidence supporting this assertion, it was repeatedly propagated by the Supreme Court and society at large to perpetuate caste-based biases against Dalits.

¹⁰ World Justice Project, 2022 < <https://worldjusticeproject.org/rule-of-law-index/> > accessed 15 April 2023

¹¹ A. Vardarajan, B.C. Ray, K. Ramaswamy, KG Balakrishnan, BR Gavai (currently on the bench).

¹² George H Gadbois, 'Affirmative Action in India: The Judiciary and Social change (1986) L. & Policy 345 < https://heinonline.org/HOL/Page?handle=hein.journals/lawpol18&div=5&g_sent=1&casa_token=> accessed 15 April 2023

¹³ibid 346

¹⁴ In 2010, Justice K.G. Balakrishnan concluded his tenure as the Chief Justice of the Supreme Court of India.

¹⁵ Constitution of India 19450, art 335 read with Article 15 (4) and 16 (4)

The marginalized communities also encounter obstacles to entry and advancement. Because, the legal field is largely controlled by individuals who hold elitist views. Due to their marginalized status, Dalits encounter impediments in obtaining high-quality legal education. According to a statement made by a previous chief justice of India, a significant number of Dalit lawyers during his tenure did not receive their education in English-medium schools. Consequently, their professional opportunities were limited to practising in lower courts, as the higher courts necessitate a higher level of proficiency in the English language.¹⁶

So, there are consequences of insufficient representation on the attainment of justice and equity in society. The decisions that are made in favor of affirmative action for the poorer sections of society are short-lived, and later rulings by the smaller bench of the courts or smaller courts can even go against the idea of 'stare decisis' and overturn those earlier decisions.¹⁷ For example- In some judgements the Indian Supreme Court has interpreted Article 16(4) as a provision that grants the State the authority to reserve positions in public employment for disadvantaged groups, thereby treating it as an exception from the principle of equality of opportunity enshrined in Article 16(1). But in later judgments the court maintained that Article 16(4) functions solely as a facilitative measure, meaning that it is at the discretion of the State to implement affirmative action policies for disadvantaged groups.¹⁸ Hence, the court changed the whole narrative of reservation policy through textual interpretation of constitutional provisions.

As the global community strives to implement new legislation aimed at combating discrimination and reforming legal systems, the Supreme Court of India has issued a ruling that appears to contradict the intended purpose of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989. This act was designed to uphold the fundamental right of equality and promote social justice.¹⁹ So, another example can be with regard to the percentage of people who are found guilty of violating the SC/ST Atrocities Act is far lower

¹⁶ Challenges for Dalits in South Asia's Legal Community, Chapter – 3, Dalit Justice Defenders in India (2021) American Bar Association Centre for Human Rights < <https://www.dhrdnet.org/news/dalit-justice-defenders-in-india-report/> > accessed 14th April 2023

¹⁷ A report on Reservation in Judiciary, (National Commission for Scheduled Castes) < <http://ncsc.nic.in/files/Reservation%20in%20Judiciary.pdf> > accessed 14 April 2023

¹⁸ Anurag Bhaskar, 'Reservation as a Fundamental Right: Interpretation of Article 16(4)' (2021) 13 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3868419 > accessed 15 April 2023

¹⁹ Kiruba Munuswamy, The nauseating nepotism and caste-based discrimination that exists in Indian judiciary *The Print* (11 April 2018) < <https://theprint.in/opinion/the-nepotism-and-caste-based-discrimination-that-exists-in-indian-judiciary/48542/> > accessed 15 April 2023

than one percent. This is largely attributable to the failure to enact a legislation that, in the end, goes against the traditional morality of a populace that constitutes the majority. It is made abundantly obvious by a public interest litigation (PIL) complaint lodged in regard to the implementation of the SC/ST Atrocities Act that there are many different ways in the course of which a law that goes against the will of the majority might be undermined.²⁰ So, the inefficacy of the statute persisted due to its minimal sanctions, thereby resulting in a tragic outcome.

Reservation Policies and Affirmative Action in the Judiciary

In a constitutional democracy, the significance of representation cannot be overstated, particularly in ensuring a more diverse society. This principle extends to the judiciary as well. The composition of a society is reflected in its judiciary, which is deemed to possess a higher degree of authenticity when it indicates equal opportunity and justice for marginalized groups. The Indian judiciary post-independence is divided into three hierarchies, i.e., Subordinate judiciary, High Courts and Supreme Court. Prior to gaining independence, the British Crown possessed the authority to appoint judges to the higher judiciary without being influenced by domestic politics. The Crown's exclusive discretion in such appointments remained unchallenged.²¹ For the first time, the Sapru Committee, in its constitutional proposals of 1945, suggested that the appointment of Supreme Court and High Court justices should be made by the head of state after consulting with the Chief Justice of the Supreme Court.²² There were a lot proposals regarding how judges should be appointed, also Dr. Ambedkar referred to the practice of appointment of judges in England, where they are appointed by the executive alone, and in the United States, where they are appointed by the executive on the approval of the Senate.²³

In order to ensure independence of the judiciary, very specific and elaborate provisions have been made in the Constitution under Article 124, 217, 233, 234 and 235. But as per author, the

²⁰ Aravind Narain, 'What would an Ambedkarite Jurisprudence look like?' (2017) 29 National Law School of India Review 11 <<https://www.jstor.org/stable/10.2307/26459197>> accessed 15 April 2023

²¹ Government of India Act 1935, S. 200 (Part IX, The Judicature, Chapter -1: The Federal Court)

²² Sapru Committee Report 1945 para 13 clause (3)(a)
<<https://www.constitutionofindia.net/historical-constitution/sapru-committee-report-sir-tej-bahadur-sapru-1945/>> accessed 16 April 2023

²³ M. P. Singh, 'Securing the Independence of the Judiciary - The Indian Experience' (2000) 10 Ind Int'l & Comp L Rev

263 <http://heinonline.org.eresources.nls.ac.in/HOL/Page?public=true&handle=hein.journals/iicl10&div=16&start_page=245&collection=journals&set_as_cursor=7&men_tab=srchres ults> accessed 16 April 2023

manifestation of implicit and explicit biases among judiciary members, who possess the authority to designate other judges, has impeded endeavours to guarantee equitable representation within the judiciary.

Reservation policies are implemented in certain states for the position of District Judge within the subordinate judiciary.²⁴ And, to qualify for appointment as a district judge, an individual must have a minimum of seven years of experience as an advocate or pleader and must receive a recommendation from the High Court.²⁵ With respect to the selection of individuals for the judicial service of a state who are not district judges, the Governor of the state is responsible for making such appointments in accordance with regulations established by the Governor after consulting with both the State Public Service Commission and the High Court that has jurisdiction over the state in question.²⁶ In High Courts, individuals who have served as a judicial officer for a minimum of ten years or have acted as an advocate in a High Court for at least a decade are qualified to be appointed as a judge in a High Court.²⁷ The current provision is problematic because it does not include any reservation measures, necessitating a constitutional amendment to implement such policy. Lastly, an individual who has served as a High Court judge for a minimum of five years, or an individual who has practiced as a High Court advocate for a minimum of ten years and is deemed by the President to be a distinguished jurist, is qualified for selection as a Supreme Court judge.²⁸ The current provision also lacks provisions for reservation, thus necessitating a suitable amendment to the Indian Constitution to accommodate the appointment of judges from Schedule Caste and Tribes at all levels.

As discussed above, the Constitutional provision outlined in Article 217(2) stipulates that high court judges are eligible to be either practising lawyers from the bar or judges of the subordinate judiciary from the services. Therefore, it would be reasonable to anticipate a relatively balanced representation of judges from both the bar and the services. Nonetheless, that assertion is distant from reality.²⁹ The appointment process exhibits bias against judges originating from the

²⁴ For example- Rule 22 of the Delhi Higher Judicial Service Rules, 1970 stipulates the requirement for reservation for Schedule Caste and Scheduled Tribes in positions designated for judges of District and Sessions courts and the percentage of reservation must align with the directives issued by the central government.

²⁵ Constitution of India 1950, art 233(2)

²⁶ Constitution of India 1950, art 234

²⁷ Constitution of India 1950, art 217

²⁸ Constitution of India 1950, art 124

²⁹ Alok Prasanna Kumar, 'Absence of Diversity in the Higher Judiciary' (2016) 8 EPW 10

< https://www.epw.in/journal/2016/8/law-society/absence-diversity-higher-judiciary.html?0=ip_login_no_cache%3Dacb9aa302e28db6ae64f8d46f54870d0 > accessed 16 April 2023

services, where there is reportedly a more diverse composition compared to the bar. Consequently, the high courts are predominantly composed of male individuals from upper-caste backgrounds who have previously worked as practising lawyers. It is evident that the aforementioned judges will occupy prominent positions in the hierarchy of the Supreme Court. Consequently, they will be responsible for selecting future appointees to the high courts, thereby establishing a self-sustaining pattern of entitlement.³⁰

International Perspectives and Comparative Analysis

Though among sovereign nations, Indian Constitution consider as the world's longest constitution but still we can learn from other constitutions in the world. For example, one of the characteristics of the South African constitution is that it is often recognized as being the most progressive constitution in the world. South Africa has implemented affirmative action measures to address historical inequalities. The constitution expressly provides for the reservation in the judiciary for marginalized communities. It reads as "*the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.*"³¹ And similar provisions have been made in other constitution of the world for example, the Constitution of Nepal which was passed in 2015 provide for such provisions.³²

Each democratic nation, such as the United States, endeavors to ensure that all segments of society, particularly minority groups, are adequately represented within the judiciary. Recommendations pertaining to the inclusion of underrepresented segments of society, such as women, minorities, and disadvantaged groups, align with the democratic principles enshrined in the Constitution.³³ Further, in the Constitution of New Zealand, although there are no explicit legal requirements pertaining to the reservation of seats for marginalized communities in the judiciary, measures have been implemented to facilitate such community's representation in judicial appointments. These measures include consultation procedures and the evaluation of cultural competence. These constitutional provisions aimed at promoting diversity, representation, and social justice through the judiciary. But, as discussed, in Indian constitution there are no provisions for reservation in higher judiciary and no steps have been taken ever to

³⁰ibid 11

³¹ The Constitution of South Africa 1996, s.174(2)

³² The Constitution of Nepal 2015 < constituteproject.org/constitution/Nepal_2015.pdf> accessed 4 May 2023

³³ R. Ramachandran, The Conflict that Never Was, *Hindustan Times*

provide representation to marginalized communities, though the provisions of reservation are there in lower judiciary in some states but the representation in higher judiciary remains negligible. So, the appointment procedure for judges should be more inclusive as it is impractical for Supreme Court judges situated in the apex to have knowledge of events occurring throughout the nation, because of absence of the lived experiences that marginalized communities goes through in every aspect of life. It is imperative that the judiciary be elected through a process that is consistent with the election procedures of the other two branches of government. However, it is imperative that the institution in question embodies. I concur with Shetreet's preference which mirrors the societal context within which it functions.³⁴ So, "*an important duty lies upon the appointing authorities to ensure a balanced composition of the judiciary, ideologically, socially, culturally and the like.*"³⁵ Because, research on judicial conduct has extensively demonstrated that the decision-making process of a judge is significantly influenced by their personal background.³⁶ So other than the provisions which are mentioned in the Constitutions of the world regarding representation there are also international declarations which emphasize for importance of representation in the judiciary.³⁷ Considering the constitutional provisions and established practices in India, it is evident that there is a clear emphasis on the representation of marginalized groups such as minorities and women in legislative and executive bodies, as well as in civil services and lower judiciary. Therefore, it is reasonable to assume that if this matter were to be brought before the court, it would support the fair representation of society in the higher judiciary as well.³⁸ The onus now rests primarily on the judiciary to establish a legal system that is not only autonomous from the executive and legislative branches, but also capable of carrying out the incomplete duty of societal transformation envisioned by the framers of the Indian Constitution.³⁹

Judicial Interventions and Reservation

Dalits also have found instances of subtle implicit biases and prejudices through judges. Certain Supreme Court justices have employed problematic terminology when referring to Dalits and

³⁴ Shimon Shetreet, *Judging in Society: The Changing Role of Courts*, in *The Role of courts in Society* 467, (1988)

³⁵ Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in *Judicial Independence: The Contemporary Debate* 594

³⁶ Benjamin N. Cordozo, *The Nature of the Judicial Process* (1941)

³⁷ For example – Draft Universal Declaration on the Independence of The Justice (Singhvi Declaration) The process and standards of judicial selection shall give due consideration to ensuring a fair reflection by the judiciary of the society in all its aspects.

³⁸ M. P. Singh, *Affirmative Protection of Minorities in India*, in *The Living Law of Nations* 301 (Gudmundar Alfredsson & Peter Macalister-Smith eds., 1996)

³⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 164

Adivasis in their rulings.⁴⁰ For example - Judges in affirmative action often referred to reservation/quotas as “crutches.”⁴¹ It is well settled that the reservation is not the benefit and is fundamental right which has been expressly enshrined in the Constitution. There are lot of examples of indirect discrimination by judges while delivering decisions against marginalized communities as discussed above in cases relating to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to address caste-based violence and discrimination, the judiciary has also changed the narrative of reservation, access to justice and remedies and intersectional discrimination. After examining numerous court rulings in India, it appears that while the Constitution outlines provisions for verbal expression, the intended essence of these provisions has been rendered entirely ineffective.

The Article 16(4) of the Constitution provides that, “*nothing in this article shall prevent the State from making any provision for the reservation of the appointments or posts in favor of any backward class of citizens which, in the opinion of the State is not adequately represented in the services under the State*”. In *State of Madras v. Champakam Dorairajan*⁴², although the ruling did not directly address the interpretation of Article 16(4), it had implications for the subsequent interpretation of the aforementioned provision and the concept of reservations. The ruling established the foundation for subsequent debates regarding the compatibility of upper-caste privileges with democratic ideals, and the incompatibility of lower-caste entitlements with said principles. Further in, *M.R. Balaji v. State of Mysore*,⁴³ a constitution bench was hearing the challenge to the 68 percent reservation provided to backward classes in engineering, medical, and other technical institutions in the erstwhile Mysore state. The validity of this scheme was contested based on its alleged lack of rationality and its potential violation of Article 15(4). The court maintained that any “special provision” as envisioned by Article 15(4) must adhere to reasonable limitations, resulting in the invalidation. The Court deemed the act of considering reservations for a significant number of seats as undermining the purpose of Article 15(4). While hesitant to prescribe a specific provision, the Court established a general limit of 50% for reservations. The statement posited that, in a general and overarching sense, a particular stipulation ought to be below the threshold of 50%. The exact degree to which it

⁴⁰ Anurag Bhaskar, When It Comes to Dalit and Tribal Rights, the Judiciary in India Just Does Not Get It, THE WIRE, (May 3, 2020), < <https://thewire.in/law/when-it-comes-to-dalit-and-tribal-rights-the-judiciary-in-india-just-does-not-get-it> >

⁴¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477 (1992)

⁴² AIR 1951 SC 226

⁴³ AIR 1963 SC 649

should fall below this percentage is contingent upon the pertinent and current circumstances that are applicable to each individual case. of the 68% reservation. So, this judicial narrative was regard to the reservation in education and public employment, the provisions which were made to address past injustice rendered nugatory by upper caste Supreme Court Judges through textual interpretation of the provisions. So, individuals from marginalized backgrounds encounter systemic obstacles that hinder their access to these institutions. That's why the depiction of socially disadvantaged individuals in both the upper and lower judiciary in India remains unfavorable.

Conclusion

Upon the adoption of its constitution in 1950, India incorporated the principles of liberty, equality, and fraternity with the aspiration of yielding favorable outcomes for its populace belonging to the Dalit community and Dr. Babasaheb Ambedkar emphasized the importance of constitutional provisions in protecting the interests of Scheduled Castes and Scheduled Tribes. The current state of affairs for individuals belonging to Scheduled Castes/Scheduled Tribes has been rendered highly problematic despite the existence of constitutional provisions, owing to the selective and unfavorable interpretation of said provisions. It is evident that the government's reluctance to hire candidates from SCs/STs may stem from caste-based animosity, as numerous legal rulings have deemed such discrimination permissible. As a result, individuals belonging to these particular social groups are compelled to rely on the capriciousness and preferences of those in upper castes. The current state of judicial interpretation has resulted in the exemption of upper caste-dominated government from constitutional accountability. Thus, it can be argued that provisions pertaining to reservations are merely symbolic gestures and lack substantive implementation. The pursuit of social justice and equal opportunities has become increasingly difficult for individuals belonging to the SCs/STs communities.

Despite the Indian constitution's aim to eliminate "untouchability" and discrimination, prejudice remains prevalent among the privileged segments of society. Furthermore, those responsible for upholding the constitution have demonstrated a tendency to exhibit complete insensitivity towards Dalits and Adivasis. Regrettably, the ability of the Supreme Court of a constitutional democracy such as ours to distinguish between truth and falsehood has frequently been inadequate. There have been no steps taken in the past regarding the

representation of marginalized communities in the judiciary, the reluctance is due to the collegium who appoint Supreme Court judges also consist of upper caste judges and there is indirect discrimination in regard to the appointment of the judges from the marginalized communities.

Suggestions

- 1) The Supreme Court and High Court should be regarded as State within the meaning of Article 12, so the provision with regard to reservation can be applied to these institutions.
- 2) It is imperative to promptly address the issue of outstanding judicial vacancies designated for individuals from the Dalit community within the lower judiciary.
- 3) It is recommended that judges at all levels receive training to refrain from utilizing problematic terminology that may be rooted in implicit bias, stereotypes, and gestures that may impinge upon the dignity of individuals belonging to Dalit and other marginalized communities.
- 4) The data pertaining to social diversity within the legal profession and judiciary be gathered and disseminated on an annual basis for the purposes of public discourse and scrutiny.
- 5) The Government should establish an initiative akin to the Judicial Diversity Taskforce in the United Kingdom. This would enable the creation of a pool of prospective candidates from marginalized communities, including Dalits, to be made available.

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