

Administrative Efficiency and Reservation Policy in India: An Impact Assessment

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I. Introduction:

An efficient administration is one which implements the Constitutional goals enshrined in the Preamble to the maximum extent. The ultimate goal of the Constitution is to provide social justice to all its citizens and to establish a welfare state. Reservation in jobs under Article 16(4) and reservation in educational institutions under Article 15(4), for backward classes are the measures to provide social, distributive as well as corrective justice to those people who are the victim of long social discrimination. Constitution provides the protective discrimination in favour of backward classes in the form of reservation. A policy of reservation automatically implies abandoning the principles of merits in the selection process. Since opportunities are few and the population large, merit is the only fair selection process. No doubt for good administration India needs able administrators at all level of government but at the same time reservation system does tend to detract from the required quality. Therefore, a proper reservation policy is needed. The purpose of this small paper is to examine the present reservation policy and to assess the impact of reservation on efficiency of administration.

II. Efficacy of Reservation:

History holds the testimony to the fact that over the century many sections of our caste-ridden society have been the victims of oppression and exploitation at the hands of the dominant groups in society. In such stratified society a particular segment of people had been denied the bare human rights. Their education, wages, living conditions, social status was dictated by the whims of upper strata of the society, reducing them to destitution. The economic backwardness brought social backwardness which consequently made them downtrodden and thus depriving them even of the dignity of life. It was natural that the upper castes were able to exploit the lower ones. Members of lower caste always suffered from discrimination in all areas of life. One of the worst impacts of caste system was that access to knowledge and learning was denied to the lower castes.

The founding fathers of the Indian Constitution felt that the caste system had subjected a majority of the population to severe social, economic, political, civil and even legal disabilities. The system needed to be abolished legally and constitutionally. The constitution made an elaborate provision to remove the

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disability arising from caste so as to enable a citizen to participate freely in the social, economic and political activities and attain fullest development of their personality. In pursuance of this assurance Articles 14, 15, and 16 have been enacted by the Constitution. Article 16(4) which is a facet of equality provision, provides that nothing shall prevent the state from making any provision for the reservation of appointment of posts in favour of any backward classes of citizen, which in the opinion of the state is not adequately represented in the services under the state. Therefore, the reservation was made on the principle of protective discrimination in favour of backward classes. It is a means to provide social justice to the victims of social discriminations. Article 15(4) empowers the state to make special provision for advancement of any socially and educationally backward classes of citizen or for Scheduled Castes (SCs) and Scheduled Tribes (STs).

At the same time Article 335 says that while considering the claim of SCs and STs for appointments, the maintenance of efficiency of administrations shall be kept in sight. This is a public good, which cannot be sacrificed. Article 46 says that the educational and economic interests of the weaker sections of the people can be promoted properly and liberally to establish social and economic equality. This has to be read with Article 15(4) but it would be extremely unreasonable to assume that in enacting Article 15(4) for advancement of SCs and STs, the fundamental rights of the citizens constituting the rest of the society are to be completely and absolutely ignored².

The use of the words maintenance of efficiency of administration has been made in Article 335 of the Constitution. The heading of part XVI in which this Article appears and the wording of the provision itself shows clearly that the claims of SCs and STs in giving them adequate employment in services and while doing so, weightage should be given to the efficiency of administration. Stress on the claims of the SCs and STs cannot be denied, but simultaneously, the state has been directed to take into account the efficiency of administration as well. This Article contains a single principle, the advancement of SCs and STs but through the modes and avenues which must not detract from the maintenance of efficiency in administration³.

III. Impact of Reservation on Administrative Efficiency:

Ever since *Rangachari case* it has consistently been insisted that reservations should not impair the efficiency of administration although some impairment of administrative efficiency is seen as inherent in the very idea of reservation. It is implicit in the idea of reservation that a less meritorious person is to be preferred to another who is more meritorious. Although unlike Article 335

2 M. Sridhar Acharya, *Quota system in Higher Levels of Employment, Education and exclusion of creamy layer*; 27 (3 & 4) 2000 IBR, p. 136

3 Harpal Kaur Khehra, *Job Reservation versus Efficiency of Administration*; CILQ 1990. p. 44

which is related to the SCs and STs only, Article 16(4) does not limit the state's power to make reservation consistent with the maintenance of the efficiency of administration yet the courts have imported the requirement of Article 335 as a broad notion of policy applicable to all reservations. It is in the public interest which is always paramount that reservations are compatible with the efficiency in services, but who should decide whether reservations are compatible or incompatible with administrative efficiency and what standard of efficiency is constitutionally required⁴?

In *General Manager, Southern Rly. v. Rangachari*,⁵ it was held that in providing for the reservation of appointments or posts under Art. 16(4) the state has to take into consideration the claims of the members of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. That undoubtedly is the effect of Art. 335. Reservation of appointments or posts may theoretically and conceivably mean some impairment of efficiency; but the risk involved in sacrificing efficiency of administration must always be borne in mind when any state sets about making a provision for reservation of appointments or posts. It is also true that the reservation which can be made under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In exercising the power under Article 16(4), the problem of adequate representation of the backward classes of citizens must be fairly and objectively considered and an attempt must always be made to strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration⁶.

In *M.R. Balaji v. State of Mysore*⁷, the Court struck down reservation of 68% for backward classes for admission into medical and engineering courses in the University. It said that the reservation under Articles 15(4) and 16(4) must be within reasonable limits. In *Jagdish Saran v. Union of India*⁸, in which 70% reservations for local candidates in PG admissions of medical course was struck down. Justice Krishna Iyer said in this case that "the first caution is that reservation must be kept in check by the demands of competence. The best talents cannot be completely excluded by wholesale reservation". In *N.M*

4 Parmanand Singh, *Equality, Reservation and Discrimination in India. A constitutional study of SCs and STs and Other Backward Classes*; Deep and Deep publications, D-1/24 Rajouri Garden, New Delhi (1985) P. 213

5 AIR 1962 S.C. 36

6 *Supra note 4*

7 AIR 1963 S C 649

8 *Ibid*

*Thomas case*⁹, all the seven Justices have uniformly insisted that a state employment preference must be consistent with efficiency of administration and even the majority of the Justices who voted for the impugned scheme they would strike down the preferential policy if they had concluded that it was inconsistent with administrative efficiency. In *A.B.S.K.Sangh (Rly) v. Union of India*¹⁰, it has been repeatedly stated by the Supreme Court that the paramount need is to maintain efficiency of administration. That is dictated by the common good, and not of a mere section of the people. This is primary and all else are subordinate. Therefore, whatever is done in considering the claims of the SCs and STs, must be consistent with the supreme need, the maintenance of efficiency of administration. A generally acknowledged and long established principle for securing an efficient administration is throwing open the doors to general recruitment, either directly or by promotion, where the governing criteria is excellence and the emphasis is solely on equality. The competitive best are collected regardless of equality. The competitive best are collected regardless of religion, caste, sex, descent, place of birth or residence¹¹.

In *Janki Prasad Parimoo v. State of Jammu and Kashmir*¹², it was held that in identifying backward classes, one has to guard oneself against including therein sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated. Moreover, where appointments and promotions to responsible public offices are made, greater circumspection is required in making reservations for the benefit of any backward class because efficiency and public interest must always remain paramount. In *State of M.P. v. Nevedita Jain*¹³, where admission to medical course was regulated by an entrance test called pre-medical test. For general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For SC/ ST candidates, however, it was 40% and 30% respectively. On finding the SC/ ST candidates equal to the number of the seats reserved for them did not qualify on the above standard, the government did away with the said minimum standard altogether. The government's action was challenged in this case under Article 15; Art. 335 had no relevance and were not applied. In the case of Article 16, Art. 335 would be relevant and any order of the lines of the order of the government of M.P. would not be permissible, being inconsistent with the efficiency of administration. The court held that in the matter of appointment of Medical officers, the government or the public service commission cannot say that there shall be no minimum qualifying marks for SC/ ST candidates while prescribing a minimum for others. It may be permissible for the government to prescribe a reasonably lower standard for the

9 AIR 1976 S C 490.

10 AIR 1981 S C 332

11 *Ibid*

12 AIR 1973 S C 930

13 AIR 1981 S C 2045

SCs and STs or backward classes— consistent with the requirement of efficiency of administration – it would not be permissible not to prescribe any such minimum standard at all. In *State of Kerala v. N. M. Thomas*¹⁴, Justice Ray the then chief Justice held that the power to make reservation, which is conferred on the state, under Article 16(4) can be exercised by the state in a proper case not only by providing for reservation of appointment but also by providing for reservation of selection posts. In providing for reservation of appointment or posts under Article 16(4) the state has to take into consideration the claims of the backward classes consistently with the maintenance of efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration¹⁵.

The Supreme Court in a 1985 decision in *K. C. Vasanth Kumar v. State of Karnataka*¹⁶ speaking through Mr. Justice O. Chinnappa Reddy has firmly and irrefutably put the merit argument to rest.

One of the results of the superior, elitist approach is that the question of reservation is invariably viewed as the conflict between meritarian principle and compensatory principle. No, it is not so. The real conflict is between the class of people, who have never been in or who have already moved out of the desert of poverty, illiteracy and backwardness and are entrenched on the basis of convenient living and those who are still in the desert and want to reach the oasis. There is not enough fruit in the garden and so those who are in want to keep out those who are out. The disastrous consequences of the so-called meritarian principle to the vast majority of the under-nourished, poverty-stricken, barely literate and vulnerable people of our country are too obvious to be started and, what is merit? There is no merit in a system which brings about such consequences. Is not a child of the SCs and STs 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 no T.V to watch, no one to help him with his home work, who goes to the nearest board school and college whose parents are either illiterate or so ignorant and ill-informed that he cannot even hope to seek their advice or any matter of importance, a child who must perforce trudge to the nearest public reading room to read a newspaper to know what is happening in the world, has not this child got merit if he with all his disadvantages is able to secure the qualifying 40% or 50% of the marks at a competitive examination where the children of the upper- classes who have all the advantages, who go to St. Stephen's College and have perhaps been specially coached for the examination may secure 70%, 80% or 90% of marks? Surely, a

14 AIR 1976 SC 490

15 AIR 1985 SC 1495.

16 AIR 1985 SC 1495

child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life.

Chinnappa Reddy, J, further said “the mere securing of high marks in an examination may not necessarily make out a good administrator. An efficient administrator, one takes it, must be one who possesses among other qualities the capacity to understand with sympathy and therefore, to tackle bravely the problems of a large segment of population constituting the weaker sections of the people; and who better than the ones belonging to those very sections. Why not ask ourselves why 64 years after independence, the position of the SCs and STs has not greatly improved? Is it not a legitimate question to ask whether things might have been different, had the district administrators and the state and central Bureaucrats been drawn in larger number from these classes? Courts are not equipped to answer these questions but the courts may not influence with the honest endeavors of the Government to find answers and solutions. We do not mean to say that efficiency or that it is a myth. All that we mean to say is that one need not make a *fastidious fetish* of it”¹⁷. In *Comptroller and Auditor General of India, Gian Prakash, New Delhi v. K.S. Jagannathan*¹⁸, it was held that the discretionary power conferred to the government by the Constitution through different Articles, it is transparently clear that it is discretion to be exercised in the discharge of constitutional duty imposed by Article 335 to take into consideration the claims of the members of the SCs and STs, consistently with the maintenance of efficiency of administration in the making of appointment to services and posts in connection with the affairs of the Union or a state. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker section of the people and in particular of the Scheduled Caste and Scheduled Tribes and to protect them from social exploitation.

Even Subba Rao, J, in his dissenting opinion in *T. Devadasan case*¹⁹ said that there is no conflict between Article 16(4) and Article 335, he said “it is inevitable in the nature of reservation that there will be a lowering of standards to some extent,” but he said, “on that account the provision cannot be said to be bad in as much as in this case, the state had as a matter of fact, prescribed minimum qualifications for appointment”. This view was, however not accepted by Krishna Iyer, J., in Thomas case. He said efficiency means, in terms of good governance not marks in examinations only, but responsible and responsive service to the people. A chaotic genius is a grave danger to public administration. The inputs of efficiency rule include a sense of belonging and of accountability if its composition takes in also the weaker segments of “We the people of India”. No other

¹⁷ *Justice, Chinnappa Reddy in K.C.Vasanth Kumar*, AIR 1985 SC 1495.

¹⁸ AIR 1987 SC 537

¹⁹ AIR 1964 SC 179

understanding can reconcile the claim of a radical present and the hangover of the unjust past.

In *Indra Sawhney v. Union of India*²⁰, it was held that it would be a misleading of Article 335 to say that the mandate is maintenance of efficiency of administration. May be, efficiency, competence and merit are not synonymous concepts, may be it is wrong to treat merit as synonymous with efficiency in administration and that merit is but a component of the efficiency of an administrator. Even so the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time we recognize that this much cost has to be paid, if the constitutional promise of Social Justice to be redeemed. We also firmly believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with- and may, in some cases, excel- members of open competitor candidates²¹. It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are antimeritarian. Merit there is even among the reserved candidates and the small difference that may be allowed at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency along with others²².

The Court further held that there are certain services and positions where either on account of the nature of duties attached to them or the level in the hierarchy, at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations²³ like, technical posts in research and development organization departments / institutions, in specialties and super-specialties in medicine, engineering and other such courses in physical sciences and mathematics, in defense services and in the establishment connected therewith. Similarly in the case of posts at the higher echelons e.g., Professors (in education), Pilots in Indian Airlines and Air India, Scientists and technicians in Nuclear and Space application, provision for reservation would not be advisable. The court opined that in certain services and in respect of certain posts, application of rule of reservation may not be advisable for the reason indicated herein before. The list given above is merely illustrative and not exhaustive. It is for the government of India to consider and specify the service and posts to which the rule of reservation shall not apply. The court said that the services / posts enumerated above, on account of their nature and duties attached are such as call for highest level of intelligence, skill and excellence. Some of them are second

20 AIR 1993 SC 477

21 *Ibid*

22 *Indra Sawhney v. U.O.I.*, AIR 1993 SC 477, Para 111

23 *Ibid*

level and third level posts in the ascending order. Hence, they form a category apart. Reservation therein may not be consistent with efficiency of administration contemplated by Article 335²⁴.

In *Ajit Singh Januja v. State of Punjab*²⁵, the Supreme Court held that the policy of reservation cannot be implemented in a manner to block the merit channel and to make it dry. It is so heartening to note that for whom the founding fathers introduced the provision for reservation to protect and encourage entry in service, now are able to enter into services on their own merit by competing with candidates of general category. The Court further held that when framers of the Constitution by Article 16, guaranteed equality of opportunity in matters of public employment, they aimed at combining democratization with efficiency. In the process of democratization Article 16(4) enabled the state to make provisions for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state is not adequately represented in the services under the state. As has been pointed out by this court that Article 335 of the Constitution enjoins to take into consideration the claims of the members of the SCs and STs consistently with the maintenance of efficiency of the administration. While the making of appointments to services and posts in connection with the affairs of the Union or of a State. Thus it has been conceived by our Constitution that a process should be adopted while making appointments through direct recruitment or promotion in which the merit is not ignored. For attracting meritorious and talented persons to the public services, a balance has to be struck, while making provisions for reservation in respect of a section of the society. This court from time to time has been issuing directions to maintain a balance in the public services so that there should not be discontentment, heart burning and frustration, which can never be held to be in the larger interest of the society. The court again said and warned by saying that “all concerned who are involved and interested in the upliftment and growth of the nation have to work out a system by which the injustice done to a section of people in our society at certain period of history can be rectified by providing protections to their descendants but we have to be conscious, at the same time that the efficiency of the administration of the country is not harmed and there is no reverse discrimination.

According to Mr. *G.P. Verma*²⁶, reservation would mean that a sizeable percentage of engineers, doctors, judges, administrators are of unproven merits and of sub-standard efficiency. By reserving jobs the country may not be getting what it should desire for, as normally a person of such lower intellects is chosen for a better one simply because the former belongs to the reserved quota, regardless of whether he deserves it or not. This may be highly undemocratic and injurious to

24 *Indra Sawhney v. U.O.I.*, AIR 1993 SC 477.

25 *AIR 1996 SC 1189*

26 Quoted in Harpal Kaur Khehra, *Job Reservations versus efficiency of administration* : CILQ 1990P.46

the efficiency of the nation and as such is not justified by any argument. Such a policy which causes suppression of merit by other factors may lead to gross inefficiency and may ultimately stagnate all government work. It may also amount to fraud on the Constitution which unequivocally speaks that the claims of the members of the SCs and STs shall be taken into consideration consistently with the maintenance of efficiency in administrations²⁷.

IV. Relation of Merit and Efficiency:

According to the meritarian principle of distribution, which can be traced back to Aristotle and was at its peak during the nineteenth century under the influence of individualistic thinkers, social goods should be allotted on the basis of one's merit or ability, whether natural or acquired. Leaving aside the general intricacies in the application of the principle, in such matters as admission to institutions of higher education or appointment to state services, it will require that the candidates are selected on the basis of their individual merit, i.e. their ability in terms of achievement of certain grades or marks, in an objective tests – generally a test of intelligence plus knowledge – held for that purpose. Supporters of this principle claim that it assumes best justice in so far as it allocates the rewards or goods on the basis of an objective criterion having nothing to do with such personal characteristics of an individual as his birth, race, colour, sex, castes etc. they say that it also satisfies the justice percept of “treat like cases alike and different cases differently” in so far as it provides a criterion of immediate relevance to the good to be distributed. This principle assures the selection of the ablest persons from amongst a large number for the limited goods or opportunity available for distribution. It also assumes a strong society and its overall progress in so far as it provides incentive for hard work and the development of superior mental and physical capacities²⁸.

Though on their face these arguments appear to be attractive, a close examination will expose that they suffer from a number of serious weaknesses. To begin with, the notion of merit itself is not as objective as it might appear. It is rather subjective. What is merit? Merit has no fixed or definite meaning free from variations. It is nothing but a criterion to achieve some pre-determined social objective or value or to satisfy certain perceived social need. It does not control the objective, value or need, but is controlled by them.

Thus the merit must vary according to the variations in the social objective, value, or need set for achievement or satisfaction. For example in a society suffering from under-population due to long term war or any other reason, production of more children may be a merits and parents may be rewarded for producing more children because the society needs an increased growth of population. Production

²⁷ *Ibid*

²⁸ M.P. Singh, *Jurisprudential Foundation of reservations*. 17 (3 & 4) : 1990 & Vol. 18 (1): 1991, IBR p. 248.

of more than one or two children may, however, become a demerit in an over populated and under developed society. Similarly, high grades or percentage of marks in educational examinations may be a merit for teaching assignment because the object is to have intellectually sound persons, but for a police or defence job where predominantly, physically strong men are needed, physical strength and not the grades in examinations may be the merit²⁹.

This analysis of merit leads us to two conclusion, first, since merit is dependent upon the value, goal, or the objective to be achieved, a society or the dominant group in a society may set such objectives or goals for which the members of that group are most suitable and thus use the opportunity objective – looking criterion of merit to exclude other groups from the social good. For example, a warrior class or race in power may say that they need physically strong and well-built men in all walks of public life and administration and accordingly all positions will be filled on the basis of physical strength or powers. On the face of it physical strength appears to be an objective criterion, but in fact it may, as has been illustrated by Mathew J, in Thomas case result in constant and uniform exclusion of the under nourished and the poor from these positions because there is a close proximity between being well fed and well built and between under – nourished and weak.

Since, merit is determined for serving the perceived social needs or values, of the day, satisfaction of such needs is the end and merit is simply a means to achieve that end. For example, efficiency in public administration may be an end and to achieve that end standards that may ensure such efficiency may be set as merit. A society may find that having met the ordinary common needs of the community, it needs highly intelligent and sophisticated doctors, engineers or lawyers to meet the special needs. To achieve that end it may decide that to these courses persons must be admitted solely on the basis of their intelligence measured through a pre-admission test or on the basis of marks or grades achieved in the previous school examination or both. Conversely, a society may find that it does not need as much intelligent and sophisticated doctors, engineers, or lawyers, as it needs the ones who can serve the day to day ordinary needs of the rural and tribal people and may accordingly decide that persons to these courses should not be admitted on the basis of intelligence alone, but also on the basis of their suitability to serve the rural and tribal people. If the society finds that persons with urban or affluent background are not suitable for the job because of attitude towards them, it may decide that persons with rural or tribal poor background only will be admitted to these courses or that preference will be given to them. Thus while in the first case intelligence is the merit for becoming a doctor, engineers or lawyer, in the second rural or tribal poor background acquires priority over intelligence and becomes merit³⁰. These examples should leave no doubt that merit varies with the variance

²⁹ *Ibid* at 249

³⁰ M.P. Singh, *Jurisprudential Foundation of reservations*. 17(3 & 4: 1990 & 18 (1): 1991, IBR p. 248.

in the social needs. A society has to first determine and find out its needs and then determine the best means to ensure their satisfaction. It cannot talk of merit in the abstract.

V. Conclusion and Suggestions:

A society like ours which is under a constant and serious threat of disintegration because only certain classes or groups are dominating in every walk of life leaving no place or even hope for the rest of the classes or groups may find that keeping the society together is much more important than high standards of efficiency and accordingly it may look for the means that ensure its integration and prevent disintegrations. One such means may be larger induction of excluded groups in all walks of public life so that they also develop a sense of involvement and stake in the present social arrangements. Operationalisation of this means may temporarily require reservation for the excluded groups: whether the reservation should be one hundred percent or less is a matter for determination, but whatever method is adopted, membership of an excluded groups and not intelligence, becomes the merit for selection to the seats in educational institutions and positions in public services. A society must make this kind of decision on the basis of clearly and objectively ascertainable facts test the decisions should lead to injustice, bad-blood and even quicker disintegration but that is a different matter altogether. What is necessary to be remembered at this juncture is the fact that merit changes with the context and that it is simply a means to achieve certain ends and not an end in itself³¹.

Again the so-called merit related to talent is not necessarily something which proves the superiority of one individual over another in terms of effort or diligence. It depends on a number of factors which one cannot influence in spite of one's best efforts and lie beyond one's control. Researches have established that intelligence is mainly determined by heredity – specifically that about 80 per cent of the vacancy in IQ scores is genetically determined. Professor Eysenck says that 'talent, merit ability' are largely innate factors. In addition to genetic factors, talent is also conditioned by environmental factors and their interaction with genetic factors. This is clear from Jensen's assertion that "something between one half and three fourths of the average IQ difference between American Negroes and whites is attributable to genetic factors, and the remainder to environmental and their interaction with the genetic factors". Even where heredity is the same as in identical twins, if the social environment is allowed to vary, remarkable differences sometimes occur. Finally IQ is also dependent upon motivation and motivation to a great extent depends upon social environment which shapes future hopes, expectations and prospects.

31 M.P. Singh, Jurisprudential Foundation of reservations. 17 (3 & 4): 1990 & 18 (1): 1991, IBR p. 250

Thus, if merits depends upon a number of factors beyond one's control, is it not as much suspect as race, caste, religion, sex or colour for the purposes of classification or allocation of social goods? We do not suggest that merit must out rightly be rejected as criterion of social justice but who argue that merit should be the sole and exclusive criterion, should not forget to take into account the factors that constitute it. If we cannot provide uniform conditions of living and development to all, we have no reason to prefer the advantaged over the disadvantaged, such arrangement in prima facie unjust in so far it ensures perpetual advancement of the former and condemnation of the latter. Many times the nexus between what we consider merits and the social objective that we want to achieve through it is grossly inadequate. For example, admission to law or medical classes on the basis of pre-law or premedical school scores does not necessarily assure that the best future lawyers or doctors that will best serve the need of the society are admitted. The admission criterion does at the most assure a good class room or examination performance. It is equally true about the tests administered for the purpose of recruitment to various public services. The test may at the most assure that the most intelligent persons are selected but do not necessarily assure that they are the most suited persons for the job³².

In view of these weaknesses of the meritarian concept of social justice and the injustice which it has led to in the past, its importance should not be over emphasized. No insistence upon it will be fair without a careful examination of the dimensions of merit and its role in different walks of our social life. We cannot talk of merit in isolation³³.

If we carefully examine the relevant provisions of the Constitution viz. Articles 15, 16, 46 and 335, we shall notice that the Constitution makers attached great importance to efficiency in administration and wanted it to be unaffected by the policy of reservation. They wanted that candidates belonging to SCs and STs as well as other backward classes should be properly equipped by financial help and special training etc. so that they may be able to face a fair and open competition with the candidates of the general category. The special provision referred to in Article 15(4) and provisions of Article 46 are meant to achieve this end. In fact Article 46 is more liberal than Article 15(4) in the sense that by using the words "weaker sections", it includes within its scope the poorer section of the general category³⁴. From Article 335 it appears that the Constitution makers apprehended fall in efficiency due to induction of candidates belonging to SCs and STs on reserved posts. They further realized that in view of their special concern for the educational and economic interests of the member of the SCs and STs as expressed in Article 46, it may be necessary to lower the standard for their admission to

32 Supra Note 31

33 Ibid at.252

34 S.M.N. Raina, *Reservation with Justice, CILQ 1990, p. 17*

professional college such as medical and engineering colleges and this may also have an adverse effect on administrative efficiency of the services in which they are appointed on reserved posts. They therefore, lay it down in the said Article that while taking their claims into consideration, maintenance of efficiency of administration should be kept in view. It therefore, follows that while determining the number of posts to be reserved for them in a particular branch of services, the nature of the service should be taken into consideration to see how far dilution of efficiency in such service would be harmful to public interests. Similarly the lowering of standard for SC and ST candidates for admission to professional colleges such as Medical colleges and Engineering colleges should be with due regard to high degree of proficiency required for the Medical and Engineering Services. The lowering of standard, if at all necessary should be from 40% to 35% and not more than that, so that efficiency of such services may not be adversely affected³⁵.

It is submitted that when a state provides reservations it may be presumed that it has kept in view the efficiency factor into account and the judges are very less equipped to decide on this issue. They can simply set Constitutional limitation but have to leave the state to do the required balancing, but if the courts undertake the review of this kind they have also to do a delicate balancing of the claims of meritocracy with the claims of backward classes to have more share in the administration and the national interests involved in the efficiency in service and in such balancing the courts must answer the questions of unfair burdens and stigmatizing effect as those adversely effected. It may be assumed that reservations and other preferences will inevitably injure some individuals – this is implicit in the very idea of compensatory treatment. It is equally evident that the compensatory schemes should always seek to balance the preservation of the moral and incentives of the non-favoured employees, the needs of efficiency and the claims of backward classes. Reservation cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees and the public interest involved in efficiency of administration³⁶.

It is submitted that the mere existence of a provision for reservation does not necessarily result in the impairment of administrative efficiency or adversely affect those who are excluded unless the members of the backward classes are really represented in services. The question of efficiency of administration, the quantum of preferences, and the problem of unfair burdens and stigmatizing effect on the non-beneficiary classes closely related to the question of who should be designated as the backward class and what criteria should be applied for selecting the legitimate beneficiaries. The claims of merit and efficiency, it is submitted, is impugned more by the present trend to create more and more beneficiary groups under the communal and the pressure for winning political supporters. The

35 Supra Note 33

36 Dr. Parmanand Singh, *Equality, Reservation and Discrimination in India*. Deep & Deep Publication, D-1/24 Rajouri Garden, New Delhi.

grumblings, the grievances and resentment are more against the political extension of the compensatory schemes to the non-deserving groups. This can be checked only by reducing the number of beneficiary groups and confining the benefits only to those who really deserve. The efficiency in service is not affected even by the size of reservations unless there are sufficient capable candidate to enjoy reservation³⁷. Bearing in mind that the backward classes need upliftment, what appears to be necessary is increased concentration on education and financial assistance to backward classes. The purpose of the approach should be to bring these backward classes to the stage where they can take off in open competition with others in education as well in employment³⁸.

³⁷ *Dr. Parmanand Singh, Equality, Reservation and Discrimination in India. Deep & Deep Publication, D-1/24 Rajouri Garden, New Delhi.*

³⁸ *Ibid.*