

Reservation System of Judiciary in India

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Abstract:

Law does not discriminate, it sees no gender or caste for that matter of fact, as it is projected by lady allegorical which personifies the moral force of judicial system. Her elements are a balance, a blindfold and a sword. A blindfold because it signifies that justice is blind towards outwardly world, it is objective and never biased, and so it should be throughout the world.

Indian people have been suffering this discrimination since the very beginning. This paper focuses on the reservation system present in the Indian Judiciary. And discusses about the various evidences that have come to light regarding this matter. Objective of writing this paper is to create awareness and condemn the biasness to which society is suffering. If the institution which provides justice will get tainted nothing more could be done to save the constitution of India.

Keywords: Indian legislation, Reservation system, Caste Bias, Law.

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INTRODUCTION:

India the country of democracy which runs successfully with the support of three wings namely legislature, executive and judiciary which are meant for transparency of their action to the public. But, in present days the purpose of its formation was only successfully performed by judiciary which is meant for its transparency. So as for its action the judiciary is considered as the guardian of supremacy of the constitution¹, as its already mentioned the judiciary is known for its transparency, but it's not so for all the cases, the mentionable one is the appointment of judges where even the list of members took place in the selection list of judges appointment was also not revealed, for which the reason provided as is for the scope of secrecy and security issues by the committee members but their also the conflict opinion for this opaque nature of the selection committee as its to avoid the early quires with respect to the policy of reservation which remains as the common request put forth by the members of judiciary as well as by the executive from the long decades of time. This paper mainly concern to establish the reason for which the reservation system was not provoked in our country, especially in the higher judiciary where the system of reservation was completely revoked as the statement mention the complete revocation in higher judiciary what is the status in subordinate judiciary? This was explained with the help of constitutional laws and cases. As its mentioned the reservation as the common request by judiciary and executive, the reason for their request may varies with respect to their own common welfare as it's the needy point for the Indians to raise

for some common issue which was also explained in this project which the historical coverage of decision flow of cases and the constitutional debates.

HISTORY COVERED BY INDIAN JUDICIARY:

In India the term court was introduced by British empires during their rule in India, the courts which prevails in the earlier stage was the Mayor and Adalat court and the appeal from this courts where heard in privy council due to the status changes from British empire to Indian country the Privy council was replaced by the High court and supremacy over which was granted to the Supreme court².

As the history clearly explains our country is famous for its caste based discrimination from the British period or even before the judiciary is considered as supreme and not available for all caste groups which restrict the applicability of reservation system from the past and the decisions with respect to judiciary was always taken by some supreme person who remains unquestionable from the ancient time. As we know the law is the derivative of human life practices the same acts became provisions in the legal form, the supreme person became president and his decisions remains unquestioned over some period of time. As the history is known for the study of past the unquestioned power of president was also became history which was clearly explained in the further chapters. The policy of reservation in the judiciary remains unachieved even time passes by and the historical proof for the voice for reservation in judiciary was the Constitutional

¹ Pandey.J.N, '*Constitutional law of India*', (52nd edition, 2015), Central Law Agency, Allahabad, Pg- 522.

² Gandhi.B.M, '*Landmark in Indian Legal and Constitutional History*', (10th edition, 2012), Eastern Book Company, Lucknow.

assembly debate 1949³ which was also explained further. As this chapter covers history of judiciary one of the mentionable case law is Union of India vs S.P. Anand⁴ in which the petitioner filed the writ with respect to Article- 130 the decision made in this case law explains the supremacy of the chief justice as they were not under the power flow of high court to make decision upon them (Article- 226) this historical judgment explains the discretion of power between the center and the state.

DIVISION IN JUDICIARY AND APPOINTMENT OF JUDGES:

As mentioned the judiciary is considered as the guardian of the supremacy of constitution as like the government is divided as central and state for the purpose of its effective functions the judiciary was also divided as the higher and subordinate judiciary. Higher judiciary comprises of High court and Supreme Court where the subordinate judiciary comprises of district courts and state level courts.

As per the division of judiciary the system and functions of judges appointment was also varies. Generally the judges were categorized as below as follows for the purpose of their appointment,

1. Chief Justice of India
2. Judges in Supreme Court
3. Chief Justice of High Courts

4. Judges in High Courts
5. Judges of District and Sessions Courts

For your convenience let us make the categorization as the appointment of judges in Supreme Court, High Court and District and Sessions Courts (Subordinate Court).

SUPREME COURT:

Generally there is the bind-age between the custody of constitution and the historical procedure of judiciary⁵ may be for this reason or not so till today the judges appointment was followed as per in our constitution with respect to Supreme Court judges appointment the provisions were mentioned in Article- 124 were it was mentioned as the Supreme Court judges shall be appointed by the president on the recommendation of NJAC with reference to Article-124 A⁶ the system of which was completely revoked by Supreme Court as the result of writ petition filled by supreme court advocates on record association and others against the Union of India⁷ which was explained in the separate chapterisation. Within the provision of Article- 124 it includes the appointment of Chief Justice of India as well as Supreme Court judges.

CHIEF JUSTICE OF INDIA:

The Chief Justice of India is appointed by the president with the consultation of such judges of the Supreme Court and the High Court as he deems necessary for

³ 'Constituent Assembly Debate', 1949, Vol-XI, <http://parliamentofindia.nic.in> , Accessed on 12/03/2017.

⁴ *Union of India vs S.P.Anand*, 7 Aug 1998, SC.

⁵ Kirpal.B.N, 'Supreme but not infallible', (6th edition, 2013), Oxford University Press, New Delhi, Pg- 16.

⁶ The Constitution of India as amended by The Constitution Act, 2015.

⁷ *Supreme Court Advocates on Record Association vs Union of India*, Writ Petition (Civil) No. 13 of 2015.

the purpose. To attain this discretionary power between the judges and president the judiciary crosses varies case laws as in earlier the appointment power of chief justice was completely vested in the hands of president as the constitution was interpreted as so and the practice of the system of seniority was also there. These two practices changes by in time flow, the absolute power to the president was cut down by the judgment of G.P. Gupta case which is popularly known as Judges Transfer case⁸, in which the decision was made as the term consultation in Article- 124 needs to be meant as same in Articles- 212 and 222. (Consultation- not the absolute power vested with president its discretionary power between executive and judiciary) and the second one with respect to seniority was criticized in the law commission report as the judges appointment need to be on merit basis and not on the basis of seniority⁹ but the appointment was still based on seniority.

SUPREME COURT JUDGES:

In present day the judges were appointed through the collegium system which consists of Chief Justice of India, four senior most judges of Supreme Court but the system of appointment was not so in past as it's based on Article-124(2) the appointment was based on the opinion of president and there is no discretion in his power until the decision was laid out in the Judges Transfer case.

In Supreme Court the judges were not appointed based on reservation (caste based) system.

HIGH COURT:

As the part of higher judiciary the system of reservation was also revoked in High Court and the appointment was based on seniority.

CHIEF JUSTICE OF HIGH COURT:

Article- 217 provide provisions for the appointment of High Court judges in which the Chief justice of High Court was also in part of it shall be appointed by the president as provided in provision. As its clear that the judges are selected through collegium system the absolute power of president became discretionary, as in case of Article-124 the Article-217 was also interpreted as like the meaning in Article- 212, 222 as the result of S.P. Gupta which was already discussed in the Supreme Court part. There is some additional change in the collegium system where along with the Chief justice of India, four senior most judges of Supreme Court, three members of concerned High Court was also taken into consideration.

HIGH COURT JUDGES:

The judges of High Court were governed by the provision in Article-217 and the collegium system function for their appointment procedure. For the appointment of these judges the chief justice opinion was considered as the prominent and superior one, which was held in SC Advocates on record vs Union of India¹⁰. The judgment in this case was considered as the historic judgment and this case over ruled the provisions in S.P. Gupta case as the result of which the chief justice opinions were considered prior before the collegium.

SUBORDINATE COURTS:

⁸ *S.P.Gupta vs Union of India*, AIR 1982 SC 149.

⁹ *Law Commission Report*, 1956.

¹⁰ *Supreme Court Advocated on record vs Union of India*, Writ Petition (Civil) 1303 of 1987.

As it's mentioned the system of reservation was only revoked in higher judiciary and that policy does not prevail in subordinate judiciary, the provision which made the difference in judicial appointment between higher and subordinate judiciary was the result of Article- 233 where it is mentioned as the district court judges appointment shall be made by the governor of the state in consulting with the high court exercising jurisdiction in relation to such state. The term "such state" made difference between the procedural functions of higher and subordinate judiciary which was interpreted as per the policies of the state. Thus the central government or the revocation system in higher judiciary does not affect the reservation policy in the subordinate courts and the principle was based on the discretion of state legislature. And there is no way a chance in the revocation of reservation policies in the subordinate courts as they were governed by state policies as it's the issue of vote bank. The mentionable state for such provision is Bihar where 50% reservation in judiciary was in practice (caste based quota which includes women also) which was approved by the state legislature in the year 2016¹¹.

RESERVATION SYSTEM IN JUDICIARY:

This project mainly concern the two types of reservation,

1. Caste based reservation
2. Women quota

¹¹ Santosh Singh, '50% Reservation in Bihar Judicial services, women quota remains', <http://indianexpress.com> , Updated- Dec 28, 2016 , IST 18.59.

¹² Maneesh Chhibber, 'For last 6 years no scheduled caste judge sent to supreme

In India the system of reservation was completely revoked in higher judiciary which does not even considered the continuous request of reservation either to its eye sight. This situation results in the caste domination and discrimination in the higher judiciary. The mentionable facts to support this point were, the first one article released in Indian Express¹² where its mentioned as in the past 6 years history of supreme court it does not even come across even with single scheduled caste judge which remains as the proof for caste domination in the higher judiciary as the result of revocation of reservation. Another mentionable one is the interview of J.Kannan¹³ who makes his point that he is discriminated in the group of judges based on his caste for which the authentic record which results to make this statement may not be in presence but it's the statement of judge which cannot be left as such as. These mentioned points remain as the proof or the supportive point to support the statement as the revocation principle reservation results in caste domination and discrimination.

PROCEDURE WITH RESPECT TO SUBORDINATE JUDICIARY:

As it's mentioned in the previous chapters the reservation system with respect to judiciary in subordinate courts were determined by the state principles and the judges in the district courts were appointed by the governor of the state in consultation with the high court¹⁴. Generally the appointment of

court', <http://indianexpress.com> , Updated- May 30, 2016, 08.24 IST.

¹³ Suresh Kumar.D, 'Justice Karnan judicial journey', <http://thehindu.com> , Updated- Sep 2, 2016, 16.53 IST.

¹⁴ Article-233, The Constitution of India, as amended by The Constitution Act, 2015.

judges in the subordinate judiciary mainly or in other words indirectly concern with the appointment of judged in district court. The Validity of this principle of reservation in subordinate judiciary was also explained by a recent article in which it was mentioned as the centre considering the caste based reservation quota in the appointment of district court judges¹⁵ which may be as the cause for vote bank but the declaration was valid and authenticated one.

Now with respect to explain the state reservation policy in subordinate judiciary this project mainly considered the states Tamil Nadu and Bihar to explain the varying reservation policies between the states and its different between the procedural principles in higher judiciary.

TAMIL NADU:

Tamil Nadu, which is one of the state mentioned to explain the state policies towards the reservation policies in subordinate judiciary, in which the fact was explained by the state enacted laws,

1. Tamil Nadu state judicial service rule, 2007
2. The Tamil Nadu state and subordinate services rule 2011

CASTE BASED RESERVATION:

In Tamil Nadu state judicial service rule it was mentioned as the reservation policy of appointment will be considered for the judges appointment in

subordinate judiciary which shall apply to the selection for appointment to the posts of District Judge (Entry Level) and Civil Judge by direct recruitment¹⁶.

In Tamil Nadu state and subordinate service rule the proceedings for the above mentioned rule was clarified with general rule 21(b) and 22 in this two 22 was based on caste based reservation which was worded as,

“The unit of selection for appointment, for the purpose of this rule, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward Classes, and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit: Provided that if even after filling up of the required appointments or posts reserved for Arunthathiyars amongst the Scheduled Castes in Schedule III to this part, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the other Scheduled Castes in the inter-se-merit among them and if any appointment or post reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars”¹⁷.

¹⁵ Satya Prakash and Singh D.K, '*Centre considering SC/ ST and OBC quota in appointment of District Judges*', <http://hindustantime.com> , Updated: Oct 18, 2016, 07.48 IST.

¹⁶ 10, Reservation of Appointments, Tamil Nadu state judicial service rule, 2007,

<http://cms.tn.gov.in> , accessed on 20/03/2017.

¹⁷ 22, Tamil Nadu state and subordinate service rule, 2011, <http://tnpsc.gov.in> , accessed on 20/03/2016.

WOMEN RESERVATION:

In Tamil Nadu state and subordinate service rule 21(b) explain about the women reservation specifically under the header Appointment of Women which was worded as,

“(a) Women alone shall be appointed to post in any institution or establishment specially provided for them; Provided that men may be appointed, if suitable and qualified come are not available for such appointment.

(b) A minimum of 30 percent of all vacancies which are to be filled through direct recruitment shall be set apart for women candidates irrespective of the fact whether the rule of reservation of appointments applies to the posts or not. In respect of the posts to which the rule of reservation of appointments applies, 30 percent of vacancies shall be set apart for women candidates following the existing reservation for Scheduled Castes and Schedules Tribes, * Backward Class Muslims, Backward Classes, *Most Backward Classes/ * Denotified communities and \$ General Turn. Women Candidates shall also be entitled to compete for the remaining 70 percent of vacancies along with male candidates.”¹⁸

BIHAR:

The state which passes the approval order for 50% reservation in the judiciary¹⁹ both in subordinate and superior services recently in the year 2016 which also includes the women reservation quota in it, this

decision by the legislative assembly of Bihar was addressed as the historical decision by the cabinet secretary of that assembly Mr. Brajesh Mehrotra and he mention that this decision was the result of case law Bihar vs Dayanand Singh which was explained below.

RESERVATION CATEGORIZATION (caste based and women)

Now with respect to reservation the percentages with respect to quota are 21% for EBC's, 12% for OBC's, 16% for SC's and 1% for ST's and 35% for women in general, in previous case it was followed as 27% reservation with respect to subordinate services and no mention about the superior services, the present day consideration of superior services was because of the decision in Dayanand Singh case.

BIHAR VS DAYANAND SINGH CASE²⁰:

In this case the sub division of subordinate judiciary was clarified as it consists of subordinate servicers and superior servicers and the case also explain that the state principles over judiciary was also directly exceed to superior services which withheld the previous practice in which the principles extend only to the subordinate services and this is the case law which explain that the state principles also extent to the judiciary and its applicable as the procedure and consideration for the appointment of judges which was explained along with the state policy towards

¹⁸ 21 (a), (b) Tamil Nadu state and subordinate services rule, 2011, <http://tnpsc.gov.in> , accessed on 20/03/2017.

¹⁹ Santosh Singh, '50% Reservation in Bihar judicial service, women quota remains',

<http://indianexpress.com> , Updated: Dec 28, 2016, 18.59 IST.

²⁰ *State of Bihar vs Dayanand Singh*, 29, Sep 2016, SC.

reservation briefly along with the Indhra Sawhney case. In this case law mainly three important decisions were mentioned with respect to case laws.

1. The principles laid down by the state also extends to the judiciary which was concern with their appointment issue also which was decided in the case law State of Bihar vs Bal Mukund Sha²¹.
2. The appointment of judges in the subordinate court was based on the governors discretion with the consultation of high court along with such laws, in which the state policies have its own importance where as in this case law it was mentioned as there exists the invisible bind-age between the high court and the state policy in determining of the validity of the constitutionality of laws enacted by state legislature.
3. The important decision laid out in the Dayanand case was the grantation was granted to The Bihar Reservation of Vacancies in Post and Services Act 1991 which provide the equality of opportunity and availability of state laws both to the subordinate and superior services in judiciary which cleared the fact that the reservation policies shall also apply to direct recruitment to the post Civil Judge and in this case law "The impugned Notification No.6067 dated 25th June 2009 issued in respect of the Bihar

Civil Services (Judicial Branch) (Recruitment) Rules, 1955, and the Notification No.6069 dated 25th June 2009 issued in respect of the Bihar Superior Judicial Service Rules, 1951 are quashed and set aside.

APPOINTMENT SYSTEM IN JUDICIARY:

In Indian judiciary, the system of practice which was and being followed for the appointment of judges in judiciary was the,

1. Collegium system
2. NJAC system

Among this two the system of collegium was still now in practice where as the system of NJAC was quashed by the Supreme Court and the reasons for which was discussed below.

COLLEGIUM SYSTEM:

Collegium the system which was being followed in the Indian judiciary from 1990's and the system of appointment of judges was famously called as judges selecting judges system²², which consists of its own historical incidents behind it.

FIRST JUDGES CASE:

In initial practices the judges were appointed as per the decision of president of his own with the constitution validity by the usage of Articles- 124(2), 217. In these Articles the terms 'consultation' was mentioned as per which for the appointment of high court judges the chief justice opinion was recognized as the result of

²¹ *State of Bihar vs Bal Mukund Sha* (2000) 4 SCC 640.

²² Akash, '*The Collegium System*', <http://theindiatimes.com> , Updated: Oct 16, 2015, 11.26 IST.

concurring opinion in the practice of considering chief justice opinion the important of his wordings was reduced and he was considered as one of the functionaries among three members group namely,

1. Chief Justice of India
2. Governor of State
3. Chief Justice of High Court

Even then the president power remains unquestioned and it seems as the end or disturbance for the policy of judicial independence and the supremacy of the Supreme Court was diminished as the result of this proceeding which was held in *S.P. Gupta vs Union of India*²³ case.

SECOND JUDGES CASE:

The question of executive intervention in the judiciary was arose and the situation was considered as against the independence nature of judiciary, the point of which was justified by mean of Article- 50 of DPSP in which it was mentioned as the it speaks about the separation of judiciary and executive and excluded any executive say in the matter of appointment to safeguard the “Cherished concept of independence”. As the result of the arose of question the concept of collegium was recommended by the supreme court in the case law *The Supreme Court Advocates on Record Association vs Union of India*²⁴ in which the executives were asked to consult with the Chief justice and two of his colleagues for the appointment process

and asked to considered their opinion as majority one and asked to relay on it to the maximum extent.

THIRD JUDGES CASE:

This incident was considered as the third judge’s case for name sake but it’s actually not a case law but the opinion given by the then president of India R.K. Narayanan about the enactment of constitutional validity for the collegium system in which he used his constitution power which was granted to his in the provision of Article- 143 for the enactment of constitutional validity of the system. The incident of which was covered in the year 1998 and the third judges case was known as *In Re: Under Article-143(1) of the constitution vs Unknown*²⁵.

NATURE OF COLLEGIUM:

The collegium system generally functions to satisfy the basic requirement as to maintain the independence of judiciary which serves the purpose of appointment of judges in the constitutional courts with the reference of Supreme Court. For the judges appointment in High Court the collegium consists of,

1. Chief Justice of India
2. Four senior most judges in Supreme Court
3. Three members of the concern court

Even though it was mentioned as for the appointment of judges in the constitutional courts the term Collegium was no were mentioned in our constitution

²³ *S.P. Gupta vs Union of India*, 30 Dec 1981, SC.

²⁴ *The Supreme Court Advocates on Record Association vs Union of India*, 6 Oct, 1993, SC.

²⁵ *In Re: Under Article-143(1) of the constitution vs Unknown*, 28 Oct, 1998, SC.

and the same in case with Chief Justice even his supremacy was not mentioned in the constitution and his supreme power was just derived from the practices.

NATIONAL JUDICIAL APPOINTMENT COMMISSION (NJAC):

NJAC the system which was introduced for the purpose of appointment of the higher and lower judiciary as the alternative to the system of collegium which was in practice for appointment purpose from 1990's. NJAC was amended as the bill form in the 2014 as its accepted by both the houses of the parliament and the amendment was also made in the 99th schedule of the Indian Constitution but as the result of Supreme Court order for the quash of this system not even the single judge was appointment based on this amendment and with respect to constitution the changes were made in Article- 124 in which A, B and C were added for this procedure.

REASONS FOR QUASH:

The reason for the quash of NJAC system was mainly because of its intervention nature of executive in the independence of judiciary which was clean by the list of its functionaries, the commission consists of,

1. Chief Justice of India
2. Two other senior judges of the Supreme Court
3. Union Minister of law and justice
4. Two eminent person (one from the minority group/ women)

In this group the chairperson was the ex officio.

FROM THIS LIST:

- From the list it was made clear that even if the chief justice and one among the senior judge remain unvoiced for the decision or act of the commission it does not affect the act as the decisions were mainly based on majority and the intervention of executive is again the constitutional validity.

- The chairperson of this commission was ex officio and the supremacy of the chief justice was defamed.

SUPREME COURT DECISION²⁶:

As the result of continuous writ petitions filed in the Supreme Court the initiation of NJAC process was stopped by the then chief justice of India through the letter addresses to the President and the suit was serious in the trail in which the collection of writs were also considered at the same time and the system of NJAC was quashed by the Supreme Court and the reasons were mentioned as follows,

1. The major reason was as the system was against the independence nature of judiciary.
2. The chairperson of the commission was ex officio and not the chief justice of India.
3. Intervention of executive in the judicial decisions, which was against the policy of separation of power.
4. The alarm of threat as the system may lead to the biased situation, which was mainly because of the nature of the list of the functionaries which only depend on the point of majority for its decision.
5. The NJAC considered reservation as one of its aspect which was considered as the

²⁶ Writ petition (civil) No. 13 of 2015, SC.

alarming factor which affect the grievance in higher judiciary.

BIASED NATURE TOWARDS JUDICIARY:

This chapter was mainly based on the newspaper articles, the interviews of some of the political persons or some judiciary members. In all those articles the common point which was noted was all of them were in the support of reservation system in lower judiciary and the revocation of same in higher judiciary, some of them are mentioned as follows,

1. J. Kanda Prasad's petition:

This petition was filed in the Supreme Court as in the time of decision of the Dayanand case were the Supreme Court upheld the policy of reservation in subordinate judiciary but the same fact with respect to high court in Uttarakhand was denied by the Supreme Court. The petition was filed in December in the Supreme Court and the demand was to the direction to the high court to reserve seats for scheduled caste and scheduled tribe judges²⁷. The decision in this case was made by CJ. T.S. Thakur who mention that the reservation cannot be claimed as the right.

2. Centre Move:

²⁷Bhadra Sinha, 'Supreme Court refuses to provide SC/ST reservation in higher judiciary', <http://hindustantimes.com> , Updated- December 8, 2015, 01.06 IST.

²⁸ Satya Prakash and Singh.D.K, 'Centre considering SC/ ST and OBC quota in appointment of district judges', <http://hindustantimes.com> , Updated- Oct 18, 2016, 07.48 IST.

The centre is preparing to introduce the common policy of reservation in the subordinate judiciary and they were also trying hard to make the move in AIJS examination selection considering caste basis as one criterion²⁸.

3. Law Minister Speech:

Law minister Ravi Shankar Prasad in Lok Sabha made a request to high court to considered the back ward community peoples for the selection of judges appointment in the subordinate court were as in the same day he mentioned that there won't be any proposal of reservation in the appointment of higher judiciary judges and he mentioned that they will be appointment as per the provisions in Article- 124, 217²⁹.

4. Justice P. Sathasivam Opinion:

While answering in this interview he was selected as the chief justice of India and he was expected to be in office from July 19, 2013. He registered his opinion as he is in favor of reservation policy in higher judiciary provided if they fulfill the minimum requirements³⁰.

5. Senior Advocate Rajiv Dhavan opinion:

²⁹ PTI, 'No proposal now for reservation in higher judiciary: Govt', <http://indianexpress.com> , Updated- August 4, 2016, 14.26 IST.

³⁰ Balaji.R, 'Next CJ favors reservation in higher judiciary', <http://thetelegraph.com> , Updated- July 2, 2013, 16.52IST.

Rajiv Dhavan criticized the centre move for the amendment of reservation principals in judiciary which was mentioned above under the header Centre move, he said that the government was treading on “dangerous grounds” by contemplating reservation in judiciary³¹.

REASONS FOR SUCH BIASED NATURE:

1. ‘Indian judiciary’ which is known for it is caste domination and discrimination not only in consideration with respect to present but also from the date of its past. ‘Caste domination’, the word which has its own position in Indian history. Judiciary which is considered as the place for higher domination from the past and the system of same was still practicable in India. The proof to explain the fact was the article published in Indian Express, in which it was mentioned as there is no even single judge belongs to SC were appointed as judge in Supreme Court in the past 6 years³². In India the Supreme Court was considered as the supreme over the judiciary where as the caste domination was representing as the highlighting fact thus results in the biased nature of treatment between higher and lower judiciary.

2. To justify the above mentioned fact let us relook the judicial practice in India. In India the system of reservation was revoked in the higher judiciary and

the appointment of judges in the high court were appointed as per the order provided by chief justice of India, as there is no reservation policy in higher judiciary it may result in caste domination in case of if any were selected as judges they may be pressured under caste discrimination, it’s not the imaginary fact it’s the mentioned point by J. Karnan as his own life incident which was mentioned in the earlier chapters.

3. The court order which recognized the judicial officials as constitutional officers and not the government officers which act as the preventing factor which prevails the judicial members from benefiting out of Article- 16(4) from the usage of the factor of reservation³³.

REASON BY JUDICIARY FOR THE REVOCATION OF RESERVATION³⁴:

The judiciary considered the reservation in appointment of judges in the judiciary was against the grievance and the judges appointment was usually based on either of two routes,

1. Elevated from the bar to the bench or promoted from the trail court.
2. Based on seniority

if it’s not so the act will be against the Article- 14 of our constitution.

³¹ Satya Prakash and Singh.D.K, ‘Centre considering SC/ ST and OBC quota in appointment of district judges’, <http://hindustantimes.com> , Updated- Oct 18, 2016, 07.48 IST.

³² Maneesh Chhibber, ‘For last 6 years no scheduled caste judge sent to the Supreme

Court’, <http://indianexpress.com> , Updated- May 30, 2016, 08.24 IST.

³³ Union of India vs Pratibha Bannerjea, (1995)5 SCC 457.

³⁴ Bhadra Sinha, ‘Supreme Court refuses to provide SC/ST reservation in higher judiciary’, <http://hindustantimes.com> , Updated- December 8, 2015, 01.06 IST.

CONCLUSION:

A complete over look of reservation policies and conflicts covered by the Indian judiciary was discussed to some mentionable level in this paper. It's the known fact that the caste based reservation in the judiciary is the vote bank voice of many politicians over the decades and the topic also holds its own desirable position in the constitutional debates, the over look of its topic reservation system of judiciary in India clearly reveals the effects of executive put forth to intervene in the judicial functions and the reflex reaction by judiciary to eradicate those effects by the executive and such system of function became the tradition in the India and such tradition was over looked in this project.

Answers for Research Questions:

1. What are the reasons for revocation of reservation system in higher judiciary? Why can't the same system in subordinate judiciary?

The system of reservation in higher judiciary was considered as it's against the concept of grievance and the judges in the higher judiciary were appointed on the basis of seniority and the reservation does not have any role to play over it. In general the subordinate courts were under the control of state government as our country is known for federal system some extend of power was granted to the state government to make decisions in some particular platforms and one among them is the judiciary and such discrimination was also has its own political history and social basis.

2. The reservation with respect to caste was revoked then what's the status of reservation for women candidates?

In higher judiciary the concept of reservation was completely revoked which was explained by the Supreme Court in view the answer the petition filed by J. Kanda Prasad and thus in higher judiciary even the women candidates didn't have any reservation but with respect to subordinate courts the fact was not so and the percentage of reservation was based on the discretion and policies by such states.

3. If there is any restriction provided for state, high court with respect to judicial appointment Article- 235?

In Dayanand case the invisible bind-age between the high court and the state policies was explained and it's also mentioned as it's the collective responsibility of the state and high court to maintain the constitutional validity of the rules and regulations enacted in the assembly.

4. What are the purpose of NJAC and why the commission was quashed?

The major purpose of NJAC was to replace the existing collegium system and the system of NJAC was quashed by the Supreme Court as for as it exist and the reasons provided for the quash was mentioned in the 5th chapter, now with respect to the policy of reservation the reasons mentioned are,

- The alarm of threat as the system may lead to the biased situation, which was mainly because of the nature of the list

of the functionaries which only depend on the point of majority for its decision.

- The NJAC considered reservation as one of its aspect which was considered as the alarming factor which affect the grievance in higher judiciary.

BOOKS:

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