

# TESTING THE LIMITS OF THE GOAL OF SOCIAL JUSTICE: A CRITICAL EVALUATION OF THE RESERVATION POLICY FOR FACULTY POSITIONS IN INDIA

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The concept of reservation is not new and finds its root even in the constituent assembly debates. Part V of the Constituent Assembly debates discusses the issue of reservation wherein it was discussed that all those unfortunate countrymen of ours who have not had these opportunities in the past, special attempts should be made, in the educational and economic field and even in the political field to see that they have a proper place till they find their own legs to stand upon without the external aid.<sup>1</sup> The leaders of Congress Party in particular were very articulate in upholding the rights of the Depressed Classes and offer them adequate safeguards for exercising those rights.<sup>2</sup> Reference was made to the provision regarding 'untouchability' being welcomed in the Draft Constitution and how the fundamental right of 'not being subjected to any discrimination' was qualified by the provisions to procure 'protective discrimination'.<sup>3</sup>

The claims of special treatment of backward classes and tribals drew upon the similar moral arguments of historical injustice and reparation.<sup>4</sup> Thus, the final goal of reservation was to provide equal opportunities and representations to everyone, regardless of social status with

<sup>1</sup> Anirudh Prasad, *Reservation, Policy and Practice in India* (Michigan: Deep & Deep Publications, 1991), p. 17.

<sup>2</sup> Part V Chapter I, "Constituent Assembly Debate on Reservation Policy," Shodhganga, last modified 2012, [http://shodhganga.inflibnet.ac.in/bitstream/10603/12835/14/14\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/12835/14/14_chapter%205.pdf) (Accessed April 3, 2018), p. 3.

<sup>3</sup> Part V Chapter I, "Constituent Assembly Debate on Reservation Policy," Shodhganga, last modified 2012, [http://shodhganga.inflibnet.ac.in/bitstream/10603/12835/14/14\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/12835/14/14_chapter%205.pdf) (Accessed April 3, 2018), p. 5.

<sup>4</sup> Rochana Bajpai, "Constituent Assembly Debates and Minority Rights," *Economic & Political Weekly* 35, no. 21 (May 2000), <http://www.jstor.org/stable/4409329> (April 6, 2018).

Brajeshwar Prasad stating that the downtrodden nature is not political but cultural, economic and educational.<sup>5</sup> It was finally agreed, although reluctantly by some, that there must be reservation for the fixed time period of 10 years post which it would be decided to be renewed or dismissed but considering that reservation is still applicable, despite 70 years since independence clearly indicates that we have a long way ahead.

One of the touchstones of our Constitution is the grant of fundamental rights which is obviously inclusive of the right of equality and such equality can be ensured by means of specific fundamental right to make reservation. Article 14 provides for equality before the law and equal protection before the law while Article 16 provides for equality in the matters relating to public employment. Equal Employment Opportunity principles, as enshrined in Article 16 apply to access to jobs, conditions of employment, relationships in workplace, evaluation of performance and opportunity for training and career development.<sup>6</sup> However, equality granted in Articles 14 and 16(1) does not aim at absolute equality of treatment to all persons in utter disregard of every conceivable circumstances and differences such as age, sex, education and so on as may be found amongst people in general.

By means of providing reservation for a certain proportion of appointments for the backward classes of citizens in the public services of the state, the state provides the members of the class with an opportunity equal to that of members of the more advanced classes in appointment in public services.<sup>7</sup> It is obvious that reservation would not be violative but in furtherance of equality. When the government undertakes the essential excise of reservation and provides the extent of percentage of posts to be reserved for backward class, the percentage provided must be followed strictly. In instances of the candidate being appointed against general posts, they are not to be counted against reserved posts and the number of posts cannot be reduced merely on this ground. The state can, depending on the situation, review the matter and re-fix the percentage of reservation.<sup>8</sup> In the case of *K.C. Vasanth Kumar v. State of Karnataka*<sup>9</sup>, the court

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<sup>5</sup> Apoorva Tadepalli, "Constituent Assembly Debate on Reservation," Logos: The Takshashila Community Blog, last modified October 14, 2014, <http://logos.nationalinterest.in/2014/09/644/> (Accessed April 3, 2018).

<sup>6</sup> M.P. Jain, *Indian Constitutional Law*, (6th ed., 2009), 109-110.

<sup>7</sup> M. Rama Jois, *Services Under the State* (New Delhi: Indian Law Institute, 2007), p. 121.

<sup>8</sup> R. K. Sabarwal v. State of Punjab, AIR 1995 SC 1371.

<sup>9</sup> K.C. Vasanth Kumar v. State of Karnataka, AIR 1985 S.C. 1495.

had suggested that reservations in favour of backward classes must be based on mean test and that the policy of reservations should be reviewed every five years or so.<sup>10</sup>

Considering this background and the cases of *Indira Sawney v. Union of India*<sup>11</sup> and *M. Nagraj v. Union of India*<sup>12</sup>, thus, reservation is provided in the interest and furtherance of equality and the field of professors in State run Universities or colleges is no exception. This was first provided by means of a circular in the year of 1974. This circular from the Ministry of Home Affairs<sup>13</sup> was addressed to all Ministries and Departments of the government that clearly provided for application of reservation for SC/ST in the services of autonomous bodies/institutions receiving grant in aid from the Government of India in compliance with the provision given in the relevant statute.

As the implementation of reservation of SC/ST was legitimized, there were bound to be conflicts with respect to the same and the judiciary has had the chance to bring more clarity to the implementation. In the case of *Dr. Suresh Chandra Verma v. The Chancellor, Nagpur University*<sup>14</sup> the employment notice for the posts of lecturers in different subjects was issued by Nagpur University wherein the reservation was mentioned category wise but not subject wise. This notice had also terminated the services of several appointed professors. The question before the court was essentially that of termination of employment but the court had also addressed whether non reserving the posts of University teachers subject wise in the employment notice was the breach of letter and spirit of reservation policy because employment notice as well as the procedure in making appointments was challenged.

The court clarified that the word 'post' was used in context has a relation to the faculty, discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised.<sup>15</sup> A non indication in the manner i.e. by means of the specification of subject and what applications were invited from

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<sup>10</sup> Dipti Khatri, "Equality of Opportunity in Public Employment," Academike, last modified January 12, 2015, <https://www.lawctopus.com/academike/equality-opportunity-public-employment/#page> (Accessed April 6, 2018).

<sup>11</sup> *Indira Sawney v. Union of India*, AIR 1993 SC 477.

<sup>12</sup> *M. Nagraj v. Union of India*, 2006 (8) SCC 212.

<sup>13</sup> Ministry of Home Affairs O.M. No. 39/40/74- (SCT)(I), dated 30th September, 1974.

<sup>14</sup> *Dr. Suresh Chandra Verma & Ors. v. The Chancellor, Nagpur University & Ors.*, AIR 1990 SC 2023.

<sup>15</sup> *Ibid*, ¶ 7.

reserved classes was violation of the object of reservation policy. While the court took into consideration how vacancies may arise more in some posts as compared to others and that might cause a problem in compliance with the minimum 34% reservation requirement, it is enough if in that year, the total appointments in all posts are taken into consideration. Thus, the minimum percentage must be kept in mind, while issuing the employment notice or advertising for the same and the notice was held to be bad in law.

In this case reliance was placed on *Dr. Raj Kumar v. Gulbarga University*<sup>16</sup> wherein the legality of a notification was challenged on the grounds of Article 14 and 16(1) of the Constitution as the notification invited applications for selection for appointment to teaching posts for 35 posts out of which 33 were reserved for backward classes and only 2 were available to general category. It was held that the general category could not complain as subsequent attempt for recruitment from reserved category should be treated as a part of the earlier process of recruitment and relying on case laws, it was held that reservation could not be used to create monopoly over posts; in instances where only one post is vacant in a cadre, it cannot be reserved.

In another case,<sup>17</sup> it was held that there would be no reservation of posts in any of the three cadres of Professors, Readers and Lecturers, if there is a solitary post in a particular discipline and reservation would be made with reference to posts in cadres of a particular discipline provided that there is more than one post. Grouping cannot be done of posts and appointment of a single post with similar single post in different disciplines. The case of *Dr. Ram Niwas Pandey v. State of U.P.*<sup>18</sup> is also an important one where the Allahabad High Court decided on if it was possible to club all the posts of professors of various departments and if this could be treated as one cadre for the purposes of providing reservation. It was held that reservation was to be applied subject wise and thus, the answers to both the questions were in negation.

However, this understanding changed by means of the case of *State of U.P. v. Dr. Dina Nath Shukla*<sup>19</sup> wherein a notification for recruitments was challenged as the recruitment was to be made applying the rule of reservation to all posts. It was held that vacancy arisen in a single post sought to be filled by a reserved candidate was not violative of any law but advertisement

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<sup>16</sup> Dr. Raj Kumar and others v. Gulbarga University & Ors., AIR 1990 Kant 320.

<sup>17</sup> Pramod Madhukarrao Padole & Anr. v. Chancellor, Nagpur University & Ors., 1991 Mh LJ 1487.

<sup>18</sup> Dr. Ram Niwas Pandey v. State of U.P. and others, (1996) 3 UPLBEC 1869.

<sup>19</sup> State of U.P. v. Dr. Dina Nath Shukla, (1997) 9 SCC 662.

was to be made so that the reserved and the general candidates would apply for consideration for recruitment accordingly. Here, it was also held that the Vice Chancellor, in order to enforce the reservation policy and the act of the university, could ensure that the single posts in each category are clubbed since admittedly all the posts of Professors, Readers or Lecturers carry the same scale of pay and such fusion would be constitutional and permissible. In a subsequent decision of three judges division bench Supreme Court in *State of U.P. v. M.C. Chatopadhyay*,<sup>20</sup> the aforesaid subsequent part of the judgment of Dr. Dina Nath Shukla's case was held to be no longer good law in view of *Post Graduate Institute of Medical Education and Research v. Faculty Association*.<sup>21</sup>

Following the older circular and so many disputes, an order was issued by the Ministry of Human Resource Development (Department of Secondary & Higher Education) dated 6.12.2005 whereby it directed the University Grants Commission to ensure effective implementation of the reservation policy in the Central Universities and Deemed Universities receiving grant-in-aid from the public funds.<sup>22</sup> Following this, there were guidelines framed by the UGC for strict implementation of reservation policy of the Government in the Universities, Deemed Universities, Colleges and other grant-in-aid institutions and Centres and the same was circulated to all the aforesaid institutions. Within the guidelines, clause 6(c) provides for grouping of posts which is most frequently challenged as being arbitrary and unreasonable. Clause 7 provides for the extent of reservation whereas clause 8 provides for procedure to be followed in reservation inclusive of applicability of a Roster to the total number of posts in the cadre in compliance with the *R.K. Sabharwal case*.<sup>23</sup> A subsequent letter of the UGC dated 19.2.2008 which required all Universities requiring them to implement reservation cadre – wise instead of department wise or subject wise.

In the case of *State of Karnataka v. K. Govindappa*<sup>24</sup> the appointment of the defendant was rejected by the state on account of it being contrary of the Roster Policy as he was appointed for a post that was reserved for Scheduled Caste. The decision was finally made against the state government and it was upheld that reservation policy could not be applicable for a single

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<sup>20</sup> *State of U.P. v. M.C. Chatopadhyay and others*, (2004) 12 SCC 333.

<sup>21</sup> *Post Graduate Institute of Medical Education and Research v. Faculty Association*, (1998) 4 SCC 1.

<sup>22</sup> F. No. 6-30/2005U-5, Government of India, Ministry of Human Resource Development (Department of Secondary & Higher Education).

<sup>23</sup> *R.K. Sabharwal v. State of Punjab*, AIR 1995 SC 1371.

<sup>24</sup> *State of Karnataka and others v. K. Govindappa & Anr.*, (2009) 1 SCC 1.

post which was the one in question. In the same year, another case<sup>25</sup> was considered where there was a dispute pertaining to what would 'cadre' constitute and if the posts of Lecturer, Reader and Professor could be clubbed together to form a cadre for the purpose of recruitment. The facts were such that there was an advertisement for the post of a Reader in Political Science and the post was classified as a reserved category post in the single cadre and such reservation was valid. It was held that there was a distinction between cadre, post and service and for rule of reservation to be applicable within a cadre, there must be plurality of posts. The advertisement was set aside to make way for a new advertisement in accordance with the judgments of the Apex Court. In the case of *Dr. Vishwajeet Singh and others v. State of U.P.*<sup>26</sup> it was reiterated that reservation and roster have to be applied subject wise and the application is collegewise and subject wise when there is plurality in posts. There existed backlog vacancies due to death, resignation, etc and out of the total number of such vacancies, half were contented to be reserved but considering there was no earlier advertisement, it would not be allowed. The discretion did, however, lie with the state to determine reserved vacancies out of the half claimed and proceed to advertise accordingly.

Post these judicial precedents, the Ministry of Human Resource Development went on to issue instructions in 2017 reiterating the guidelines reiterated in the 2008 UGC Notification. This was subsequently challenged by means of the case discussed henceforth.

The decision of the Allahabad High Court rendered on April 7, 2017 in the matter of *Vivekanand Tiwari & Ors. v. Union of India and Ors*<sup>27</sup>, in a petition raised under Article 226<sup>28</sup> of the Constitution of India is at the core of the debate surrounding reservation in the recruitment of the teaching staff in Universities, a decision which was concretized by the affirmation of the decision of the Allahabad High Court by the Supreme Court in July 2017 & the UGC Notification of March 2018.

The Petitioners, in this matter, were seeking directions from the court to issue a fresh advertisement for teaching posts in Banaras Hindu University (BHU) by treating each discipline/ subject/ department of the University as a separate 'unit' for the application of the rules of reservation, while quashing the rolling advertisement – by issuing a writ order or

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<sup>25</sup> Dr. Smt. Anupama Sharma v. State of U.P. & Ors., 2009 (4) AWC 3967.

<sup>26</sup> Dr. Vishwajeet Singh & Ors. v. State of U.P. & Ors., 2009 (3) AWC 2929.

<sup>27</sup> Vivekanand Tiwari & Ors. v. Union of India and Ors., 2017 (7) ADJ 738.

<sup>28</sup> Art. 226, The Constitution of India Jan. 26, 1950.

direction in the nature of mandamus and certiorari respectively. Further, the Petitioners were contesting that the UGC had adopted a blanket manner of application without consideration for non-interchangeable posts which were being clubbed together and treated as a unit/ cadre.

A Division Bench consisting of *J. Vikram Nath* and *J. Daya Shankar Tripathi* adjudicated the present matter, wherein the judgement highlights that while there had been a direct conflict between the decisions of the Apex Court the Executive Instructions issued in conjunction with the guidelines formulated by the UGC since the 1990s, the Guidelines of 2006<sup>29</sup> allowing for such application of the reservation policy had never been quashed. Only advertisements and appointments had been quashed by courts<sup>30</sup>.

The decision points out that Professors in higher educational institutions, there is no provision in the teaching cadre of the Universities for promotions being granted on the basis of solely seniority without considering the department or the subject & competition is not inter-se devoid of such nexus either. It is highlighted that, *“Their competition is with candidates of their subject/department and not of different subjects. Merely because Assistant Professor, Reader, Associate Professor and Professor of each subject or the department are placed in the same pay-scale but their services are neither transferable nor they are in competition with each other. It is for this reason also that clubbing of the posts for the same level treating the University as a Unit’ would be completely unworkable and impractical. It would be violative of Article 14 and 16 of the Constitution.”*<sup>31</sup>

Further, the Allahabad High Court states that if the ‘University’ and not the ‘department’ is taken as a unit, it would have the effect of some departments having only reserved candidates while others having only unreserved candidates, which would also be discriminatory and unreasonable and would not sustain against the test of Articles 14 and 16.<sup>32</sup> The Court recorded that they were of the firm view on the basis or premises summarized above that clause 6(c)<sup>33</sup>

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<sup>29</sup> Guidelines for the Reservation Policy of the Government, University Grants Commission (UGC), Letter No. 1-5/2006 (SCT), August 25, 2006.

<sup>30</sup> *Vivekanand Tiwari & Ors. v. Union of India and Ors.*, 2017 (7) ADJ 738, ¶ 26.

<sup>31</sup> *Vivekanand Tiwari & Ors. v. Union of India and Ors.*, 2017 (7) ADJ 738, ¶ 28.

<sup>32</sup> *Vivekanand Tiwari & Ors. v. Union of India and Ors.*, 2017 (7) ADJ 738, ¶ 29.

<sup>33</sup> Section 6(c), Guidelines for the Reservation Policy of the Government, University Grants Commission (UGC), Letter No. 1-5/2006 (SCT), August 25, 2006.

and 8(a) (v)<sup>34</sup> of the Guidelines of 2006 and the letter of the UGC dated February 19, 2008 were liable to be quashed.<sup>35</sup>

The decision of the Allahabad High Court was upheld by the Supreme Court of India in June 2017 by the Vacation Bench comprising of Justices RK Agrawal and Sanjay Kishan Kaul.<sup>36</sup> The decisions read together directed the UGC to examine prior decisions of the Apex Court which had upheld reservation on a department-wise basis and not University basis, and submit its recommendations to the HRD Ministry.<sup>37</sup> This led to the recommendation of October 2017 made by the UGC, the acceptance of which has accorded it the status of a policy by way of notification. The effect of such an approval by the Ministry indicates a nation-wide or unified policy for all universities.<sup>38</sup>

The Notification of the UGC dated March 5, 2018<sup>39</sup> states that the Ministry of Human Resources Development had directed the UGC<sup>40</sup> to examine the issues the overhaul of which were recommended by the Allahabad High Court, in pursuance of which a Committee had been constituted which submitted its recommendations on November 7, 2017. In compliance of the orders of the Allahabad High Court, the Supreme Court order, the suggestions of the DoPT and the MHRD, S. 6(c) and S. 8(a)(v) were amended as from the Guidelines of 2006. S. 6(c) now reads as, "*In case of reservation for SC/ST, all the Universities, deemed to be Universities, Colleges and other Grant-in-Aid institutions and centres shall prepare the roster system keeping the department/ subject as a unit for all levels of teachers as applicable.*"<sup>41</sup> S. 8(a)(v) now reads as, "*The roster, department wise, shall be applied to the total number of posts in each of the categories [e.g., Professor, Associate Professor, Assistant Professor] within the*

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<sup>34</sup> Section 8(a)(v), Guidelines for the Reservation Policy of the Government, University Grants Commission (UGC), Letter No. 1-5/2006 (SCT), August 25, 2006.

<sup>35</sup> Vivekanand Tiwari & Ors. v. Union of India and Ors., 2017 (7) ADJ 738, ¶ 30.

<sup>36</sup> LiveLaw Research Team, "Should Universities Apply Reservations in Teaching Positions Department-Wise, SC Set To Examine," Live Law, last modified June 17, 2017, <http://www.livelaw.in/universities-apply-reservations-teaching-positions-department-wise-sc-set-examine/> (Accessed March 31, 2018).

<sup>37</sup> Vivekanand Tiwari & Ors. v. Union of India and Ors., 2017 (7) ADJ 738, ¶ 45.

<sup>38</sup> Neeraj Mishra, "Curtailing Recruitment in Universities: An Unfair World," India Legal, last modified March 31, 2018, <http://www.indialegallive.com/cover-story-articles/focus/curtailing-recruitment-in-universities-an-unfair-world-46100> (Accessed April 1, 2018).

<sup>39</sup> Implementation of Reservation Policy of the Government of India, University Grants Commission (UGC), Letter No. 1-5/2006 (SCT), March 05, 2018.

<sup>40</sup> Ministry of Human Resources and Development, Letter No. 1-7/2017-CU.V, September 6, 2017.

<sup>41</sup> Section 6(c), Implementation of Reservation Policy of the Government of India, University Grants Commission (UGC), Letter No. 1-5/2006 (SCT), March 05, 2018.

*department/ subject.*"<sup>42</sup> Vice Chancellors of all Universities were directed to prepare fresh rosters within a month of the notification of the rule.<sup>43</sup>

The cumulative implication of the change in the reservation policy can be analyzed as leading to further under-representation of the SC/ST in faculty positions, which has been supported through statistics. According to a government report<sup>44</sup> released in the year 2016, only 7 out of every 100 Professors in the University were from the marginalized castes. In terms of absolute numbers, only 7.22% amounting to not over 1.02 lakh of the 14.1 lakh Professors across 716 Universities and 38,056 colleges in the country are Dalits and tribals constituted only 2.12% of the faculty amounting to approximately 30,000 in number. Further, as of April 1, 2017, there were 35% vacant positions in 41 UGC Central Universities and the new recruitment drives shall further witness a reduction in representation.<sup>45</sup>

Such a change, experts have commented, shall lead to a detrimental position for the reserved candidates, especially in departments or subject areas where there are less than 15 posts. This can be displayed through the juxtaposition in numbers of the erstwhile and the present system – while the previous system allowed the University to earmark percentages of the teaching posts in a University such as 15% for the SCs and 7.5% for the STs to allocate them employment, the system introduced by the notification of March 2018 will allow only a *split* in each department.

For instance, if there were 5 posts in a department, and the percentages reflect a staggered position of implementation then while an OBC would get the 5<sup>th</sup> seat, where eligible, an individual from the SC category would have to wait for the 7<sup>th</sup> post to be eligible for appointment while an ST category candidate would have to wait even further.<sup>46</sup> The above

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<sup>42</sup> Section 8(a) (v), Implementation of Reservation Policy of the Government of India, University Grants Commission (UGC), Letter No. 1-5/2006 (SCT), March 05, 2018.

<sup>43</sup> DH News Service, "Varsities, Colleges Must Implement Quota Rules, Says UGC," Deccan Herald, last modified March 6, 2018, <http://www.deccanherald.com/content/663112/varsities-colleges-must-implement-quota.html>. (Accessed April 2, 2018).

<sup>44</sup> Ritika Chopra, "Govt Nod for UGC Formula to Hit SC/ST, OBC Faculty Numbers," The Indian Express, last modified March 2, 2018, <http://indianexpress.com/article/education/govt-nod-for-ugc-formula-to-hit-sc-st-obc-faculty-numbers-5083460/> (Accessed April 4, 2018).

<sup>45</sup> Neeraj Mishra, "Curtailing Recruitment in Universities: An Unfair World," India Legal, last modified March 31, 2018, <http://www.indialegallive.com/cover-story-articles/focus/curtailing-recruitment-in-universities-an-unfair-world-46100> (Accessed April 1, 2018).

<sup>46</sup> Basant K. Mohanty, "UGC Faculty Quota Tweak Triggers Alarm," The Telegraph, last modified March 7, 2018, <https://www.telegraphindia.com/india/ugc-faculty-quota-tweak-triggers-alarm-213810> (Accessed March 28, 2018).

numbers have led to the call for 'prevention of denial' of affirmative action by the members of the communities who are protected under the regime of reservations fearing and envisioning a dwindling of their representation as faculty in higher education.

This had begged the central question of the need to opt between providing adequate and proportionate representation in the context of the population of the marginalized communities, without paying heed to the department/ subject as a unit or utilizing the touchstone of Articles 14 and 16 to support the argument of the lack of competition between the 'unequals' or the 'different' such that a blanket reservation policy would only support the numbers for the reserved categories without infusing equality into the system for 'the likes to be treated alike and the different to be treated differently'.

However, before such a conflict could be resolved, while identifying certain loopholes, there was a rollback of the policy sought. The loopholes primarily highlighted were, that *firstly*, the UGC had remained silent on the implementation of such revised rules to situations where the department had only one sanctioned post of professors<sup>47</sup> and that *secondly*, the need to respect the ideals of the Constitution as reflected in the Constituent Assembly Debates for reservation to truly 'bring to the level of the general population, those who had been denied for several years.'<sup>48</sup>

Recent news reports have suggested however that the UGC shall seek a rollback of the new system through filing a Special Leave Petition by emphasizing on the effect the system would have on the representation of faculty from the SC/ST candidate pool. The recommendation of an inter-ministerial committee formulated by the HRD Ministry for the purposes of review of such policy has substantially established the effect of such a policy on the numbers translating into representation.<sup>49</sup> The rollback sought pertains to both, reverting to the earlier mode of

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<sup>47</sup> DH News Service , "Varsities, Colleges Must Implement Quota Rules, Says UGC," Deccan Herald, last modified March 6, 2018, <http://www.deccanherald.com/content/663112/varsities-colleges-must-implement-quota.html>. (Accessed April 2, 2018).

<sup>48</sup> Bader, Zubai A. "Difference and Reservation: A Reading of the Constituent Assembly Debates." *History and Sociology of South Asia (Jamia Milia Islamia: SAGE Publications)* 10, no. 1 (2016), 74-94. Accessed March 27, 2018. <http://journals.sagepub.com/doi/pdf/10.1177/2230807515600088>.

<sup>49</sup> HT Correspondent , "UGC to Appeal for Roll-back of Faculty Reservation System," Hindustan Times, last modified March 22, 2018, <https://www.hindustantimes.com/india-news/ugc-to-appeal-for-roll-back-of-faculty-reservation-system/story-m3DdlXzQQceXYQfpiYDWO.html> (Accessed April 2, 2018).

calculation of candidates upon the roster, as well as viewing posts for faculties as aggregate without distinctions.<sup>50</sup>

Post the letter by Mr. Gehlot to the Prime Minister, seeking implementation of the spirit of the Constitution, in furtherance of the recommendations of the Committees and High Level Panels established to review the same, the Court is now under advisement, given the glaring repercussions of the implementation of a legally valid order upon the representation of communities sought to be uplifted, especially in light of the statistics which display the possibility of stunted upliftment by implementation of such a method of calculation.<sup>51</sup>

This brings us to a crucial portion of this article – where we identify the issues that have been raised by the decisions of the Allahabad High Court and the Supreme Court and the subsequent actions of the Executive in conjunction with the UGC in the reservation policy of faculty in Universities. *Firstly*, we question whether there is an ideal or optimal system within which representation when at odds with the method of meting out equal treatment, can seek a hierarchy between the two. *Secondly*, this also raises the question of whether the doctrine of separation of powers between the wings of the Government – the Judiciary and the Executive in this case, allows their actions to be at contradictory ends of a spectrum, while heralding one as the better one within the system. *Lastly*, it also seeks to question whether the spirit of the Constitution requires representation of numbers in proportion to be accorded to the underrepresented at the cost of the base principle of ‘*non-competing posts being equated as violative of Article 14*’.

If the Special Leave Petition which is reported to be in the pipeline on the part of the UGC is admitted, these are the central questions which the Judges must seek to address, in order to harmonize the system. In our opinion, the dicta laid down in the decision of *Indira Sawhney v. Union of India*<sup>52</sup> lays down a principle which the makers of law should not deviate from. The decision states that while merit at the time of recruitment should not be compromised upon, reservation at its essence implies the selection of a candidate who is less meritorious; however,

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<sup>50</sup> Ritika Chopra and Shalini Nair, "Govt Moves to Undo UGC Order Shrinking Quotas for University Faculty," The Indian Express, last modified March 20, 2018, <http://indianexpress.com/article/education/government-moves-to-undo-ugc-order-shrinking-quotas-for-university-faculty-5103897/> (Accessed April 3, 2018).

<sup>51</sup> Times Now Digital, "Government Explores the Reservation Clause of SC, ST in Universities' Departments," Times Now, last modified March 29, 2018, <http://www.timesnownews.com/education/article/government-explores-the-reservation-clause-of-sc-st-in-universities-departments/212131> (April 6, 2018).

<sup>52</sup> *Indira Sawhney v. Union of India & Ors.*, AIR 1993 SC 477, ¶ 111.

the same is justified on the grounds of fulfilling the Constitutional promise of social justice. However, this endeavour to fulfill the goals which form the heart of our grundnorm is qualified, which states that the policy of reservation must ascribe to at least a minimum standard and no rule would be permissible without adherence to the need for the formulation of such standards.

In our view, the goal of social justice in the present matter cannot be blindly pursued without the formulation and reliance upon the minimum standard of equating those in competition only while treating them as 'alike' given the differences in qualifications as well across different departments. Further, we also put forth that especially in the profession of teaching, where the public purpose served as an end result is of great magnitude, the policy of reservation should be applied rationally and not in a mechanical manner which clamps together different fields and areas.<sup>53</sup>

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<sup>53</sup> *Indra Sawhney v. Union of India & Ors.*, AIR 1993 SC 477, ¶ 604.