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The Reservation: Social Justice or Injustice

Introduction

Contrary to the expectations of forward - looking Indians at the time of independence, the caste system is still with us. The social anthropologists were in a minority even when at that time they pointed to the continuing strength and resilience of caste, but they have turned out to be right. In 1959, it was considered backward and reactionary to pay too much intellectual attention to caste. Many radicals have learnt through hard political experience about the continuing strength of caste. Therefore, reservations were introduced in India. But at that time the motive was clean and pure which aimed only at the development of backward classes. But even today some of them argue as if caste and caste alone mattered in India. Caste certainly matters but it is not the only thing that does and it does not matter in the same way that it did in the past. SC/ST community leaders claim that the objective of reservation is parity and not charity. It is a social necessity according to them. Previously it was, but today it just is not necessary. It contributes to nothing instead only hampers the growth of the so - called 'backward classes' which in turn proves to be an obstacle in the country's development.

The Reservations issue

History :- The system of reservation was started by Sahu Maharaj the ruler of Kolhapur and grandson of Shivaji. Sahu Maharaj had reserved certain positions in his government for Sudras. The system then was

implemented in Tamil Nadu during the British rule. The British provincial government issued a 'communal GO' in Madras province to reserve some jobs for Sudras. This made sure that a channel of sharing administrative power came into operation. A very definite mode of political and administrative reservation policy was evolved after Dr. Bhim Rao Ambedkar waged a major ideological struggle during the freedom movement. That ideology has gone through various phases; the Mandal phase, the phase of women's reservations and so on. Now the question of sharing of reservation - benefits among different castes within the SC is slowly becoming a national issue.

Recognition and Reservation for Backward Classes (OBCs) :

Reservations in favour of Backward Classes (BCs) was introduced long before Independence in a large area, comprising the Presidency areas and the Princely States south of the Vindhyas. Chatrapati Sahuji Maharaj, Maharaja of Kolhapur in Maharashtra introduced reservation in favour of backward classes as early as 1902 to eradicate poverty from amongst them and to give them their due share in the State administration. The notification of 1902 created 50% reservation in services for backward classes/communities in the State of Kolhapur. This notification is the first Govt. Order providing for reservation for the welfare of depressed classes in India. Since the concept of untouchability was not practiced uniformly throughout the country, the identification of OBCs is not an easy task. The practice of segregation and untouchability prevailed more in the southern parts of India and was more diffused in Northern India. An additional complexity is that there are certain castes/communities, which are considered as untouchables in one province but not in other provinces. Some castes, based on traditional occupations, find place in both Hindu and non-Hindu communities. Listing of castes has had a long history, starting from the earliest period of our history with Manu. Medieval chronicles contain description of communities located in various parts of the country. During the British colonial period, listings were undertaken after 1806, on an extensive scale. The process gathered momentum in course of the censuses from 1881 to 1931.

The Backward Classes movement also first gathered momentum in South India particularly in Tamil Nadu. The continuous efforts of some of the social reformers of the country viz. Periyar, Jyotiba Phule, Babasaheb Ambedkar, Chhatrapati Sahu ji Maharaj and others, completely demolished the wall created by the upper classes between them and the untouchables.

First Backward Classes Commission -

On January 29, 1953, the Central Government appointed a Backward Classes Commission under Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes.

Article 340 of the Constitution provides for appointment of a commission "to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State" The first All India Backward Classes Commission was set up with Kaka Kalelkar as its Chairman. The Kaka Kalelkar Commission prepared a list of 2399 backward castes/communities for the entire country and 837 of those were classified as 'most backward'. This Commission submitted its report on March 30, 1955. The Central Government did not accept the recommendations.

Second Backward Classes Commission -

The Government of India appointed the second All India Backward Classes Commission on 1st January, 1979, popularly known as Mandal Commission under Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes. The terms of this Commission included determining the criteria for defining the socially and educationally backward classes; to recommend steps to be taken for the advancement of the socially and educationally backward classes of citizens so identified; to examine the desirability or otherwise of making provision for the reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or of any State. The Commission submitted its report in 31st December, 1980. The Government of India vide OM dated 13.08.1990 introduced reservation of 27% for OBCs in the civil posts and services under Central Government, and in public sector undertakings and financial institutions to be filled by direct recruitment w.e.f. 7.8.90. The said OM laid down that the Socially and Educationally Backward Classes would comprise, in the first phase, the castes and communities which are common to both the lists of the report of Mandal Commission and the lists of State Governments. As a result, only 2052 castes/communities could be included in the Central List of OBCs at that time. Subsequently, Govt. of India also issued, on its own, Central List for 14 States/UTs, namely, Andhra

Pradesh, Assam, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh which came out with their respective State lists after the Indira-Sawhney judgement.

Landmark Judgement -

The Supreme Court of India in its landmark judgement dated 16.11.1992 (Judgement Writ Petition (Civil) No.930 of 1990 - Indira Sawhney and Others Vs Union of India and Others) has directed the Government of India, State Governments and Administration of UTs to constitute a permanent body in the nature of Commission or Tribunal for entertaining, examining and making recommendations upon requests for inclusion and complaints of over-inclusion and under inclusion in the list of OBCs (Annexure-I). Government of India was also directed to specify the basis for applying the relevant and requisite socio - economic criteria to exclude socially advanced persons/sections (creamy layer) from other backward classes so that this become a means of ensuring flow of the benefits of reservation to the really needy people of other backward classes.

Creamy Layer -

In the context of Supreme Court's direction regarding exclusion of socially advanced persons/sections from OBCs, the Govt. of India constituted an expert committee (Annexure-II) headed by Justice R.N. Prasad (Retd.) and three other members comprising a social scientist and two officers with wide administrative experience, to determine the criteria for identification of the socially advanced persons/sections (creamy layer) for exclusion of 'Creamy Layer' from OBCs. The Committee submitted its report on March 10, 1993 (Annexure-III) and the same has been accepted by the Government of India. The Committee defined the 'creamy layer' as when a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade/profession of high status and at which stage he is normally no longer in need of reservation. The reservation for Backward Classes took effect from the 8th September 1993 when the Department of Personnel & Training vide its Office Memorandum No.36012/22/93-Estt.(SCT), dated 8th September 1993 (Annexure-IV), the Resolution No.12011/68/93-BCC (C), the then Ministry of Welfare dated 10th September, 1993 (Annexure-V) and the Resolution No.12011/9/94-BCC, the Ministry of Welfare dated 19th October, 1994 (Annexure-VI) set the stage for the operationalisation of the O.M. of 13th August 1990. The O.M. dated 8th September 1993 incorporated the rule of exclusion of socially advanced

persons/sections from reservation, on the basis of the recommendations of the Expert Committee, thus fulfilling the condition laid down by the Supreme Court for the implementation of the Office Memorandum of 13th August 1990.

National Commission for Backward Classes -

In pursuance of the direction of the Supreme Court, the National Commission for Backward Classes Act, 1993 (Act No.27 of 1993) (Annexure-VII) was enacted by Parliament and the National Commission for Backward Classes was set up by the Govt. of India. Section 9(1) of the Act provides that it shall "examine the requests for Inclusion of any class of citizens as a backward class in the lists and hear Complaints of Over-Inclusion or Under-Inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Section 9(2) of the Act further provides that the advice of the Commission shall ordinarily be binding upon the Central Government. Section 11 of the Act also provides for periodic revision of lists by the Central Government as under:-

(1) The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.

(2) The Central Government shall, while undertaking any revision referred to in subsection (1), consult the Commission. The NCBC, after studying the criteria/indicators framed by the Mandal Commission and the Commission set up in the past by different State Governments and other relevant materials formulated the guidelines for considering requests for inclusion in the list of Other Backward Classes. Reservation for Backward Classes in Government employment came into effect from 8th September 1993. The Commission feels, however, that unless there is a body to monitor and attend to the grievances regarding implementation of reservation, the goal cannot be achieved.

Hon'ble Mr. Justice Pandian does not subscribe to the "creamy layer" theory. Dealing with the oft-repeated criticism that the reserved posts are lapped up by the socially advanced ("creamy layer") among the socially and educationally backward classes, Pandian J. has quoted with approval the observation of Chinnappa Reddy J. in the case of Vasant Kumar. The relevant passage is given below:-

"That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is

not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched away, in the same way, by the top creamy layers amongst them on the same principle of merit on which the non-reserved seats are taken away by the top layers of society. How can it be bad if reserved seats and posts are snatched away by the creamy layer of backward classes, if such snatching away unreserved posts by the top creamy layer of society itself is not bad?"

Constitutional History -

The Constitution envisages equality before law under Article 14 and Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

However Article 15(3) empowers the state to make special provisions for women and children. Article 16(4) lays down that the state would not be prevented from making any provision for reservation in matters of promotion to any class or classes of posts in the services of the State in favour of the SCs and the STs for a period of 10 years which has been extended from time to time. However, the lacuna in the Constitution to provide for reservation for the OBCs was felt as easily as in 1951, when the supreme court struck down as ultra vires a 'communal GO' issued by the then Madras Government providing for reservation to such classes of people in public services and educational institutions. There was considerable protest in the Southern States and the Constitution was amended for the first time. Article 15(4) was added according to which "nothing in this Article or in the Clause (2) of the Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and the STs enjoyed the constitutional protection of reservation. When the implementation of the Mandal Commission report, recommending 27% reservation to OBC in jobs and educational institutions was challenged in the Supreme Court, it held that the reservation for all classes should not exceed 50% and that the 'creamy layer' among them should be excluded. The Court also struck down as invalid an executive order issued by the Narsimha Rao Government in 1991 providing for 10% reservation for the other economically backward classes in jobs and educational institutions. To overcome the Mandal judgement, the Constitution was amended to add Clause 4A to Article 16 to provide for reservation even in promotions, to ensure that the seniority of such promotees was protected as well to relax qualifying norms for the SCs and the STs in promotions and to allow the Government to carry forward no vacancy to the next year. It must also be noted that through Article 46 of the Constitution under Directive Principles of State Policy envisages that the

State shall protect the economically weaker sections from social injustice and all forms of exploitation; no concrete step has been taken so far to implement it. Through the former CM of Tamil Nadu M. G. Ramachandran, tried to introduce legislation in the thereby 1980s for the benefit of the OBCs, the move was given up following widespread protests. Considering that the apex court has put a ceiling of 50% on reservation for all categories, any alteration in the arrangement can be done only through another constitutional amendment. As Tamil Nadu has provided for 69% reservation (the only state in the country to have more than the 50% quota) and Parliament has placed this legislation in the Ninth Schedule of the Constitution (outside the purview of courts), some suggest that reservation for the OBCs can be provided over and above the 50% limit and this law can also be put under the Ninth Schedule, notwithstanding the fact that the Act pertaining to Tamil Nadu is before a Constitution bench of the apex court. Whenever courts have struck down legislative or executive actions in the matter of reservation, Parliament has nullified them by amending the Constitution. There is no reason why another amendment for the benefit of the OBCs cannot be made.

Recent Events :- The Education Department is contemplating reintroducing quotas in private professional colleges by bringing in a regulation providing for 50% reservation in management quota seats in medical, dental and engineering courses. The proposed regulation is also likely to make it mandatory for private colleges to follow a set procedure while conducting their entrance tests and during the admission process. While private managements have volunteered to offer 25% reservation for SC/ST and backward classes in their share of seats, the regulation proposes to fix the reservation quota at 50%. The draft regulation proposes to provide managements with a discretionary 15% NRI quota.

The State Governments were expected to make individual laws that would decide on the percentage of quotas for different categories and fee structure. The House passed the amendment with 172 voting in favour and just 2 members voting against it. The BJP protested the exemptions of minority institutions from the purview of the new clause, but an amendment moved by Sushma Swaraj to debate this provision was voted out. The new clause allows for the advancement of SCs, STs and OBCs through special provisions for their admission to educational institutions whether aided or unaided by the state. The provision will enable State Governments to enforce a differential fee structures for students from categories admitted to private educational institutes under the specified quotas. BJP allies join protest against private quotas; NDA also objects to the proposal sparing minority

institutions. A day after the BJP dropped hints of trouble, the Manmohan Singh Government's efforts to push through a constitutional amendment bill providing for reservations for SCs, STs and OBCs in unaided private educational institutions ran into rough weather because of an across the board opposition.

A group of ministers (GoM) has submitted to the Union Cabinet its report on the proposal to reserve jobs in the private sector for SCs, STs and OBCs.

Minority reservations

The reservation system in India is not only restricted to castes or backward classes but there is also another provision called reservations for minorities which just adds to the count of obstacles in our country's development. Minority status is given to those communities in India which have a very less population. There are many institutions in India which bear the tag of minority as in they are institutions sanctioned by the Government which have seats reserved for the minority community to which the institution belongs. To add on, the Indian Government allots minority reservations in other institutes too.

Recent Events :- Andhra Pradesh Government brought in an ordinance and later an Act to ensure 5% quota for Muslims in jobs and education. Andhra Pradesh HC struck down both as unconstitutional in November, 2005. SC refused to lift a stay on HC order.

Allahabad HC struck down 50% reservations for Muslim students, also sections of the AMU Amendment Act that gave it minority institution status.

The ALL - India Christian Council and other organizations had written to the chairman of the National Commission for Religious and Linguistic minorities to the press for extension of reservation to Dalit Christians.

Reactions and effects of reservations

Reactions :-

- 1) When Navjot Singh Siddhu got up to speak, the crowd was on its feet. "Next they will ask for reservation in the national cricket team and the army", Siddhu said.
- 2) A banner on which students had signed in blood was taken around the Ramlila ground.
- 3) Students of Aurangabad brought a 100 meter long banner, filled with signatures and messages from the students.
- 4) Former CBI Director Joginder Singh said, "The day is not far when they start demanding reservations in the Parliament and State Assemblies."
- 5) Kolkata : About 5000 students of IIT, Jadavpur

University and Presidency College took out a procession from Calcutta Medical College and Hospital speaking on the sidelines of the politburo meeting. CPI - M's Sitaram Yechurg said seats should be expanded in the medical colleges before the 2007 admissions and then reservations implemented.

6) Meerut : Anti - reservation students in Meerut backed their comrades in New Delhi by going on a indefinite hunger strike inside LLRM Medical College. But unlike doctors in Delhi, they didn't call off their parallel OPDs.

7) Vadodara : Health services in most parts of the city were crippled with over 500 private doctors keeping their clinics closed in response to the one - day strike call given by the Vadodara chapters of the Indian Medical Association. About 1,000 doctors took out a silent procession from SSG Civil Hospital and went around the city.

8) Shimla : Railway minister Lalu Prasad Yadav, who was there to inaugurate a railway reservation counter, came out in defence of quota and described the ongoing agitation against reservation as unnecessary.

9) Lucknow : Doctors of the Sanjay Gandhi Post Graduate Institute of Medical Sciences called off their strike on Saturday, but asked politicians to get themselves treated by doctors who are beneficiaries of the country's quota system. The faculty raised this demand at a meeting of the Faculty Forum.

10) Kanpur : Health services in various hospitals affiliated to the GSVM Medical College in Kanpur remained affected as junior doctors and students continued with their protest. But sources at GSVM Medical College claimed the hospitals were functioning smoothly and that senior doctors were attending to patients.

11) Ahmedabad : Medicos in Ahmedabad decided to continue their anti - quota agitation as the talks between the P.M. Manmohan Singh and protestors remained inconclusive.

Effects :- Caste barrier engulfed fire brigade's modernization. From 2006, the fire brigade would have to decide on the seniority of its cadets before inducting them namely who gets promoted ahead of whom, based on caste reservations. The earlier rule was simple. Prior to the 2004 batch, the fire brigade had a 50% caste - based reservation only at the entry level. Now the brigade cannot induct the new cadets until it has figured out hierarchy.

Supreme Court and Reservations

Court's take on reservations :- The Union Cabinet decided to introduce a new fifth clause in Article 15 of the Constitution to enable quotas in educational institutions not receiving Government aid. The

amendment nullified the Supreme Court's August 12, 2005 decision that declared such quotas unconstitutional. Instead of a federal law, the Cabinet had allowed states to enact quotas laws for socially and educationally backward classes or for SC and ST in unaided private educational institutions. Crucially, unaided institutions with the status of minority institutions are exempted from quotas. On reservation policy the court said that the state can't enforce a quota and can merely insist on merit. On admission policy it said unaided institutions enjoy total freedom up to the level of undergraduate education. On fee structure it ruled that an institution is free to devise its own fee structure provided there is no profiteering and no capitation fee in any form. On state regulation it ordered that there can't be interference in day - to - day administration, and on the role of committees dealing with admissions and fees it said they are subject to judicial review if they exceed their powers by unduly interfering in the administrative and financial matters of the aided institutions.

Rules for caste status :- The Supreme Court has engraved certain rules to decide a person's caste status. They are as follows :-

Inter - caste marriage does not confer SC/ST status in Hindus. An upper caste woman cannot become SC/ST by virtue of marriage. Acquisition of SC status by voluntary mobility will be a fraud on Constitution.

The Supreme Court has held that the children of a tribal woman married to a non - tribal man cannot claim reservation in jobs and other benefits available to STs. However, children of a tribal man married to a non - tribal woman could claim the benefits.

Facts and Figures

1. 50% of the reserved seats of the IITs remain vacant (even the much lower entry marks are not secured by the students.)
2. 25% of those who join are forced to quit. They are unable to complete the 4 yr course even in 6 yrs.
3. NSSO points 23.5% college seats already with OBCs.
4. Sukhdev Thorat chairman of UGC says "at higher education levels 1.2 lakh seats of reserved category are vacant. At the same time 40% of reserved category teaching staff posts remain unoccupied."
5. Hindustan Times declared that 16% seats in higher education are occupied by both SC/ST put together whereas the Quota offered by the govt. is 22.5%. (Therefore 33% seats are wasted.)

Where is the need for these reserved seats to be increased, if they are going to waste as it is? Is this the correct use of the taxpayer's money?

Solutions

Steps towards solutions :- AllIMS is ready to increase intake. The Health Ministry was in overdrive to persuade striking doctors to go back to work. It sent out letters to medical college heads, asking them to assess their requirements in order to increase seats to accommodate the 27% reservation for OBCs next year. Health secretary Prasanna Hota said an action plan on the logistics of higher learning will be ready by next year without diluting quality. These include AllIMS, whose director Dr. P. Venugopal has said the institute could raise the general category seats from 50 to 90 by the next academic session. Hota said some other colleges do have problems in meeting the targets "but we'll get the required faculty by increasing retirement age and offerings underway and we will have a concrete action plan ready very soon."

The Supreme Court has ruled out that if the management of a college fails to find an SC/ST candidate for a reserved post, it could fill the vacancy on a regular basis by recruiting a person from the OBCs. A bench comprising Justices Ruma Pal and A. R. Lakshmanan gave the ruling.

The Government on Monday told the Rajya Sabha that it had no plans to introduce reservation of jobs on the basis of religion.

The AP Cabinet on Tuesday accepted the recommendations of the Group of Ministers (GoM). Fixing an annual income ceiling of Rs. 4 lakhs to identify the creamy layer among backward classes for excluding them from the purview of reservations.

Private schools may have quotas.

Solution :- To break this face - off, we need a fresh approach, possibly educationists who are visionaries who could plan a long and short - term solution to this problem. There is no dearth of such personalities. India is still a country that is rooted in a social consciousness and it is not beyond the scope of its better minds to find an equitable solution. Surely, education and quality education is too important an issue to be resolved by such hastily announced proposals and secretarial agitations and protests.

Conclusion

By passing a Constitution Amendment Bill which provides for reservation for socially backward classes in private colleges except those run by minority groups - the Center thinks it has achieved two objectives in one deft stroke. It has flattered the former with its show of concern for their welfare. It has appeased the later by giving them a free hand while making admissions in their institutions. It has also fondly imagined that by paying this lip service to the deprived sections in the country, it can continue to fool them even after

nearly 60 years. Socially backward and economically deprived they may be, but they are certainly not so mentally challenged as to believe that the political leaders of the country have their welfare at heart. If they did, they would have enabled the reserved categories to benefit from the minority institutions as well. Right from pre - independence days, Christian missionary schools and colleges have been celebrated as institutions of excellence. They have also been well - known for their charitable disposition and commitment to social justice. Such being the case, why has the Centre denied them the best educational opportunities by omitting such institutions from its agenda? The Bill loses much of its relevance when it closes the doors of the best colleges in the country to those who need them most. On the other hand, it merely serves to expose the hypocrisy of political leaders who eloquently plead for the weak while disabling them with their actions. Six decades of a lopsided policy have only created a new elite in the country. An elite that sports a backward class tag to corner the best places in education, job and so on. Even more challenging than caste discrimination is the unbridgeable gap between elite children from English - medium public schools and others trailing away behind having passed out of Government and language - medium schools. This elite has distinct advantages over its poorer cousins. It has emerged out of the old deprived, backward status into a powerful, rich and educated class that can stand on its own. The reservation strategies adopted by Governments now enable it to continue to seize those advantages by remaining 'backward' on paper, and in the process, deprive the really needy who cannot compete on such an uneven playing field. Surely, the Centre is not unaware of these anomalies. Realizing the unfairness of such discriminatory

policies, the Supreme Court decided to rule out reservations completely in both minority as well as non - minority private educational institutions in August 2005. It gave them absolute rights to admit students of their choice in all professional courses without the interference of the Government. The Judge Bench which passed this judgement even stated categorically that any imposition of quotas by the State constituted a serious encroachment on their fundamental rights. It is that landmark judgement that the Centre is now trying to toss aside through legislation. Of course, its purpose can hardly be camouflaged. Pressurized by its political allies, and succumbing to its own compulsions of wielding power by controlling education; it has bared its real intention of vote gathering. If the Centre is truly concerned about those who have been socially, educationally and economically deprived for generations, its concern should translate itself into better schools and better learning facilities for them at the elementary stage. The existing ones that are accessible to them are so pathetic that more than three fourths of schoolgoing children drop out even before they reach high school. Where is the need then to legislate for their reservation in institutions of higher learning which they may never see or use? Why not legislate for their reservations in well established private schools instead? At least, that may bring more deprived classes into the social and educational mainstream from where they can take off to higher learning more easily. By reversing the Supreme Court ruling and trashing merit, the Bill in question may pave the way for needless litigation when meritorious students are pushed aside to accommodate the reserved categories. Where, it will not help those very persons whose cause it pretends to espouse.

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