

Reservation Policy In Post Independence Period

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ABSTRACT

During the post independence days, there was an atmosphere of accommodation and a nationalistic brotherhood, where every citizen of the newly attained nation-state was concerned about the need for an integrated and harmonious society, free of social and communal conflicts. The make-up of the Constituent Assembly reflected the reality of what groups wield power in India, then and now. From the outset, the Constituent Assembly laid out clearly its objectives and philosophy for the new constitution. The Assembly set up a

special Advisory Committee to tackle minority rights issues. Our Constitution guarantees justice and equality of opportunity to all its citizens. It also recognizes that equal opportunity implies competition between equals, and not 'un-equals'. The Constitution provided for protective discrimination under various articles to accelerate the process of building an egalitarian social order. Initially, the percentage of reservation provided reservation of 12.5 per cent for the SCs and 5 per cent for the STs but these percentages were subsequently enhanced in 1970 to 15 per cent and 7.5 per cent for SCs and STs respectively. All state governments also enacted laws providing for reservation for the SCs and STs in the services under their control. The numbers of reserved seats are determined by the proportion Scheduled Caste and Scheduled Tribe members to the general population, based on population estimates from the most recent decennial census. To give teeth to the protections for the Scheduled Castes and Tribes mandated by the Constitution, India's Parliament has passed two major laws. Further, other concessions like reservation in promotions, etc. were also provided by the governments. In addition, social programs such as those directed at improving the education system, especially at the primary level and in rural areas, should be given more emphasis. Reservations apply to the public sector but not the private sector, the probable growth area of the Indian economy.

Keywords: Constituent Assembly, Advisory Committee, Reservations Under the Constitution, Republic, Reserved Seats, Legal Protections for Minorities, Percentage of Reservation.

Introduction:

During the post independence days, there was an atmosphere of accommodation and a nationalistic brotherhood, where every citizen of the newly attained nation-state was concerned about the need for an integrated and harmonious society, free of social and

communal conflicts. A common consensus and loyalty to the nation-making project were behind acceptance of reservation as a unanimously adopted public policy. Subsequent implementation or execution of the policy of reservation was not marked by the same zeal or enthusiasm as is usually the case with most such policies in India and elsewhere and the feeling of accommodation and generosity which were behind the consensual policy have turned into that of competing equalities in a situation of scarcity leaving the society divided into pro-reservationists and anti-reservationists. There was also a new found zeal and determination to create an egalitarian society by uplifting those who had been left behind due to inhuman social practices and ill-founded beliefs. Over the years, the feeling of accommodation and compassion has changed into confrontation and at times hatred.

Constituent Assembly:

The make-up of the Constituent Assembly reflected the reality of what groups wield power in India, then and now. From the outset, the Constituent Assembly laid out clearly its objectives and philosophy for the new constitution. An analysis of membership in the most important advisory committees of the Constituent Assembly found that 6.5 percent were SCs. Brahmins made up 45.7 percent. On May 16th, 1946, the British government released the Cabinet Mission Statement, a set of proposals to guide the framing of a new Indian constitution. By this time, the wheels for India's independence had already been set in motion by Clement Atlee's Labor Party government in London. Among other recommendations, the Cabinet Mission laid out a detailed plan for the Constituent Assembly's composition, such that the body be "as broad-based and accurate a representation of the whole population as possible." Three categories from which to draw delegates were proposed. In addition to divisions for Muslims and Sikhs, the Cabinet Mission suggested a "general" category which would include all others groups-Hindus, Anglo-Indians, Parsis, Indian Christians, the

Scheduled Castes and Tribes, and women, among others. Delegates were appointed on the basis of indirect elections in the provincial legislative assemblies. In March 1947, Britain sent Lord Louis Mountbatten, war hero and royal relative, to New Delhi as the King-Emperor's last Viceroy. His mission was to transfer power to an independent Indian government. In the end, power was transferred to two successor entities, Pakistan on August 14th, 1947, and India on August 15th, 1947. Under the Cabinet Mission plan the Constituent Assembly was to consist of 389 seats, 296 of which were filled by delegates elected from the directly-administered provinces of British India and 93 of which were allotted to the princely states.

The total number of seats was based on an undivided India, and, overall, represented a cross-section of the population of the country. Given the Muslim League's boycott of the Assembly, the impact of partition and subsequent migration, and the lengthy process of integrating the princely states, the number and distribution of seats continually fluctuated from the time of the first meeting on December 9th, 1946. With the 1947 partition, many Muslim delegates left for Pakistan, terminating their membership in the Assembly. As a result, the body was reorganized. By November 26th, 1949, it consisted of 324 seats, divided among the provinces and the princely states and representative of all major minority groups. Minority and Scheduled Caste delegates did have some influence during the Assembly proceedings, with several holding significant positions. Dr. H.C. Mookherjee, an Indian Christian, was Vice-President of the Constituent Assembly as well as Chairman of the Sub-Committee on Minorities. However, by far the most important was Dr. Ambedkar. Jawaharlal Nehru, India's first Prime Minister and dominant political figure until his death, had already selected Ambedkar, an accomplished lawyer, as his Law Minister. A Brahmin himself, Nehru sought to build a secular India free from caste discrimination. He was among the "many educated Hindus" opposed to the caste system as noted by Gandhi in his 1933 Harijan

exchange with Ambedkar (above). Given Nehru's views and Ambedkar's talents, it is not surprising that Ambedkar became chairman of the drafting committee for India's new constitution. It was also an astute political move for both leaders. For Nehru, it kept the independently minded Ambedkar "on board" with the government at a critical time; for Ambedkar, it was an opportunity to influence preparation of the new constitution and protect Scheduled Caste interests. Several of the framers' main goals, articulated in the "Objectives Resolution," included guarantees of equality, basic freedoms of expression, as well as "adequate safeguards...for minorities, backward and tribal areas, and depressed and other backward classes." These principles guided the delegates throughout the Constitution-making process.

Advisory Committee:

The Assembly set up a special Advisory Committee to tackle minority rights issues. This committee was further divided into several subcommittees. The Subcommittee on Minorities focused on representation in legislatures (joint versus separate electorates and weightings), reservation of seats for minorities in cabinets, reservation for minorities in the public services, and administrative machinery to ensure the protection of minority rights. After extensive research and debate, the Subcommittee on Minorities drafted a report of its findings for submission to the Advisory Committee. The latter supported most of the Subcommittee's recommendations. Vallabhbhai Patel, Chairman of the Advisory Committee and the most powerful member of the governing Congress party after Nehru, submitted the Report on Minority Rights to Rajendra Prasad, President of the Assembly, and on August 27th, 1947, the Assembly convened to discuss the Report. Patel opened the debate by presenting the Advisory Committee's main recommendations. Rejecting separate electorates- Congress wanted no repeat of the separate electorates granted to the Muslims by the British-

and a “weightage” system, the Report endorsed the creation of joint electorates and proportional representation. Reservations were approved for minorities, as long as the reservations were in proportion to the population of the targeted groups. Some minorities, like the Parsis, voluntarily gave up this right. Efforts by Ambedkar and his allies to craft a provision requiring a “tripwire” percent of Scheduled Caste votes in a constituency reserved for the Scheduled Castes failed. The principle of common voting and reserved seats in legislative bodies throughout the country was retained despite strong opposition from influential Constituent Assembly members like Nehru. Throughout the debate, caste Hindus permitted nothing that would suggest splitting off the Scheduled Castes in an electoral sense from the Hindu community.

Reservations Under the Constitution

The Constitution provided for protective discrimination under various articles to accelerate the process of building an egalitarian social order. Our Constitution guarantees justice and equality of opportunity to all its citizens. It also recognizes that equal opportunity implies competition between equals, and not ‘un-equals’. Recognizing the inequality in our social structure, the makers of the Constitution argued that weaker sections have to be dealt with on a preferential footing by the state. A special responsibility was, thus, placed upon the state to provide protection to the weaker sections of society. Thus, preferential treatment for the depressed classes, including reservation of seats, should not be understood as an act of magnanimity on the part of the political elite at the national level but rather a strategy to give them a share in power in politics and administration and to uplift them socially and economically.

Republic:

On January 26, 1950, India ended its “Dominion” status, became a republic, and put in effect its new constitution. With an entire section dedicated to “Fundamental Rights,” the Indian Constitution prohibits any discrimination based on religion, race, caste, sex, and place of birth (Article 15). This law extends to all public institutions, such as government-run educational facilities, to access to hotels and restaurants, public employment and public wells, tanks and roads. The practice of untouchability is declared illegal (Article 17). Significantly, Article 15, which prohibits discrimination, also contains a clause allowing the union and state governments to make “any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.” This language was added in 1951 within weeks of a Supreme Court decision outlawing quotas in school admissions.

The speed of the amendment is indicative of the strong political support for reservations, Nehru’s personal views notwithstanding. Similarly, Article 16, calling for “equality of opportunity in matters of public employment,” contains clauses permitting the “reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State” and another allowing “reservation in matters of promotion” for Scheduled Castes and Scheduled Tribes. A separate section of the Constitution, “Special Provisions Relating to Certain Classes,” requires the reservation of seats in the “House of the People,” or Lok Sabha, and the Legislative Assemblies of the states for the Scheduled Castes and Scheduled Tribes.

Reserved Seats:

The numbers of reserved seats are determined by the proportion Scheduled Caste and Scheduled Tribe members to the general population, based on population estimates from the most recent decennial census. The President of India and the Parliament, in consultation with

the state governments, determine the list of groups qualifying as Scheduled Castes, Scheduled Tribes, and “backward classes.” Several safeguards accompany these provisions for reservation. First, the Constitution originally required the reservation of seats in the Lok Sabha and state legislatures to end after ten years. After five amendments, the policy is now set to expire on January 25th, 2010. Secondly, regarding the reservation of jobs, Article 335 of the Constitution mandates that the “claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration.” Finally, a National Commission for Scheduled Castes and Scheduled Tribes was created to investigate, monitor, advise and evaluate the progress of the Scheduled Castes and Scheduled Tribes under the schemes aimed at the socio-economic development of these groups.

Another Commission was also created to investigate the conditions of the socially and educationally backward classes. It is interesting to note that the Constitution’s reservations construct, which explicitly singles out certain castes for special preferential treatment, contradicts the document’s prohibition on discrimination based on caste, race, and other such criteria. Furthermore, India’s caste system itself, with its strict hierarchy dictated by birth, is at odds with the ideals of equality and social justice. Despite the creation of centrally based commissions to monitor reservations and other schemes, the Constitution gives great liberties to the individual states to determine the quantity and limits of reservation and what, for example, qualifies as the “maintenance of the efficiency of administration.” The clause giving states the authority to formulate and implement policy to facilitate “the advancement of any socially and educationally backward classes of citizens,” is also decidedly vague. In addition, though a specific-if, in practice, flexible—time limit is placed on the reservation of seats in

the Lok Sabha and state legislative assemblies, there is no such clause regarding the future termination of reservations of jobs and promotions.

Legal Protections for Minorities:

To give teeth to the protections for the Scheduled Castes and Tribes mandated by the Constitution, India's Parliament has passed two major laws. The Untouchability Act of 1955 (renamed the Protection of Civil Rights Act in 1976) was intended to provide enforcement of Article 17 of the Constitution, outlawing untouchability. It fell short of expectations. In the words of India's National Commission for Scheduled Castes and Scheduled Tribes, "All the measures taken were not found to be effective enough in curbing the incidents of atrocities on Scheduled Castes and Scheduled Tribes." In 1989 a new law, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, came into force. Similar to an American hate crimes statute, it provides heavier penalties than under ordinary law for eighteen specified crimes including forcing the eating of obnoxious substances, bonded labor, and sexual exploitation.

Percentage of Reservation:

Initially, the percentage of reservation provided reservation of 12.5 per cent for the SCs and 5 per cent for the STs but these percentages were subsequently enhanced in 1970 to 15 per cent and 7.5 per cent for SCs and STs respectively. The reservation was provided in jobs, admission to colleges and universities, and the central and state legislative assemblies. Later, it was provided in public undertakings and nationalised banks, etc. All state governments also enacted laws providing for reservation for the SCs and STs in the services under their control. Further, other concessions like reservation in promotions, etc. were also provided by the governments. In January 1999, the President of India's noting in a confidential file pertaining to judicial appointments to the effect that special quota should be

considered for the weaker sections of society like SCs, STs and women in the appointment of judges in High Courts and the Supreme Court, led to a future in legal circles and a debate on meritocracy versus protective discrimination. The controversy is not about whether the President has constitutional power to suggest changes in the selection process. The issue is: if Chief Justice of India's argument that merit alone is important in judicial appointments is logical, why cannot it be applied to other areas like educational institutions, science laboratories, and if President's view has logic, why can't reservations be extended to armed forces, formation of cabinets, etc. They are not personal opinions. They carry an official stamp. If judges and senior advocates believe in the primacy of merit in judiciary, will the Supreme Court review its earlier judgement given in November 1992 with regard to accepting 27 per cent reservation for the OBC.

The failure of the policy of reservation to uplift the SCs and STs over a period of around five decades on the one hand and the politics of reservation, i.e., the rat race among the political parties to net specific groups like OBCs, Dalit Christians and the Muslims, and recent demands of some castes to include them in OBC category, on the other, have posed serious challenges for the society and economy. The Supreme Court ruling on the ceiling of the reservation limit at 50 per cent and subsequently, the passing of Tamil Nadu Reservation Act (1993) raising the reservation to 69 per cent and including this Act in the constitution by 85th amendment to take it beyond judicial review have opened the door with one state government after another rushing through similar kind of legislations. It is in this context that the issue of reservation assumes great importance. The question now raised by many people is: Should we continue reservations for SCs and STs in educational institutions, services, Lok Sabha and Vidhan Sabhas? One argument is that these should have been discontinued ten years from the coming into force of the Constitution. By extending the term every decade, we are going

against the wishes of the Constitution-makers. It is in fact de-recognising merit and depriving the more qualified. The SCs and STs in India together constitute 24.56 per cent (16.48% and 8.08% respectively) of the total population, OBCs 51 per cent, economically weaker sections (destitute) 10 per cent, and Muslims 12 per cent.

Conclusion:

The reservations system would benefit markedly from an administrative face-lift. As recommended by the Commission for Scheduled Castes and Scheduled Tribes, a comprehensive act, articulating the policy, is needed. Reservations will continue to play a useful role but will likely be a diminishing part of the solution of Dalit problems. There are major flaws. Reservations apply to the public sector but not the private sector, the probable growth area of the Indian economy. Then there are tens of millions of Dalits living in rural areas and not part of the “organized” economy. The revision and streamlining of procedures, such as SC certification, might help curb abuse. In addition, social programs such as those directed at improving the education system, especially at the primary level and in rural areas, should be given more emphasis.

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