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Merit versus Social Justice An Endless Debate"

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Abstract

In Indian society large numbers of people have experienced social discrimination through centuries on account of its peculiar institution called the caste-system; efforts have been made to provide redress for these under-privileged sections, through the policy of protective discrimination that is reservations or quotas for them in every sphere of life-education, financial, economic, public services and legislations. The fundamental question, however, is how far the quotas have and other privileges helped the target groups. As we have seen above the progress in this regard has at best been marginal. Whatever progress has been registered by the depressed classes it is more or less proportionate to the overall progress achieved by the nation. As target groups they should have shown a visibly better record, but this has not happened. In a country like India where poverty, illiteracy and deprivation are so widespread, it is a questionable proposition to think in terms of upliftment for particular social groups, that too by emphasizing reservations alone. The present paper is a humble interdisciplinary effort to analyse the Merit versus Social Justice Issue regarding reservation policy in service and promotions with especial reference to 117th Constitutional Amendment Bill, 2012. **Key**

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words: protective discrimination, promotion quota, roster system, down-trodden, mandal commission, 117th amendment bill, merit, social justice.

Recently the reservation in promotions for SCs and STs is proving another blow to fairness and equality of Indian society. Honourable Supreme Court while making decisions on the validity of Constitutional Amendments during the case of ***M. Nagaraj v/s. Union of India & Others*** observed that the concerned State will have to show in each case the existence of the compelling reasons, namely, ***backwardness, inadequacy of representation and overall administrative efficiency*** before making provision for reservation in promotion. High Court of Rajasthan and High Court of Allahabad also produced verdict on similar lines. Now the government is again going to amend the constitution to remove the necessity of providing the proof for backwardness. Government is providing two reasons: (1). Difficulty in collection of quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment. (2). Uncertainty on the methodology of this exercise. Here the big questions rise-

- Moral issue with this amendment is, you can enjoy the protection of reservation no matter how rich and financially capable you are.
- If somebody feels that they are deliberately discriminated in promotions due to their caste, then they can (and they should) go to administrative tribunals or courts. If there is no discrimination then what is the point of giving this type of promotions? Even if there is discrimination, then also there is no need for this sweeping bill. That situation can be (and should be) handled in other ways.

- If the promotion is based on caste (with “consequential seniority”) then where is the rule of fairness and equality?
- Well, if government is not sure about the data and the methodologies to assess the backwardness; on what basis Government of India is extending reservations to promotions?

Social justice efforts in India are in a form of affirmative action designed to improve the well-being of perceived backward and under-represented communities defined primarily by their ‘caste’ is a phenomenon that commenced with the coming into force of the Indian Constitution. These are laws (both Constitutional and statutory) or merely local rules/regulations/practices wherein a certain percentage of total available vacancies in educational institutes and government jobs are set aside for people from backward communities and others. Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) are the primary beneficiaries of the reservation policies under the Constitution.

In 1882, *Hunter Commission* was appointed for special social justice provisions. *Mahatma Jyotirao Govindrao Phule* (1827- 1890) made a demand of free and compulsory education for everyone along with proportionate representation in government jobs. In 1891, there was a demand for reservation of government jobs with an agitation in the princely *State of Travancore* against the recruitment of non-natives into public service overlooking qualified native people. In 1901 *Shahuji Maharaj of Kolhapur* (*Chatrapati Sahuji Maharaj*) initiated reservation quota system for down-trodden to ensure their participation in administration and to mitigate their poverty. Sri Narayan Guru started *Ijhwara-caste* movement in Kerala well known as *SNVP* (Sri Narayan Dharm Paripalan). Madras Presidency started

reservation in public employments in 1921. In the year of 1943 scheduled castes seek eight per cent quota in employments first time. In 1908, reservations were introduced in favour of a number of castes and communities that had little share in the administration by the British. There were many other reforms in favour of and against reservations before the Indian Independence itself.

Some Constitutional Safeguards:

ü Article 16 and 335: Preferential treatment in matters of employment in public services.

ü Article 16(4): Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, Nevertheless, “nothing in this Article shall prevent the State from making any provision for 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”.

ü Article 16 (4-A) : Nothing in this article shall prevent the state from making any provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in services under the state in favour of SCs/STs which in opinion of state, are not adequate by represented in the services under the state.

ü Article 16 (4-B): “Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which

they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”

ü Article 17: Abolition of “untouchability” and making its practice in any form a punishable offence.

ü Article 46: Promotion of educational and economic interests

ü Article 330 and 332: Reservation of seats in the Lok Sabha and State Assemblies.

ü Article 335: This article provides that “the claims of the members of the SCs and STs shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments in services and posts in connection with the affairs of the Union or of a State”.

Promotions Quota: Hue and Cry in Political Spheres

The Supreme Court of India, in its 16th November 1992 judgment in the *Indra Sawhney case*, ruled that reservations in promotions are unconstitutional, but allowed its continuation for five years as a special case. In 1995, 77th amendment to the Constitution was made to insert clause (4A) to Article 16 before the five-year period expired to continue with reservations for SC/STs in promotions. Clause (4A) was further modified through the 85th amendment in order to give the benefit of consequential seniority to SC/ST candidates promoted by reservation.

The 81st Constitutional Amendment was made to the Constitution that inserted clause (4B) in Article 16 to permit the government to treat the backlog of reserved vacancies as a separate and distinct group, to which the limit of 50 percent ceiling on reservation may not apply. The 82nd amendment inserted a proviso in Article 335 to enable states to give concessions to SC/ST candidates in promotion. The validity of all the above four amendments i.e. 77th, 81st, 82nd and 85th

was challenged in the Supreme Court through various petitions clubbed together in *M.Nagaraj & Others v/s. Union of India & Others*, mainly on the ground that these altered the *Basic Structure of the Constitution*.

The Supreme Court on 19th October 2006, upheld these four amendments but stipulated that the concerned state will have to show in each case the existence of compelling reasons which include *backwardness, inadequacy of representation and overall administrative efficiency*, before making provisions for reservation. The court further held that these provisions are *merely enabling provisions*. If a state government wishes to make provisions for reservation to SC/STs in promotion, the state has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class.

In 2007, Government of Uttar Pradesh introduced reservation in promotions. The policy specified reservation for SC/ST employees in the first stage of their promotion and that of the benefit of consequential seniority in successive promotions. However, this policy was challenged through a spate of petitions and subsequently Allahabad High Court on 4th January 2011 struck down the policy terming it as unconstitutional. The Allahabad High Court verdict was challenged in the Supreme Court through various petitions. The Supreme Court on 27th April 2012 (*U.P. Power Corp. Ltd. v/s. Rajesh Kumar & Ors.*) upheld the high court judgement. The bench consisting of Justice Dalveer Singh Bhandari (now in International Court of Justice) and Justice Deepak Mishra rejected the government's argument on the ground that the UP government failed to furnish sufficient valid data to justify the move to promote employees on caste basis. The apex court

reiterated the law lay down through various judgements by the Constitution benches in the *M.Nagaraj*, *Indra Sawhney* and other cases wherein it was declared that reservation in promotions can be provided only if there is sufficient data and evidence to justify the need.

The new 117th Constitutional Amendment Bill, 2012:

The 117th Constitutional Amendment Bill for providing reservation in promotions for SCs & STs has been introduced in Rajya-Sabha on 5th September 2012. It shall be deemed to have come into force on the 17th day of June, 1995. In the Constitution, in Part III, in article 16, for clause (4A), the following clause shall be substituted, namely:-

“Notwithstanding anything contained elsewhere in the Constitution, the Scheduled Castes and the Scheduled Tribes notified under article 341 and article 342, respectively, shall be deemed to be backward and nothing in this article or in article 335 shall prevent the State from making any provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in these services under the State in favour of the Scheduled Castes and the Scheduled Tribes to the extent of the percentage of reservation provided to the Scheduled Castes and the Scheduled Tribes in Indian Constitution.”

Pros and Cons of the Reservation Policy:

The debate over reservation or protective discrimination in India is acrimonious and is increasingly finding expression in violence. But a democracy which is essentially a social contraption is neither dictated by logic nor by ethics. At the root of democratic success is social engineering which is affected through political bargaining. In India the process is on and only

the future would tell whether its experiments were in the right direction or not.

Social categories are neither static nor monolithic. But in India the hierarchical stratifications have by and large survived for centuries and they continue to be politically relevant. In the given situation the policy of reservation seems to continue for an indefinite period. But this is the easiest thing that the state could think of. The real challenge for the state should be to make the disadvantaged groups competitive through raising their standards so as to let them be on par with the traditionally successful upper classes. That is cost intensive and for that there has to be a shift in the dynamics of power. The disadvantage would have to come to the fore of politics. The present Dalit movement seems to be straws in the wind indicating this penchant for transformation which is bound to be violent.

Though the concept is reasonable yet its irrational formulation makes the whole principle of 'reservation' a serious drain on extremely scarce National resources. Some of the arguments and counter-arguments regarding reservation put forth by Anti-Reservationists and Pro-Reservationists.

Arguments against Reservation:

Lower castes no longer accept that their lower economic status, lower position in the social hierarchy and lack of respect from members of higher castes are a "given" in their social existence. Opponents are unhappy because they believe that an arbitrary socio-economic injustice is being committed against them and in favour of those who have already reached a 'level' playing field, and equality of opportunity is being eroded from the point such 'level' ground was reached by individual members of a community that is only collectively labelled as 'underprivileged'. They are against the reservations because

not only appointments are made on the basis of membership in a caste, but further promotions are also made on the basis of mere membership of a community— not considering the fact that the individual is, upon being appointed to the aforesaid 'public' post, no longer "socially or economically handicapped". They also believe that reservations are used for political benefits rather than social benefits. **Prof. Rajani Kothari** (Caste in Indian Politics) wrote about the politization of Indian castes and the castization of Indian politics. Similarly **Rudolf and Rudolf** talked about caste-federations involved in Indian politics. Various anti-reservation movements are initiated in the different parts of India. *Mission- 72, SamtaAndolan, SamtaManch, Sarva-Brahmin Mahasabha (in the leadership of Pdt. Suresh Mishra), General and OBC Officers Mahasangh (in the leadership of PankajOjha) Jago Party and Anti- Reservation Federations* are raising their voices for justice and for sake of saving our constitutional spirits.

They believe that reservations do not take into account merits and achievements; and those who do not deserve hold certain positions or get those positions because of reservations—this could lead to deterioration in the efficiency of public services. This is also responsible for youth-unrest and frustrations among youngsters. India will remain trapped in the caste paradigm. The Reservation Policy is helping less, while harming more.

Arguments in Favour of Reservation:

Men should remain in the same occupation and station of their life as their forefathers' was a part of religious precepts and social customs long ago, in India. The oppressed argue that they should get a greater share in administrative positions

because political power resides in India's administrative positions. They view political power as a way to get economic benefits, of which they have been deprived.

The 'pro-reservationists' believe that they should get reservations because they had been victims of the Brahmin-dominated caste system, and look up to reservations as a part of the struggle against this oppression—towards changing India's social structure. Supporters of quotas have argued that reservations have been successful in Southern states, where they have been used extensively.

Some Leading Judicial Pronouncements:

Ø *State of Madras v/s. Smt. Champakam Dorairajan* AIR 1951 SC 226, Supreme Court pronounced that caste based reservations as per Communal Award violates Article 15(1).

Ø *M R Balaji v/s. Mysore* AIR 1963 SC 649, Court put 50 per cent cap on reservations.

Ø *General Manager, S. Rly. v/s. Rangachari* AIR 1962 SC 36, *State of Punjab v. Hiralal* 1970(3) SCC 567, *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India* (1981) 1 SCC 246 it was held that reservation of appointments or posts under Article 16(4) included promotions.

Ø *Indira Sawhney & Ors v/s. Union of India*, AIR 1993 SC 477 : 1992 Supp. (3) SCC 217, held that reservations cannot be applied in promotions.

Ø *M. Nagaraj & Ors v/s. Union of India and Ors.*, AIR 2007 SC 71 held the amendments constitutional. (1- Those constitutional amendments do not alter basic structure of Article 16(4). (2- Backwardness and inadequacy of representation are the controlling/compelling reasons for

the state to provide reservations keeping in mind the overall efficiencies of state administration.

Ø **SurajBhanMeena v/s. State of Rajasthan**, held that, in view of **M. Nagraj&Ors v/s. Union of India and Ors. AIR 2007 SC 71**, if the state wants to frame rules with regard to reservation in promotions and consequential seniority it has to satisfy itself with quantifiable data that is there is backwardness, inadequacy of representation in public employment and overall administrative inefficiency and unless such an exercise was undertaken by the state government the rules in promotions and consequential seniority cannot be introduced.

Ø **U.P. Power Corp. Ltd. v/s. Rajesh Kumar & Ors.**, Supreme Court, 27th April 2012.

At present, the benefits of job reservations are most chewed up by the more affluent sections of the backward class and the benefit of the reservation policy is not being percolated to the poor and the really backward class amongst them which makes them poorer and more backward. So, the government must give effect to the observation made by Supreme Court in various cases in order to achieve social and economic justice for the whole section of backward classes.

Commenting on the impact of reservations on the educational standard, sociologist **Andre Beteille** writes- “Everybody says that the standards have fallen in the Indian universities. However I find it difficult to judge, firstly, whether standards have in fact fallen, and secondly, if they have fallen, whether the fall has been due to affirmative action. At the bottom end of the scale, a very large proportion of the present crop of graduates would not have graduated in the 1950s. On the other hand the number of good students is probably higher-so at the

top end of the scale, standards are maintained. I would attribute the lowering of standards in this particular sense to the massive and sometimes reckless expansion of higher education under political pressure.”

The more fundamental question, however, is how far the quotas have and other privileges helped the target groups. As we have seen above the progress in this regard has at best been marginal. Whatever progress has been registered by the depressed classes it is more or less proportionate to the overall progress achieved by the nation. As target groups they should have shown a visibly better record, but this has not happened. In a country like India where poverty, illiteracy and deprivation are so widespread, it is a questionable proposition to think in terms of upliftment for particular social groups, that too by emphasizing reservations alone. A report on the state of primary education in India brought out by the *India Today* portrays a depressing picture of the Indian state's failure in this regard. The problem as such is much larger and mere targeting particular sections of society would not do. It is surmised that since reservations are the least expensive and politically most rewarding the political parties find them the easiest policy options available to them.

A related question is whether the privileges are being cornered by the elites amongst the target groups. One common criticism against the reservation policy is that it has benefited only a small section of them. According to estimates only 6 per cent of the SC families have benefited from the policy. It must, however, be admitted that even this small number has thrown up leadership for the community to bargain for the larger interests of the community at large. Moreover, it is a fact of life that in any community within a competitive polity the initial

beneficiaries are invariably the elites.

In fact the reservation policy is a million dollar question regarding basic structure of constitution, efficiency and merit versus social justice issues. Frustrations and unrest can be seen among the unreserved segment of society. It can burst out in any form of social revolution or rebellion or movement. Now the time has come to review the policy of protective discrimination. This is the need of the hour to save the fabric of our caste based social integrity. It was also said by Gandhian **Kaka Kalkekar (1885-1981)** and eminent sociologist **Prof. M. N. Srinivas** years back.

References:

Ø “SC quashes quota benefits in promotions”, The Hindu. April 28, 2012.

Ø “U.P. Power Corp. Ltd. v/s Rajesh Kumar & Ors, 27 April, 2012”.

Ø 117th Constitutional Amendment Bill, 2012.

Ø **Basu, Durga Das** (2008), Introduction to the Constitution of India. Nagpur: LexisNexis Butterworths Wadhwa. ISBN 978-81-8038-559-9.

Ø Constitution of India

Ø **Education Safeguards**, Department of Education. Government of India, 27 November 2011.

Ø **Indra Sawhney** etc. v/s Union of India and Others, 16 November, 1992

Ø **Kohli, Atul** (2001), The Success of India's Democracy, Cambridge University Press.

Ø **Laskar, Mehbubul Hassan**, “Rethinking Reservation in Higher Education in India”. ILI Law Review.