

RESERVATIONS AGAINST RESERVATION

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The Jat Community once again a few months ago threatened to start the stir for a demanding reservation in government jobs, this time more powerful in magnitude by sitting on a dharna across various places in the NCR region, bringing normal life to a grinding halt by blocking rail and road traffic. The same demand was raised earlier last year¹ by the Maratha community when lakhs of people from the community took out a march on the streets of Mumbai demanding reservation in educational institutions and government jobs. Though the agitation has been put off with assurances from the government listening to their demands, it has once again raised the ever contentious issue of the scourge of reservation. A debate for amelioration from oppression Vis a Vis the victory of merit.

The Indian society, since the days of yore has been deeply embedded in the caste system and sections of the population have been discriminated on the basis of caste, wealth etc. depriving them of many advantages and services.

Ever since the inception of the Constitution² the menace of inequality has continued to hound the nation and this has also seen a reflection in the final draft itself. The Constitution as passed by the constituent assembly contains many provisions which would advance the cause of the oppressed, and save them from appalling discriminations.

Dr B.R. Ambedkar, the chief architect of the Constitution, during the constituent assembly debates³ had stated “On social plane, we have in India a society based on the principle of graded inequality which means elevation of some and degradation of others”.

He further stated: “We have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of the communities which have not had so far representation in the state believing that the judiciary would provide an excessive safeguard if the reservation tended to be excessive.

Dr. Ambedkar’s assertion of judicial intervention might only have been in cases of any palpable error in the drafting or where a heavy disbalance was visibly apparent between equality and subjugation.

¹ 09-08-2017

² As it was originally drafted by the framers

³ Constituent Assembly Debates- Chapter II

But after more than five decades since the Constitution came into force, the judiciary has seen a more activist intervention in matters of reservation with the Apex Court deciding a plethora of cases under Chapter III owing to the beneficiaries⁴ using it as a tool to have the icing on the cake and the ruling elite as a ploy to remain in power by hoodwinking those who are vociferous votaries of merit and equality of opportunity.

Citing all or most of those cases would amount to replacing opinion with judicial precedents. Hence I would only quote the landmark case⁵ on this issue before dealing with the perennial problem. To nullify and dilute the effect of the judgment, the Parliament vide Seventy seventh constitutional amendment, 1995 inserted Article 16 [(4A)] in the constitution which provided for reservations in promotion with consequential seniority.

This, as mentioned earlier appears more as a ploy to garner support base for the large section of the vote bank to remain in power with heavy and unjustified disregard to the principle of equality of opportunity.

Justice V.R. Krishna Iyer has rightfully observed about reservation: *“as wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalization- when the constitution mandates for everyone equality before and equal protection of the law- may be fatal folly, self-defeating educational technology and anti- national if made a routine rule of State Policy.”*⁶

Disregarding equality has a cogent corroboration in the form of extending the period of reservation after every ten years⁷ till date mechanically without even contemplating the plausible need for the same. Oppression is a form of social discrimination that has its roots in the visceral hatred existing since time immemorial. The four classes of society⁸ have their social, educational and financial status, and work assigned to them according to the birth and

⁴ Many who got the benefit of reservation since the inception of the Constitution continue to receive it even today even though the economic and social position of the particular caste and class have improved considerably bringing them to the mainstream society free from all kinds of social shackles

⁵ In a path breaking judgment *Indira Sawhney v Union of India* AIR 1993 SC 477, The Supreme Court put a capping of 50 percent on initial appointments under Article 16(4) including 27 percent for the other backward classes.

⁶ *Dr Jagdish Saran and Others vs Union of India* 1980 2SCC 768, paragraph 21, 22 and 23

⁷ The reservation for public employment was not a permanent feature but was initially for a period of ten years subject to review, if during the said period the position of the beneficiaries improved which would no longer warrant them to avail the benefit.

⁸ The Brahmins, Kshatriyas, Vaishya and Shudra

customs and conventions⁹ followed as a matter of practice. It is mainly the Shudras have been the one that are considered backward and face the brunt of the discrimination and oppression and freedom from the shackles of the same.

It primarily demands changing of mind-sets and social attitude from the more privileged towards the victims. This would inter-alia require diminishing the distinction between the work assigned to each caste.

This would require bringing the lowest rungs of the society¹⁰ on a social equilibrium with the upper castes. The policy planners and law makers have been pursuing a one sided approach to end social discrimination.

To alleviate the sufferings of the oppressed and the victimized is a form of social justice which they should get and deserve. The methods employed to do the same stems dissatisfaction among the various members of the society that has resulted in an invidious comparison otherwise not warranted.

Education is and has been the most powerful tool to diminish the distinction among the various social forces guiding and operating the malaise of discrimination.

While laying emphasis on education of the untouchables by making special provisions for them in schools colleges and even government jobs by the method of reservation¹¹, the government fails to educate the upper castes against social discrimination.

Education thus would require a two pronged approach:

1. Educating those who are considered as untouchables and who traditionally do menial work.
 2. Educating the upper castes¹² for their attitude towards the scheduled castes and tribes.
- It needs to be emphasised that this type of education cannot be achieved through academic studies and books alone but by social sensitization and changing of attitudes and behaviour.

⁹ Amongst the many theories prevalent for the caste system, a popular belief exists that the categories originated from Brahma: the Hindu God of creation. With the Brahmins coming from the Brahmas head and the Shudras from the feet.

¹⁰ Considered as the untouchables

¹¹ Reservation is a method by which the lower castes get special benefits and concessions in education and government jobs. This is done by giving heavy discounts to them in examinations by keeping the qualifying marks for recruitment to various civil posts under the government much lower as compared to the upper castes.

¹² This would chiefly require social sensitization.

The former being important but the latter also carrying equal weightage. While laying emphasis on the education of the backward classes and the discriminated, the attitude of the upper castes towards the former is not carrying the right rectitude.

This abominable attitude of the latter towards the former has stemmed from the flawed approach of those at the helm to end injustice, discrimination and oppression.

All this could be eliminated to a greater extent if the principle of equality is followed wisely. This would require going into the root cause of the problem. To bring the subjugated to the mainstream of the society, there are two main requirements:

1. Educating them
2. Providing all facilities for the overall development of their faculties and personality.

Both are interlinked and would need: (a) giving free or subsidised learning to them in schools and colleges, (b) waiving off their fee as per requirement, (c) giving special attention and care to children who need it more than others, (d) giving them free books or at subsidized rates.

But providing a smooth sailing to some by keeping the admission criteria of different categories of society for entry into schools, colleges, and government jobs on a lower or higher pedestal is like providing a piece of cake to some without having to put in any effort for its procurement.

The learning, grasping, understanding and analytical abilities of a child would depend upon his individual capacities along with the atmosphere in which he is imparted education. Education is a very broad and comprehensive term which includes academic studies, moral values, and vocational skills among other things which would lead him to become a responsible citizen and earn a decent livelihood according to his area of interests.

A child does not come into this world with the power and right to bequeath everything to his brain. Taking a hypothetical situation of personification of human brain which had the ultimate power to decide everything according to his personal choices i.e. it would not work only because it is fitted in the body of a person who is born in a family branded by the society or the government as scheduled caste or tribe or other backward class by the society. Hence would not function no matter how hard the body or individual tries. It will only start to function when fitted in the body belonging to the upper caste as recognized by the society, the purpose of reservation would have fulfilled as an imperative. But no such power being existent, the policy of reservation has not come to fruition but has instead created a deep chasm across various its various members.

Analogically speaking, it is like comparing the hypothetical scenario to the first scene of the Amir Khan directed blockbuster: 3 Idiots where the career of a new born child¹³ is immediately decided by the parents while the child is still in the incubator.

Those availing policy of reservation are in a sense deliberately undermining their brain's working power by not utilizing it to its capacity owing to the government's cakewalk policies.

Ever since the policy of reservation has been in force, the beneficiaries have become habituated to sailing through various platforms with considerable ease as compared to their upper caste counterparts irrespective of the fact that they can qualify the various exams within the parameters of criteria set for the upper castes easily.

This is also the reason of the vehement protests whenever voices are raised against abolishing reservation.

The social and economic position of many castes have improved considerably since the inception of reservation warranting no more benefits to them.

But there seems to be a deemed understanding between the beneficiaries to continue the policy with the former serving as potential vote banks to those at the helm of governance to continue with the flawed policy on the condition of their remaining in power.

This is also the reason that with every passing day more and more castes depending upon their numerical strength and clout raise demands to be declared as backward for availing the benefits of reservation which would in turn garner enough support and votes for the current ruling dispensation to remain in power.

Reservation bridges the gap between remaining in power and conferment of benefits. It is like an erroneous trade-off, a mea culpa on the part of the elected which they should acknowledge but consciously fail to do. The recent 123rd Constitutional Amendment giving constitutional status to the National Commission for backward classes (NCBC) which was otherwise a statutory body by proposing the insertion of Article 338B in the Constitution is a corroboration of the same.

¹³ Becoming doctor or engineer

Policy planning is an intricate task of balancing the competing forces that disturb social cohesion. When these forces fail to achieve the avowed objective, democracy is put at peril.

A policy deliberately designed to subvert democracy is a social malaise which smacks of corruption. Corruption is not only measured in monetary terms to gain financially by accepting bribes, but in a larger connotation would also imply corrupting a social practice, a tradition or rules and regulations to continue with the usufruct of the ill-gotten gains.

In this case it is the deliberate designing of wrong policies to heavily favour a few at the behest of others to continue with the ill-gotten gain of remaining in power.

The Jats have been a well off dominant community both socially and economically. They don't face discrimination and are well placed across all spheres of human activities in terms of employment or otherwise. The dharnas and demonstrations from time to time is only a pressure lobby to achieve the above objective.

The Supreme Court in **Ram Singh and Others vs Union of India**¹⁴ struck down the Central Government notification for reservation to Jats in government jobs as being arbitrary and violating the right to equality.

The court eloquently said-

“The perception of a Self-proclaimed socially backward class of citizens or even the perception of ‘advanced classes’ as to the social status of ‘less fortunates’ cannot continue to be constitutionally permissible yardstick for determination of backwardness, both in the context of Articles 15 (4) and 16 (4) of the Constitution. Neither can any longer backwardness be a matter of determination on the basis of mathematical formulae evolved by taking into account social, economic and educational indicators”.

But the threat of Dharna and the Central government conceding to the demand of reservation by crating space between the 27 percent meant for the Other Backward Classes, not only

¹⁴ Decided on 17-03-2015

defies the order of the highest court of the land, it is an unjustified surrender under a vehement pressure lobby for a deliberate compromise on a craving for power.

Policy planning and issues related to governance must maintain a modest balance between robustness and fragility to maintain social harmony. When this equilibrium is disturbed the weak gaps between social harmonies are filled up with discontentment and disaffection creating even a wider chasm between various sections of the society.

Reservation is a social malaise that has always created an evil negative effect of dividing the society. The time has now come to put an end to the policy of reservation.