

SOCIAL JUSTICE IN INDIAN SOCIETY

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Social justice has a special significance in the context of Indian society. Because here the structure of the society is based on caste and communities which create walls of exclusiveness. The lower castes are victims of historical wrongs and exploitation for Indian democracy. Social inequality is the major obstacle because equality and social justice are among the foundations of democracy. The concept of social justice aims at removing the inequalities and providing equal opportunities to all citizens in social affairs. The main objective of a welfare state is to extend social justice to the weaker section, women and children. Poverty is the root cause of inequality. Therefore, the social justice is interrelated with economic justice. State has to fight with evils of want, disease, ignorance, and idleness, all attempts made by democratic legislature to meet the challenge of poverty. Sometimes the individual rights and freedom are regulated to achieve social justice. The regulation and control must be absolutely essential and under reasonable limits, the claims of social justice and individual liberty have to be rationally and harmoniously reconciled, the Constitution of India has solemnly promise to all citizens, justice, social, economic and political, liberty of thought, expression, belief, faith and worship equality of status and of opportunity and to promote among all fraternity, assuring the dignity of the individual and the unity of the nation. The policies which aim merely at non-discrimination will not aim in overcoming the injustice of the past. It is asserted that mere non-discrimination would perpetuate indefinitely the gross inequalities of the past discrimination to overcome the inequalities the past discrimination. Compensatory measures are needed to bring to pure genuine equality of opportunity inequalities resulting from one's birth or those due to past social injustice are relevant to the issue of social justice and equal protection,

protective discrimination for a transitory period. Without compromising the equality principle is an essential part of a program designed to realize this principle is only an aspect of the policy of social justice which India has endorsed. Other measures are related to planning welfare programs, educational facilities grant etc. But reservation is the most controversial issue. In this relation the backward classes in India who had kept in subjugation were to be given opportunities to bring them on par with those who had the educational and cultural benefits over the centuries if the highly advanced caste and the backward caste were allowed to compete without the state's interference. Consequently, the backward caste deteriorated further so it became necessary that advantageous aids should be given to the backward classes in order to raise the status, so the caste system would cease to exist. Ultimately the compensation is what the society as a whole owes to the disadvantaged groups because the interest of the society at large would be served by promoting the advancement of weaker sections in the society.

As far as the theory of protective discrimination is concerned, it has some loopholes. It is not clear who is paying the compensation. It depends on compensation for a class from another class or society as a whole. While the past generations are responsible for the injustice, the present generation has to pay the price for historical wrongs. The benefits may go to the person who are not the victim of discrimination. The history of reservation so far reveals that a large chunk of the benefit is grabbed by the elite of the backward classes, the benefits of the most qualified persons among them instead of the most deserving because large portions of backward classes are illiterate and live under grave poverty. The differential treatment originated a competition among different castes for

being identified as a disadvantaged group. On the other hand, protection, and safeguard generally have the tendency to promote dependency among those who are provided these protection feelings of securities emerged by them which make them inner towards their own progress. If the safeguards are provided for a long time, the weaker section can lose the power to be insensitive to their development. The advanced classes may develop a feeling that weaker sections are unable to compete with them without the protective discrimination in India, caste is evidence of backwardness but there are variations in educational, economical and social level of the person. Even belonging to the very caste group. Occupation has a changing pattern for many communities so it cannot be a significant determinant of the backwardness. If the backwardness is determined by an economic test, it would be difficult to assess the real income of professional classes and farmers. Further it ignores the historical wrongs. Therefore, a multiple test is needed for the domination of backwardness of which caste is a major factor because in India, the social structure is completely based on caste consideration. The other factor should be given the due recognition because in today's society many people belonging to the upper caste may be classified as disadvantaged classes. Economically, the caste is the chief factor. It results in perpetuation of division in society in which caste flourishes. There are examples that in many cases the provision of reservation extension of its time for scheduled caste and scheduled Tribe's determination of backward classes and implementation of reservation for them are calculated by political motives instead of extending actual welfare to the most disadvantaged section.

There is a clear resentment among the upper castes due to the unemployment and frustration, posts and seats are obtained by persons who are less qualified by them. It results in violent clashes and atrocities against the backward classes. This has led to the increasing conflicts in caste divisions in the country.

Even if the protective discrimination is justified on some grounds, it can be termed as

invalid if it is excessive and is incompatible with the efficiency in service it would be against the national interest to exclude deserving students from higher education and public service by making reservations while the Constitution is silent about the limit of the reservation and provides that the reservation should be in accordance with the maintenance of efficient in service. The Supreme Court has set a ruling of below 50% reservation, reservations beyond this limit is excessive and unjustified because reserving a majority of the seats would be against the principle of social justice. This ruling is a convenient way of reasonable balance among the claims of meritocracy, the claims of social justice for the backward classes and the national interest of efficiency in service education the reservation should not be excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities

In India the reservation for scheduled castes and scheduled tribes was set in proportion to their then population, 15 percent and 7 percent respectively in the services of the central reservation government but in States the was in accordance with their local population. The Mandal Commission proposed 27 percent reservation for other backward classes constituting 52 percent of the population maintaining the limit of 50 percent. This reservation is not proportional and there are variations in the percentage among states. Our Constitution envisages adequate representation which is not proportional representation under Article 16(4).

Reservation granted to the other desperate groups such as physically handicapped and ex-servicemen etc. are under the rational basis test of Article 14 instead of increasing the percentage, the reservation should be under the minimum possible limit and every effort should be made to include the really disadvantaged groups under that ceiling. Some questions arise about the efficiency of administration as who can make decisions about whether efficiency is affected by the reservation and to what extent? Constitution favors efficiency, but no right is granted to citizens if this principle is breached. Again, it can not be guaranteed that the persons selected on merit will provide an efficient

administration because if they have merit, candidates belonging to backward classes have the experience of the actual social situation, which is necessary for administration.

It is an important query that how far reservation serves the goals of social justice. It is a fact that the representation of the Scheduled Castes and Scheduled Tribes is increasing in the services which would be very difficult without such measures. It is argued that in India where 40 percent of the population is living below the poverty line and unemployment is prevailing on a large scale, giving a few thousands of jobs to the backward classes can not be termed as an upliftment measure. But regarding the power and prestige which public services have in India, this measure can provide a sense of security and participation in national life to these classes. If there are a few thousands of jobs, the backward classes should have due share in them.

There are demands as to raise the reservation for the Scheduled Castes and Scheduled Tribes according to the increase in their population and fixation of sub-quotas in compartments for the clusters of backward classes on population basis. Such demands will further complicate the situation. All political parties are taking up populist measures and the task of nation building remains unsupported.

It was often feared that the benefit of reservation goes to the elite of the backward classes.

In the case of the reservation for OBCs, the Supreme Court directed the governments of center and States to identify the creamy layer among the OBCs so as to prevent them taking undue benefits from the job reservations scheme which was conceived only as a measure of protective discrimination to help the socially disadvantaged. The Court was of the view that on the grounds that the country has made much progress on political, social and economic fronts and some individuals and families among OBCs have developed competence with others.

They should not be included in the scheme of reservation. This concept is criticized on the ground that it militates against the emphasis on

social rather than economic backwardness. If it is so, the Supreme Court would not have ruled against reservation for the backwards among the forward castes. Those families among backward classes which have ceased to be economically, educationally and socially backward can be excluded from the reserved categories. Since elite formation is inevitable in every group, this section should periodically be skimmed off to maintain the rationality of reservations.

The Supreme Court did not define the creamy layer. It was left to the governments in their respective areas. The Central government defined the creamy layer for central government services. In some States it became a matter of controversy. As in Bihar, first the Chief Minister declared that there was no creamy layer in the State. Later, the government gave the definition. In Kerala too, it was declared that there were no advanced sections among the backward classes in the State. Bihar and U.P. adopted some criteria for the determination of creamy layer. It was challenged in the Supreme Court which held that the criteria was unconstitutional, wholly arbitrary and discriminatory. Reservation is meant for the "Class" excluding the creamy layer. A creamy layer among the OBCs exists is itself a confirmation of the upward mobility of a section of them and there can be no justification for allowing this miniscule group to prosper at the expense of the genuinely disadvantaged. While it is argued that the percentage of the OBCs falling under the creamy layer would be very little, we do not know the real percentage of the OBCs excluding the creamy layer for whom 27 percent reservation is provided.

The Mandal Commission gave the number of the OBCs - 3143, but now there are 1200 castes in the list of central government. The concept of the creamy layer is opposed because it decreases the political value of the castes, politicians use caste to mobilize support, castes use politics to further their interests which result in caste-consciousness.

The Constitutional provisions against the practice of untouchability are meant to remove the inequities of casteism. But this is not the rationale

behind Mandalisation. For Mandalites, it is important to keep caste identities alive as a matter of policy rather than device measures for their total removal from social life. Reservations as originally conceived were for a strictly limited period in legislatures and were meant only for the Scheduled Castes and Scheduled Tribes, by consensus the most disadvantaged groups in the society. Gradually, they were extended and the State used them to guarantee a sort of social justice. And now they are extended to OBCs in jobs without any time limit. It is hoped that they are meant for 10-15 years. In the Mandal case the Supreme Court suggested that the reservation must carry the seeds of its own termination. The termination of the reservation is not an easy process because it is a matter of policy.

The emergence of consensus among political parties is difficult due to the vested interests. An accurate assessment of the benefits of reservation for backward classes is essential as feedback. The concept of the creamy layer may be extended to the Scheduled Castes and the Scheduled Tribes. If a generation has taken the benefits of the reservations, their second generation should have no right of these benefits, rather they should go to their more unfortunate brethren. This process can lead to the termination of reservations, which will otherwise be a tedious task. It depends on the efficiency of the government and how soon the nation can finally put the need for quotas behind it. A transparent policy is needed. Other communities should be included in the periphery of the reservation, only if they fulfill the conditions of the social and educational backwardness, and not on any communal or minority grounds. At the point of entry, as well as at every subsequent post of advancement the standards must be those which the proper discharge of duties at that level requires. In the context of the fact that our country is increasingly opening up to global competition in every sphere, its response should logically be to heighten standards rather than to lower them. In recent years, the idea of empowerment of the people has come to be linked very closely with the idea of social Justice. In the Indian context It has tended to shift the focus of attention from individual

to collective identities. These groups have started seeking out their own futures on the basis of their own identities and numbers. In this upsurge the struggle for social justice is found to move beyond class and socialism and constitute a challenge to politics.

The Scheduled Castes and Scheduled Tribes are provided reservation in legislatures. No such provision exists for the other backward classes. There increasing importance in the national electoral scene is evident by the election results. It is not the reservation, but their consciousness which is the reason behind this development.

Besides jobs, real social justice lies in providing health, nutrition and education to depressed masses. It will be ensured by a rigorous economic programme for all the backward classes. There have been various schemes and programmes but there again the benefits have been cornered largely by a dominant few. These inequities have to be tackled. Lack of resources can be managed by economic programmes which are needed to increase the competitiveness of the backward classes of the means to achieve. Reservation is only one step for egalitarian society. Backwardness is not a single isolable trait, it exists in kinds and degrees. The backward are not a uniform group. But whatever standards they are selected, some of them will be more backward than others. Whatever arrangement is proposed for the distribution of preferences among them, it will work to the advantage of some and the detriment of others. Power will acquire its benign form when it is gathered up from its privileged possessors and distributed to the people who will then share it among themselves according to agreed principles of social justice.

There are limits of equality, but every existing form of inequality is neither tolerable nor irremovable. The real thrust in social justice should be to make basic rights and facilities universally accessible to all. Every man-made wall of inequality is needed to be demolished for the achievement of the goals of social justice. Affirmative action should be treated only as a transitory period for attaining greater equality. Means may be compensatory but

the end should be equality which is the base of social justice.

REFERENCES

1. Galanter Marc 'Judicial Review of Designation of Backward Classes
2. Journal Of Indian Law Institute 459, 1961
3. Shouri Arun, the mandal report, this way lies not only folly but disaster, in Indian Express New Delhi 25th August, 1990
4. Venkat Ramani S.M., Diluting Standard through Quotas, in the Times of India, New Delhi, 18th November, 1994
5. 'SC quashes U.P. Bihar order on creamy layer' in the Times of India 6th September, 1995.