

PROTECTIVE DISCRIMINATION AND OTHER BACKWARD CLASS

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Right to equality is a means to obtain the higher goal of egalitarian society providing equal opportunity is meaningless the unequal society. Protective discrimination is needed for the exploited and underprivileged sections of the society for the fulfillment of the right to equality.

Article 15(1) of Indian constitution prohibits discrimination on certain grounds, while clause (4) of the same article provides- the state may make any special provision for the advancement of socially and educationally backward classes of citizens or for the scheduled castes and the Scheduled Tribes. Again article (16) secures to all citizens equality of opportunity in matters relating to employment or appointment to any office under the state and forbids discrimination against any citizen on grounds only of religion, race, caste, sex, descent, place of birth or residence or any of them. Clause (4) of this article permits the State to make any provision for the reservation of appointments or posts in favor of any backward class of citizen which in the opinion of the State is not adequately represented in the services under the State Article. Article 335 enjoins both the Central and State Governments, the responsibility of making provision for appointment for scheduled caste and scheduled tribes in the public services consistent with the maintenance of efficiency in the administration. The scope of the right to equal opportunity in matters of employment guaranteed by Article 16 Clause (1) appears to be more fully defined when read with the state obligation to promote the educational and economic interests of the weaker sections.

Indian Constitution says it is the obligation of the state to set up a commission to investigate the Conditions of socially and educationally backward classes and the difficulties under which they live and to make recommendations as to the steps that should be taken to remove such

difficulties and to improve their conditions. Two Backward Class Commissions were set up after independence, one under Kaka Kalelkar in 1953 and other under B.P. Mandal in 1978. The first Backward classes commission prepared a list of 2399 castes and communities and recommended various measures for the social and economic advancement. About 70 percent of India's population was considered a backward. The commission adopted the criteria of literacy, representation in services, traditional occupations etc. but the major one was caste hierarchy. The caste wise data of representation in services was not available as only few states provided figures, the commission based its conclusions on the then existing list of backward classes. The commission prepared only one list for purposes of both Article 15(4) and 16 (4). It recommended reservation for other backward classes in services at least 25 percent in class I, 33.5 percent in class II and 40 per cent in class III and IV. It also proposed 70 percent reservation in medical, scientific and technical education and creation of a separate ministry for backward classes welfare *1.

In 1961, the center directed the states to prepare their own lists based on economic criteria instead of caste basis. This was also supported by the judiciary in Balaji and Chitralakha cases. Most of the states adopted reservation and other welfare measures for the other backward classes *2

The second Backward classes commission was set up in 1978 by the Janata Party government under the chairmanship of Mr. B.P. Mandal. All members of the commission were from backward castes. According to its findings backward classes constitute 52 per cent of India's population, so 52 percent jobs should be reserved for them. But to maintain the limit of reservations below 50 percent set by the Supreme Court, it recommended 27 per cent reservation for OBC's in government services

and professional education, both in the centre and states. *3

On August 7, 1990, the then Prime Minister V.P. Singh announced the government's acceptance of Mandal commission report in Parliament for the 27 percent reservation for other backward classes in the services under the central government and public undertakings. A sharp reaction started particularly among students against this decision. Press was also critical of the caste based reservation and an increase in castism was feared. The notification of the government was challenged in the Supreme Court. A five Judges bench declared on 1 October 1991 that till it "decides the constitutionality on the August 13, 1990 notification the National Front government, no jobs will be given to the socially and educationally backward classes under this notification. The identification of castes by the Nations front government shall continue but until the matter is finally heard no further steps will be taken." *4

In the meantime, the V.P. Singh government was toppled, the Chandrashekhar government came for a few months and the Rao government was stalled in June 1991. The Supreme Court gave directive to the central Government to make clear by September 25 its stand on the notification issued the V.P. Singh government. The Congress (I) government decided to maintain it and guided by its manifesto, it also cleared 10 percent reservation for the underprivileged among the upper castes. The total proposed reservation became 59.5 percent. The Supreme Court continued the stay order and a nine Judges constitution bench was formulated for the hearing of this case.

On November 16, 1992 by a majority of 6-3 verdict, the constitution bench of the Supreme court ruled that the notification issued by the National Front government of 27 per cent reservation for OBCs was enforceable provided the government removed the economically better offs from the list of beneficiaries. The apex Court struck down the amended notification issued by the Rao government. Court also directed that job reservation for socially and educationally backward classes was restricted to

employment alone and not for promotions. The Supreme Court maintained the 50 per cent bar on total reservation of jobs for both scheduled castes and scheduled tribes and other backward classes. The court allowed some relaxation in the rule for inhabitants of far flung areas due to some extraordinary situations inherent in the great diversity of the country and its people. The judgment was the result of over 110 petitions challenging the National Front government's order to implement in a phased manner, the recommendations of the Mandal Commission. *5

The judges noted, a caste could be and quite often is a social class in India. If it is socially backward it would be a backward class for the purpose of Article 16 (4). A backward class can not be identified only and exclusively with reference to the economic criteria. The Court directed the centre and state governments to set up commissions to examine requests of inclusion and complaints against wrong inclusion or non- inclusion in the list of OBCs. Fixing a four months deadline for setting up such commissions, the court directed that all matters relating to wrong inclusion and non-inclusion would be open for judicial review by the apex court alone. It also directed the governments to determine the basis of removing the creamy layer so that genuine backward classes could be identified. Siphoning off the creamy layer is intended to protect the needy sections from the privileged one, who have taken the benefit and now should not be protected by the reservation. While the decision was hailed as the triumph social justice by some sections of society, other criticized it as a catalyst in caste war which can open up new vistas for conflicts and fissiparous forces and make backwardness as a vested interest. *6

On February 22, 1993, a committee was appointed by the centre following the Supreme Court directives. The committee was chaired by Justice R.N. Prasad, former Judge of the Patna High Court. A Backward Classes Commission was constituted on 16 August 1993 under the Chairmanship of Justice Prasad. Other members of the commission were Dr. Dhuru Bhai L. Seth, Dr.

Dinesh Singh Yadav, Dr. R. Prasannan, and Mr. P.S. Krishnan. They would hold office for three years.

September 9, 1993, marks the beginning of a social revolution in India. That is when the official notification to implement the Mandal Commission report was issued. The creamy layer among the backward classes was identified. It meant that persons or sections of society who were socially, educationally and economically advanced had forfeited the right to benefits of the reservation aimed at bringing the less fortunate and weaker sections into the mainstream of society. The decision opened up new vistas for the backward classes. Now they can join the bureaucracy leading to upward mobility.

The implementation resulted in the Mandalization of the whole political system. More and more castes were claiming their inclusion in the list of backwards. Backwardness became a vested interest and even those castes who claimed upper class status through upward mobility were claiming inclusion in order to qualify as the beneficiaries of protective discrimination.

The Lingayats and Vokkaligas. in Karnataka Reddys and Kammas in Andhra, Ahirs and Kories in U.P. and Bihar and many other castes wanted their continuous recognition as backward classes. The electoral system of the country had changed the character of the traditional caste system. *7

Castes were treated as vote banks and the political system was using it differently. Upper castes were losing their hegemony and a power shift was obvious by the electoral behavior in recent years. The upward mobility was resulting in social and economic upliftment and having become bolder they were seeking appropriate accommodation in the political system of the country.

With the implementation of Mandal Commission report all the controversies relating to reservation were not solved. A crucial question was about the limit of reservation while Supreme Court

upheld the limit of 50 percent, some states were crossing it. Tamil Nadu approved 69 percent reservation and recommended to put it in the ninth schedule of the Constitution. On 25th August 1994, the Parliament passed the bill unanimously to put it in the ninth schedule so that it can be saved from judicial review. Karnataka adopted the same course and recommended 73 percent reservation. On 17th November 1994, Supreme Court indicated that Tamilnadu Government legislation reasserting 69 percent seats in state government jobs and educational institutions could not be enforced by the government even after its inclusion in the ninth schedule of the constitution validating the act retrospectively.

Reservation is a protective measure and increasing it to this extent may hide the real issue under the vote bank politics. The inclusion of the politically important and numerically big castes in the list of backward classes makes the reservation a weapon of gaining political support. Far reaching structural changes are needed for achieving the goal of egalitarian society and making the downtrodden classes competitive for attaining higher ends. Protective discrimination is only one of the various means in this direction.

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