

RESERVATION FOR ECONOMICALLY WEAKER SECTIONS

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Reservations for weaker sections are provided by the constitution. The provisions for safeguards were discussed in the constitution Assembly which were later included in the Indian Constitution on 13 December 1946, Jawahar Lal Nehru moved a resolution which was in the nature of a pledge. Clause 5 of the resolution was 'wherein shall be guaranteed and secured to all people of India justice, social, economic and political, equality of status of opportunity and before the law freedom of vocation, association and action subject to law and public morality.

Clause 6 provided "Wherein adequate safeguards shall be provided for Minorities, Backward and Tribal areas, depressed and other Backward Classes.

The objective resolution was welcomed by different sections of the society and ultimately found expression in the Preamble of the constitution, which proclaims in unequivocal term justice, liberty, equality and fraternity as the inalienable rights of the citizens.

The objective resolution comprises of justice, equality and liberty. These are the essential pillars of democracy and they are used in wide and varied connotation The essence of justice impresses the entire social, economic and political spheres of human life. The equality signified the equality of status, equality of opportunity and equality before law. It promises. safeguards against all types of discrimination. The 'freedom' is not absolute and unlimited.

Dr. B.R. Ambedkar submitted an exhaustive note which was concerned with the political, and social safeguards for the Scheduled Castes. He suggested that Scheduled Castes should have a minimum representation within their proportion of

population in the legislature. Similar provisions in public services was also suggested. The suggested the continuance of the safeguards for twenty five years when the position might be reviewed. But when committee decided a period of ten years, He agreed to it with a note that if it was considered necessary it could be extended at the end of ten years.

The Draft constitution of India was formed by the Drafting Committee headed by Dr. B.R. Ambedkar In preparing the draft, the committee generally followed the decision taken by the Constituent Assembly, on the recommendations of the various committees appointed by it. At the time of drafting Art 16 (4) which was Art 10 (3) of the draft constitution, there occurred a considerable discussion for the determination of the backward classes for whom special provision for jobs was to be made in the constitution. According to one group this term meant only the "untouchables" by the other thought it covered a broader group of people who were educationally, economically and socially backward regardless of their religion, race or caste and some believed that it should include the victims of historical wrongs.

In the opinion of K. M. Munshi the backward classes were the victims of historical discrimination, to deny equality of opportunity in the socio-economic life of the society, therefore their socio-economic needs should be satisfied. He clarified that the term 'backward classes' covered not only the Scheduled Castes and scheduled Tribes but also other socially, educationally and economically backward classes. But neither the Art 16(4) nor Art 340 talk about economic backwardness. Art 46 of our constitution speaks of directive principles to promote the educational and

economic interests of the weaker sections of the society, particularly the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. The Constituent Assembly intended to include even economically backward classes of the society for the purpose of securing social justice to those people by making reservation of jobs for them.

Some views were expressed against the reservation and in favor of merit as the principle of equality but Dr. Ambedkar thought that there must at some time be a provision made for the entry of certain communities which were outside the administration. There should be balance between a merit and efficiency and the provisions of social justice. The provisions of reservation must be so arranged that they should not go against rule of equality in reverse direction favoring the backward classes by giving them all posts. In his opinion reserved seats must be in minority in number, if only 30 seats out of 100 are left for general category it is against the principle of equality.

When the decision of implementation of Mandal Commission report for reservation for other backward classes was taken it was also argued that Mandal report had also taken economic criteria into account in determining backwardness. The fact remains that Mandal Commission used them only to determine the backwardness of a caste and not the people in general. Only a small section of dominant castes enjoys wealth and power, the vast majority are poor and enjoys little social and political leverage, On the other hand some backward castes have more access to corridors of power.

The Congress called for a national consensus on the issue and demanded inclusion of economic criterion for reservation. The Bhartiya Janta Party felt that while implementing the recommendations of the Mandal Commission, the criteria of economic backwardness should be given proper weightage along with caste consideration.

The anti reservation agitation continued till the matter went to the hands of judiciary on October 1, 1990. In the meantime, V.P. Singh Government

was toppled and Chandrashekhar Government was stalled for few months. In the general election of 1991, almost every political party supported the welfare measures for the backward classes. In the tenth Lok Sabha Congress emerged as the largest single party with 224 seats but still short of an absolute majority. The government of Congress approved the consensus formula on job reservation issue, 27 percent for OBCs and 10 percent for economically weaker section of upper castes.

The Supreme Court, on Oct 1, 1991 decided to refer the Mandal case to nine judges constitution bench and directed the Rao government to make clear its stand on economic criteria. The bench observed with this scheme the cumulative reservation exceeded more than 59 percent. Therefore, there was a need to review the earlier order.

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 two years back providing for 27 percent reservation for OBCs was enforceable provided the government removed the economically better off from the list of beneficiaries. The Court struck down the amended notification issued by Rao government by which 10 percent reservation was proposed for economically weaker sections of forward classes. The judges directed the government to determine the basis of removing the creamy 'layer'. The then Union Welfare Minister, Sitaram Kesari also suggested that the central government would, if need be, amend the constitution to do away with the 50 per cent restriction. It can provide the benefit to the economically backwards among the upper castes.

After a long period, the provision of reservation for economically weaker section came for discussion in Parliament. Articles 15 (6) and 16 (6) were inserted in the constitution vide the 103rd Amendment Act 2019. This enables the state to provide the benefits of reservation on preferential basis to the economically weaker sections in services in Government of India and admissions in educational institutions. The provisions were implemented by

the Government in 2019. This raised the percentage of quota to 59.5% The decision was challenged in Supreme Court and the limit of 50% fixed by Supreme Court in Balaji Case.

Justifying 10% quota for economically weaker sections belonging to general class, the Centre contended that it is constitutional obligation to extend helping hands to the poor and it is duty of the government to fulfill their aspiration who are deprived of the opportunity due to their economic status. Attorney General K.K. Venugopal argued that granting 10% EWS quota would not amount to violation of the Apex Court previous judgment on fixing a ceiling of 50%. He elaborated that the Indra Sawhney judgment on ceiling on reservation was meant to ensure the people from the general class are not denied opportunity and they must get 50% seats in jobs and educational institutions. He said that the EWS quota is not violation of that principle as people from general class would continue to 50% and the poor from that category would get the reservation.

Senior advocate Shekhar Naphade, appearing for the Tamil Nadu government, submitted that the 103rd amendment was violation of basic structure of the constitution. He said economic criteria cannot be the basis for classification for granting reservation and it would breach Article 14. Contending that economic criteria alone can not be made the basis of reservation, senior advocate Sanjay Parikh told the Court that EWS quota effectively places the socially and educationally forward groups alongside socially and educationally backward groups who are lower in social hierarchy and it disregards the principle of equality envisioned by the framers of the constitution.

On 7th November 2022, the Supreme Court by 3-2 verdict upheld the validity of 103rd constitutional amendment carried out to provide legal sanction to 10% reservation for EWS from unreserved classes for admission in educational institution and government jobs and held that the 50% cap on quota is not inviolable. All judges agreed that the reservation for EWS is justified, while also

approving the quantum of the quota going beyond the 50% ceiling laid by the Apex Court. In their dissenting verdict then Chief Justice U.U. Lalit and Justice Bhatt struck down the amendment holding the exclusion of SCs, STs and OBCs from the purview of economic backwardness to be discriminatory and arbitrary.

Now the reservation policy which was only based on castes has opened new direction for an egalitarian society. For a person to come under the EWS quota, his or his family's income. should be less than Rs. 8 lakhs. Here the source of income also includes agriculture, business and other professions. There are certain mandatory conditions for people coming to EWS. A person under this category must have less than 5 acres of agricultural land. He should not have a (1) Residential space of 1000 sq. ft or more (2) A residential plot of 100 Sq. Yards or more. (3) Residential plot of 200 Sq. Yards or more in region other than the notified Municipalities.

Due to the lack of data on household income it is impossible to assess that how many people are economically backward. The EWS cut-off is such that it captures many more than just BPL families. The assessment of actual income of business class families is very difficult. There would be errors of exclusion of genuinely EWS persons, as well as errors of inclusion of not deserving persons in reservation. Many questions are unanswered. A Pandora box is opened about the limit of reservations.

For genuine people it is a good effort, but the need of the hour is that the benefit should go to the needy and deserving persons. Affirmative action should be treated only a way in transitory period for attaining greater equality.

REFERENCES

1. Ambedkar B.R.: Writings and Speeches Vol. 5, Bombay 1989
2. Basham A.L. The wonder that was India Rupa and co. Delhi 1989

3. Keer Dhananjay: Dr. Ambedker Life and Mission, Second Edition Bombay 1962.
4. Maurice Guyer and Appadorai, Speeches and Documents on Indian Constitution 1921-1947.
5. Namboodripad : Caste classes in Modern Political Environment-
6. R. Sangeetha Rao : Caste system in India, Myth and Reality, New Delhi' 1989
7. T.V. Sheshagiri Aiyer : In the Depressed. classes in India, New Delhi 1977
8. Report of Mandal Commission.