

Reservation as a welfare Measure

Reservation is an affirmative action taken by the state to remove persistent and continuous discrimination on a particular segment of the society.

Its aims to provide access to equal opportunities and grants full participation in the governance of the country. It also helps to overcome the chronic underrepresentation of a particular social group.

The constitution adopted a two fold strategy for ensuring the equality of depressed classes. On one hand equality before law provides for equal protection of the law irrespective of caste. on the other hand, the constitution provides for special provisions to promote educational and economic interests of socially and educationally backward classes. It reflects in Art 14,15(4),16(4) etc.the Directive principles of State policy under Art 46 says that state shall make necessary efforts for promotion of educational and economic interests of SC, ST and other weaker sections. The phrase weaker sections of the society has not been defined under the constitution. Supreme court in Indira sawhney case differentiated between backward classes under art 16(4) and weaker sections under art 46. It held that, expression weaker sections is wider than the connotation backward classes and includes all sections who are rendered weak due to various causes including poverty, natural and physical handicap etc.

The policy of reservation had a salutary effect in terms of induction of various backward classes in to public sector employment and educational institutions. But, few sections expressed concerns over quality and efficiency of administration. Added to this,Reservations did not provide equal opportunities with in the group to all beneficiaries. There is a growing sense of deprivation amongst different categories and is leading to internal dissension. so, regular revision of reserved lists and exclusion of some communities based on decadal data may be of some help. In this context,The jawaharlal nehru University has devised a unique admission policy which combines constitutionally mandated reservations with a system of weightages to other marginalised sections too. Justice Ranganath mishra commision recommended for an Uniform criteria of reservation based on socio economic backwardness and not the caste or religion. It further said that, the concept of reservation is an exception and it should aim at the self abolition. That is, as backwardness decreases, the reservation also shall come to an end. The policy of reservation is complex in India with out any single central policy. It is causing too many litigations. So, an evidence based scientific formula that can be applied uniformly across India can be developed. The private sector can be more effectively engaged in affirmative action in LPG era. Today, in India majority jobs are created in informal sector and organised private sector. In this context, confederation of Indian industry recommended for a voluntary code of conduct for affirmative action for disadvantaged groups.

DEMANDS FOR AMENDING CONSTITUTION (SCHEDULED CASTES) ORDER 1950

The constitution of India does not restrict the scheduled castes to any select religions. 1. The Constitution of India does not restrict the Scheduled Castes class to any select religions. The

term "Scheduled Castes" has been defined in Article 366 (24) read with Article 341(1) as: "Scheduled Castes" means such castes, races deemed under article 341 to be Scheduled Castes for the purposes of this Constitution.

(a) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes as Scheduled Castes in relation to that State or Union territory, as the case may be. (It mean state is taken as a unit to determine the schedule castes)

(b) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe.

Under these provisions a constitutional order was issued in 1950. According to this, anybody who is not a Hindu, Buddhist, Sikh can be a schedule caste. so, the demand for making this order religion neutral are increasing on the ground that, it is in violation of principles of secularism and equality. SC in *Sosai vs UOI* 1985 accepted that caste continues even after conversion. It also held that caste is more a social combination than a religious group. The atrocities and discrimination against lower castes is uniform irrespective of the religion they belong to. Contrary to this, arguments are, Persons of Scheduled Caste origin converted to Christianity/Islam who are socially and educationally backward are included in the list of OBC and are benefiting from reservation in services/ educational institutions and from other schemes and institutional support systems formulated for OBCs. Apart from the benefits available to socially and educationally backward classes, they are also benefiting from the constitutional, legal and institutional protection/arrangements as members of minority communities. Added to this, Grant of SC status to converts to Christianity/ Islam will adversely affect the benefits available to Scheduled Caste in the matter of reservations.

Reservations for minorities

Ranganath Mishra committee recommendations

The report of the, National Commission for Religious and Linguistic Minorities headed by former Chief Justice of India Ranganath recommended 10% reservation for Muslims and 5% for other minorities in government jobs and favoured Scheduled Caste status for Dalits in all religions. The Commission recommends delinking of Scheduled Caste status from religion and abrogation of the 1950 Scheduled Caste Order which "still excludes Muslims, Christians, Jains and Parsis from the SC net."

With regard to quota, the Commission says that 10% should be reserved for Muslims and 5% for other minorities in central and state government jobs in all cadre and grades.

It added that in case of non-availability of Muslims to fill the 10% earmarked seats, these may be made available to other minorities but in "no case" shall any seat within the recommended 15% shall be given to anybody from the majority community.

The Commission also suggested an alternative route for reservation to minorities if there is "insurmountable difficulty" in implementing the recommendation for 15 reservation.

In this regard it said since minorities constitute 8.4 percent of the total OBC population according to the Mandal Commission report so in the 27 percent OBC quota, an 8.4 percent sub quota should be earmarked for minorities.

The internal break-up should be 6 percent for the Muslims, commensurate with their 73 percent share in the total minority population at the national level and 2.4 percent for other minorities.

Besides it has recommended that the reservation now extended to the Scheduled Tribes, which is a religion neutral class, should be carefully examined to assess the extent of minority presence in it and take remedial measures.

The Commission noted that the minorities especially the Muslims are very much under-represented and sometimes wholly unrepresented in government jobs.

Welfare of minorities

For schemes and programmes for minorities please refer to IYB and Economic Survey.

Minorities

In common parlance, the expression "minority" means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc. The Constitution of India uses the word 'minority' or its plural form in some Articles – 29 to 30 and 350A to 350 B – but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "any sections of citizens.... having a distinct language, script or culture." This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B relate to linguistic minorities only.

The National Commission for Minorities Act, 1992 says that "Minority for the purpose of the Act, means a community notified as such by the Central Government"- Section 2(7). Acting under this provision, the Central Government notified the Muslim, Christian, Sikh, Buddhist and Parsi (Zoroastrian) communities to be regarded as "minorities" for the purpose of this Act. The Supreme Court in TMA Pai Foundation & Others vrs State of Karnataka and Others (2002) has held that for the purpose of Article 30 a minority, whether linguistic or religious, is determinable with reference to a State and not by taking into consideration the population of the country as a whole. Incidentally, 'Scheduled Castes' and 'Scheduled Tribes' are also to be identified at the State/UT level.

In several States (e.g. Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, U.P. and Uttarakhand), Jains have been recognised as a minority. The Jain community approached the Supreme Court seeking a direction to the Central Government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the Central Government to decide the issue (Bal Patil's case, 2005) and held

that not just mere the size of population, but also ability of the group to protect its distinctive identity determines the groups minority status.

Rights of Minorities

Internationally,

The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that “all human beings are equal in dignity and rights” and prohibit all kinds of discrimination – racial, religious etc. The UN Declaration against all Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the States to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

In India, Articles 15 and 16 of the Constitution prohibit the State from making any discrimination on the grounds only of religion, race, caste, sex, descent place of birth, residence or any of them either generally i.e. every kind of State action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the State (Article 16). However, the provisions of these two Articles do take adequate cognizance of the fact that there had been a wide disparity in the social and educational status of different sections of a largely caste-based, tradition-bound society with large scale poverty and illiteracy. Therefore, the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason.

The words ‘class’ and ‘caste’ are not synonymous expressions and do not carry the same meaning. While Articles 15 and 16 empower the State to make special provisions for backward “classes”, they prohibit discrimination only on the ground of ‘caste’ or ‘religion’. In other words, positive discrimination on the ground of caste or religion coupled with other grounds such as social and educational backwardness is constitutionally permissible and, therefore, under a given circumstance it may be possible to treat a caste or religious group as a “class”.

The DPSP under Article 46 mandates the State to “promote with special care the educational and economic interests of the weaker sections of the people..... and shall protect them from social injustice and all forms of exploitation. This Article refers to Scheduled Castes/ Scheduled Tribes “in particular” but does not restrict to them the scope of “weaker sections of the society”.

Article 340 of the Constitution empowered the President to appoint a Commission “to investigate the conditions of socially and educationally backward classes” but did not make it mandatory.

Other Constitutional Safeguards having a bearing on the status and rights of minorities are: (i) Freedom of conscience and free profession, practice and propagation of religion (article 25) (ii) Freedom to manage religious affairs (article 26) (iii) Freedom as to payment of taxes for promotion of any particular religion (article 27) (iv) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (article 28) (v) Special provision relating to language spoken by a section of the population of a State (article 347) (vi) Language to be used in representations for redress of grievances (article 350) (vii) Facilities for instruction in mother tongue at primary stage (article 350A) (viii) Special Officer for linguistic minorities (article 350 B).

Legal Framework for protection of the rights of minorities.

Legislations such as the Protection of Civil Rights Act, 1955 [formerly known as Untouchability (Offences) Act, 1955] and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been enacted by the Central Government to protect persons belonging to Scheduled Castes and Scheduled Tribes from untouchability, discrimination, humiliation, etc. No legislation of similar nature exists for minorities though it may be argued that, unlike the latter Act. viz, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the former Act, viz, the Protection of Civil Rights Act, 1955 is applicable across the board to all cases of untouchability related offences regardless of religion. Therefore, if a Scheduled Caste convert to Islam or Christianity (or any other person) is subjected to untouchability, the perpetrators of the offences may be proceeded against under the provisions of the Act. However, no precise information is available in regard to the Act being invoked to protect a person of minority community. so, the provisions of the Protection of Civil Rights Act need to be enforced vigorously with a view to ensuring that the law serves the purpose it has been enacted for.

In 1992, National commission for Minorities was set up under act of parliament. The 103 constitutional amendment bill is pending in the parliament to give it a constitutional status. But, as there is no timeframe for laying the annual report of the commission, there has been a considerable delay in tabling the annual reports of the commission in the parliament. so, a suitable amendment for a timeframe for the recommendations to be laid in legislature is necessary.

According to the provisions of Clause(9) of article 338 and 338A, the Union and every State Government shall consult the National Commission for Scheduled castes and the National Commission for Scheduled Tribes on all major policy matters affecting the Scheduled Castes and the Scheduled Tribes, respectively. A corresponding provision does not exist in the National Commission for Minorities Act, 1992. In the absence of such a provision the Government of the day may or may not consult the National Commission for Minorities on major policy matters impacting minorities, depending on exigencies. Therefore, the National Commission for Minorities Act, 1992 needs to be suitably amended with a view to incorporating in it a provision analogous to the provision in article 338(9) and 338A(9). This may instill a sense of confidence amongst minorities about protection of their interests.

The National commission for minority educational Institutions act , 2004 was enacted to constitute a commission charged with the responsibilities of advising central government or state government on any matter related to the education of Minorities.

Socio – Economic characteristics of religious minorities.

Communal violence and Minorities

Part 2

Vajiram & Ravi