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**COMMUNAL RESERVATION:
ITS ISSUES AND CHALLENGES**

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Reservation Policy and Constitutional Provisions: A Question of Endless Challenges Today

Introduction

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As an instrument of social transformation the reservation policy in India, is both hailed and condemned. By mandating reservation of seats in education, public service, legislature and local government for the backward sections of society, the Constitution aims to redress the rooted inequities caused by the discriminatory social structure and uplift the marginalized sections at par with forward classes. It envisages that reservation policy along with other state supported measures will raise the socio-economic status of the backwards and that India will evolve into a casteless and classless society.

The Vision and the Constitutional Provisions

With the attainment of Independence in 1947, India sought to depart from the age old practice of social discrimination between her people. As the national movement progressed so did ideas of equality, liberty and fraternity. People protested against untouchability, espoused education for all including depressed classes and sought reservations in public employment, education and state legislatures for backward classes and minorities. The same was conceded by Princely states and British India. Thus, at the dawn of independence the country was ready to embark on a social revolution whereby the backward and marginalised sections of the society would be treated as equals with the forward classes. The social revolution would be brought about, by the Constitution of India, which while, treating all citizens as equal against whom the state would not discriminate, would at the same time initiate measures in the constitution itself to protect and promote the socially backward communities. The task of protecting socially backward communities was therefore taken up very earnestly by the members of the Constituent Assembly who drafted the Indian Constitution. The Constituent Assembly worked for about 2 years framing the largest constitution of the world, and in translating the ideals of the freedom movement into

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constitutional provisions. One of the ideals was the protection of the socially backward communities. Jawahar Lal Nehru stated the intention of the Constituent Assembly in the sixth item in the Objective Resolution moved by him in the Constituent Assembly which read "wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other classes". H.V. Kamath, a distinguished member of the Constituent Assembly participating in the debate on 14 October 1949 stated that "before I close I only wish to express the hope that before ten years have expired from the commencement of the there will be not merely no backward classes, socially and educationally backward classes left, but that all the classes will come up to a decent normal human level, and also that we shall do away with this stigma of any caste being scheduled. I hope, sir, that ere long, this stigma too will disappear from our body politic, and we shall all stand before the world as one single community."

Dr. B. R. Ambedkar was not in favor of undue reservation as it would adversely affect the concept of reservation. The policy as decided by the constituent assembly was not to adversely impact the efficiency of administration and political reservation was to be only for a period of 10 years. If the conditions of depressed classes did not improve sufficiently, they were to find ways to maintain such concessions. The Constituent Assembly members were of the view that the quotas were directed against communal practices of the dominant castes that excluded the backward classes from the administration. The prominent argument in favour of quotas was that they were required to bring up sectors that were dragging the nation down and inhabiting its progress. In the process, the Constituent Assembly through reservations sought to ultimately build up a casteless and classless society. The term "Backward Classes" was not defined in the Constitution. Ambedkar opined that what constitutes backward community was left for the local government to decide. The Constitution in Article 340 provided that what constituted backwardness would be decided by a commission appointed by the President.

Basic Constitutional Provisions Pertaining to Reservation

The salient provisions of Constitution to ensure the delivery of social justice through reservations are as follows:

- Article 15(4) is the fountain head of all provisions regarding compensatory discrimination for SCs and STs. This clause was added in the first amendment to the constitution in 1951 after the Supreme Court (SC) judgment in the case of Champakam Dorairajan vs. State of Madras AIR 1951. It says thus, "Nothing in this article or in article 29(2) shall prevent the state from making any provisions for the advancement of any socially and economically backward classes of citizens or for Scheduled Castes and Scheduled Tribes (SCs and STs)" Art. 15 (4) talks about backward classes and not backward castes, thus caste is not the only criterion for backwardness.
- Article 15(5) was added in 93rd constitutional amendment in 2005 and allows the State to make special provisions for BCs, SCs and STs for admissions in private educational institutions, aided or unaided, not being minority institutions.
- Article 16(4) allows the State to reserve vacancies in public service for any backward classes of the State that are not adequately represented in the public services.
- Article 16(4A) allows the State to implement reservation in the matter of promotion for SCs and STs.

- Article 16(4B) allows the State to consider unfilled vacancies reserved for BCs as a separate class of vacancies not subject to a limit of 50 reservation.
- Article 17 does not pertain to reservation yet it is fundamental to the concept of reservation as untouchability is crucial criteria for determining which classes should be treated as "Scheduled Castes". This abolishes untouchability and its practice in any form.
- Articles 330 and 332 allow reservation of seats for SCs and STs in the Parliament as well as in State Legislatures.
- Article 335 allows relaxation in qualifying marks for admission in educational institutes or promotions for SCs and STs.
- Articles 338, 338A and 339 allow the state to establish a National Commission of SCs and STs. Under Article 339, the Central Government can direct States to implement and execute plans for the betterment of SCs and STs.
- Constitutional (73rd Amendment) Act 1992 and Constitutional (74th Amendment) Act 1992 which came into force w.e.f. 24.4.1993 and 1.6.1993 respectively, have brought about a radical change in strengthening the local self government bodies i.e. Panchayats and Municipal boards by inserting parts IX and parts IXA in the constitution. Seats reserved for SC, ST and among the categories one-third seats are reserved for women under articles 243D (2) and 243J (2). States are empowered by legislation to provide reservation in favour of OBCs. The upliftment of the marginalized sections and their integration in society through reservation is an ongoing process. The constitutional provisions are periodically amended to address the aspirations and requirements of the depressed masses.

The Impact of Reservation Policy

At the dawn of independence 15% (5.4 crore) of the Indian population comprised the Depressed Classes including the SCs, STs and backward classes. The SCs suffered severe ostracism, they were treated as 'outcasts'/'untouchables' and the STs were geographically isolated. They suffered from social, educational and economic backwardness. In other words, they suffered social exclusion resulting in capacity deprivation. Reservation in public service, education, central, state legislature and local bodies was seen as a constitutional method of ameliorating the position of the depressed classes, in providing equal opportunity and in bringing them in the national mainstream. Today, in 2012, to many, India may still seem to be struggling to achieve the principle of one man one value in the social-economic sphere. Nevertheless, it is to be said without any hesitation that humongous strides have been taken in this direction since 1950.

Impact of Reservation on the Beneficiaries

Articles 16(4), (4A) of the constitution provide for reservation in appointments in public services and in the matter of promotion. Reservation for SCs, STs and OBCs is available in all groups of central posts as under:-

- In case of direct recruitment by open competition - ST- 7.5%, SC-15%, OBC-27%
- In case of direct recruitment other than open competition - ST-7.5%, SC-16.66%, OBC-25.84%
- For group C and D, the reservation for STs and SCs is fixed in accordance with their population percentage.

The number of STs, SCs and OBCs in services is increasing every year but still they are unable to avail the full quota and their representation at higher posts such as Secretaries or equivalent is marginal. In the higher judiciary where there is no reservation, the representation of STs, SCs is only 20% and in the defence services in the non officer quota their representation as per figure for 2000 was only 2.4% and 7.2% in the case of SCs and STs respectively.

A large number of teaching posts meant for the STs, SCs and OBCs are lying vacant in Central Universities. 48.5% of STs and SCs teaching posts in 24 Central Universities remained unfulfilled during 2010-11. The backlog in SC category at the level of Lecturers was 341 out of 740 required posts. In ST category, 197 or 53% of posts were vacant out of 369 posts. The vacancy was more at the senior level as 84% of the Reader post and 92% of Professor post were found vacant. This indicates that the communities are unable to compete effectively and need further support. It could also indicate a lack of preference amongst the eligible individuals for this profession.

The socio-economic impact of disadvantage persons holding governmental posts and white collar jobs is tremendous in terms of bridging the divide between forward and backward classes. Recruitment confers social respectability, boosts self confidence and gives the backward classes a voice in decision making and effortlessly weaves them into the national fabric. Through a chain effect, the upliftment of one individual triggers off incremental changes in his/her family, his/her social group, the community to which she belongs and the society at large. They attain social acceptability and upward mobility. Through the medium of reservation for backward sections, the monopoly of the forward classes over inherited privileges including exclusive right to education and white collar jobs and professions has been effectively breached.

The Reservation Policy and the Challenges Today

An objective analysis of the prevalent reservation policy indicates that it is not free from shortcomings and challenges which compromise the intended aim of reduction of Inequities and upliftment of the SCs, STs and OBCs. Even the objectives laid down in the National Tribal Policy, 2006 clearly demonstrate that the reservation policy is facing challenges. It identifies the reservation related priorities in its objectives as ascertaining the increasing demand from new communities for inclusion in the list of STs by rationalizing the process of Scheduling; examine the need for de-scheduling of certain STs and Sub-categorisation of existing STs to ensure that benefits are evenly spread across the tribes by 2020.

Against the backdrop of the wide canvas of 60 years of implementation of quota benefits, the following shortcomings of the reservation policy are identified as no comprehensive survey ever done to empirically determine the social seclusion, geographical isolation and backwardness of communities availing reservation benefits, therefore correctness of inclusion cannot be validated. The "SCs list" was for the first time drawn up in 1936, in compliance to the Government India Act, 1935. Castes which were backward on account of historical culture of 'untouchability' figured in the list of 429. Post independence the same list was adopted without any survey. At present, there are 1208 SCs. Only 33 cases have been excluded. Similarly, the Tribes living in geographical isolation were termed as STs. In 1950 as per notification, there were 240 STs and in 2012 the number is 744 with only 15 excluded so far. The OBC list includes 2230 castes in Central list and 2781 castes in various state lists.

Lack of survey based data in the case of SCs and STs vitiates the correctness of the inclusion of several communities. A case in point is the inclusion of the Mina Community of Rajasthan in ST list. As per articles written by Sh. Meetha Lal Mehta, Ex. Chief Secretary of Rajasthan¹⁹ and Sh. Chandan Mitra, Member Rajya Sabha,²⁰ the Mina Community got included in the ST list on account of a misplaced comma in the 1953 Kaka Kalelkar Commission's Report on socially and educationally backward classes: a comma was inadvertently put after Bhil for small community known as "Bhil-Mina" in the report which led to the large Mina Community unexpectedly getting classified as a ST. Ironically, the Denotified Tribes, an extremely backward group are treated as OBCs and not tribes.

The SC in Indra Sawhney case has questioned the determination of OBCs at 52% of the population, in the absence of any empirical data. It has directed that empirical data be gathered to determine backwardness. The Planning Commission in the Eleventh Five Year Plan stated "Like STs, SCs, Minorities and Persons with Disabilities, there is an imperative need to carry out a census of OBCs now or in the next census in 2011". The demand for caste based census of OBC communities was not conceded to in 2011 census.

The Social and Economic survey being carried out by the states will not throw up the actual figures of OBCs as the 'caste' particulars are not mandated to be disclosed and the survey is restricted to BPL families only. Hence, the nation will not know whether 27% quota for OBCs is justified or excessive or deficient with regard to their population. If 'caste' is a determinative factor for reservation as also share of representation in public services in proportion to population, then both factors need to be quantified to remove dichotomy, confusion and heart burning. Since reservation has the effect of restricting opportunities to the general category, it is absolutely essential that proper surveys are conducted before a community is treated as one which requires reservation. As reservation status is granted without subjecting the aspiring community to stringent surveys many forward communities are demanding to be included in the reserved category groups. The Ranganath Mishra Commission noticed that both at the Central level and in the States, instances can be cited to establish that political considerations have largely guided "inclusions". The dynamics for inclusion suggests that whether it be Jats or Vokkalingas considerations arising out of political compulsions have guided inclusion rather than the concern for the backward or the need for reaching out to that segment of the community. Presently, the Jats are pursuing inclusion of the community in central OBC list in Delhi, Haryana, Punjab, parts of Rajasthan, Uttar Pradesh etc. Even the Jat Sikhs are seeking inclusion in OBC reserved category.²¹ No comprehensive scientific survey is being carried out to ascertain the genuineness of the claim – only a sample survey. Thus, the fears of more backward OBCs that Jats, if included, being forward will corner all quota benefits does not get addressed. In such a scenario, mutual distrust sets in leading to undesirable fragmentation within castes.

Sub Categorisations of Quotas within SCs and STs

The reservation laws do not provide for sub categorizations of quotas within SCs and STs. At the time of incorporation of the provisions, in the Constitution, the complexities which are visible now were not anticipated. Hence, these were not provided for. However, the Constitution should now provide for sub-quota within quota, depending on the levels of backwardness of the communities. It is a travesty of truth to hold that all 1208 SCs and all 744 STs are at the same level of backwardness within their category. The extent of backwardness among the various castes in SCs and tribes in STs is so vast that all of them, though collectively put in one basket cannot be

called a homogenous group. Recognizing this reality of inequities within same category groups, several states have provided for sub-classification of OBC quota as backward and most backward etc. (Karnataka, Kerala, Tamil Nadu, Bihar and Assam). However, with regard to sub classification of SCs, the SC in case of EV Chinnaiah (2005) 1 SCC 394 held that as the SCs are indivisible homogenous entities, they are one and cannot be broken into subcategories. Before this decision, there have been attempts to sub-categorize the SC quota. The states of Punjab and Haryana have seen monopolisation of quota benefits by a few SCs communities to the detriment of the others. The Government of Punjab in 1975 admitting that the upliftment of the extremely backward communities of the SCs was lopsided took a policy decision for sub-categorisation of reservation. The Government divided the 22% quota of reservation of the SCs by providing 50% to Ravidasia Sikhs and 50% to Valmiki and Mazhabi Sikhs which remained in force till the SC decision in the case of EV Chinnaiah. In 1990, the Haryana Government appointed a "Backward Classes Commission" headed by Justice Gurnam Singh to examine the percolation of quota benefits. The Commission found that reservation benefits were cornered by one particular caste consisting of 6 sub castes of Jatavs/Chamars and the benefits were not percolating down to rest of the other 36 Communities/Castes. Consequently, on the basis of the recommendations, on the pattern of Punjab, the SC "reservation list" came to be divided into Block 'A' and Block 'B', eventually putting 36 Communities in Block 'A' and the rest of the communities of Chamar Caste in Block 'B'. This decision was subject matter of challenge in Court and was upheld. However, after some years it had to be withdrawn in view of SC decision in the case of EV Chinnaiah. In 2001, Uttar Pradesh, appointed a Social Justice Committee headed by Sh. Hukam Singh, to examine the utilisation of quota benefits. This committee factually found that, the benefits of reservation was not percolating down to the most depressed classes. The SC category benefits were mostly cornered by the Jatavs (chamars) and the Pasis. The Valmiki, Dhobi and Korie were not benefitted. In the OBC category, the Yadav, Kurmi and the Mauyra cornered most benefits, although they were only 12 % of OBC population. It recommended the categorisation of SC, ST and OBC communities. The matter was challenged in the SC and pending adjudication, the subsequent government withdrew the notification. In 2007, the Government of Bihar appointed the "Maha Dalit Aayog" which recommended exclusion of affluent and advanced castes among SCs namely Mahar, Dusad, Pasi and Dhobi but later on account of pressure, re-included three of them. On 4th of August, 2006, the state of Punjab witnessed protests and demonstration against cornering of SC quota by few castes in view of withdrawal of bifurcation of quota in the light of EV Chinnaiah. As seen in the preceding paras, it is an acknowledged fact that there is a wide gap between the various communities within the intended beneficiary group. On occasions when the state has taken steps to bifurcate the quota, the benefits of reservation have passed on to most backward quotas within the quota group. In the states of Haryana and Andhra Pradesh following effect was visible.

To conclude, the existence of several thousand castes, communities, tribes, ethnic groups, the vast geographical areas, the socio-cultural differences, pressure of political compulsions, the varying ideologies and motives of the governments in power and the circumspect attitude of the Judiciary have all cumulatively given shape to the reservation policy as it exists today. While positively beneficial for the marginalized sections, the reservation policy has also had the effect of creating class within caste and of creating further inequities. In its present form, the policy has become a tool of political bargaining as well as social aggrandizement. If not rationalized, it can severely divide the society thereby inflicting serious damage to the social and economic fabric of the country. The repeated caste struggles and lop sided upward social mobility emanating from the

implementation of the policy may even pose a threat to national progress and unity. Hence, the policy and its shortcoming need to be examined for suggesting appropriate changes. And also we should remember the words of Dr.B.R.Ambedkar as follows:

"On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."

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Impact of Communal Reservation on Scheduled Castes

A. Gajendran¹

Introduction

Reservation for Scheduled Caste that are meant to uplift the community socially, politically and economically for Scheduled Castes would help them to improve their standard of life. Employment seems to be an important economic device for their upliftment. Hence, more number of Scheduled Caste societies especially in villages and Scheduled Caste colonies in the towns should be organised on a priority basis. These societies are to be brought under the control and supervision of one central Scheduled Caste society of the state level.

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