

RESERVATION IN PROMOTIONS

There seems to be a sinister design behind implementation of reservation scheme of the Constitution. Although provision for special opportunities (instead of equal opportunity) to the classes who suffered for centuries due to the caste system was based on natural justice, (the weaker progeny getting special care among human beings as well as animals), the upper castes never appreciated it. Even the great man like Pt. Jawaharlal Nehru always talked of merit against reservation or special opportunity without understanding that meritocracy ultimately leads to caste. Our Varan Vyavastha was nothing but a meritocracy. This was a division of labour according to merit (Guna Karma Vibhagshah) but as the occupations became fixed and hereditary, the division into castes and sub castes according to the division of occupations took place. This was (in Ambedkar's words) division of labour becoming division of labourers. It may appear strange but it is the truth that meritocracy leads to caste and reservation to abolition of caste.

When our Constitution was being framed, Dr. B.R. Ambedkar, Chairman of the drafting committee of the Constitution and law minister in cooperation with the Congress leaders like Jawaharlal Nehru, saw to it that the vast population of depressed classes or Other Backward Classes (OBCs) remained outside the fold of reservation. Dr. Ambedkar wanted to exclude them so that he could realize his dream of number one minority status for scheduled castes. Earlier, he had advocated separate home for Muslims with this aim. Jawaharlal Nehru had tolerated reservation for SCs/STs thinking that 22% reservation would not make much difference to the hegemony of upper castes, which he called hegemony of merit. But reservation for OBCs was a challenge not only to Nehru's dream of 'meritocracy' but also to Ambedkar's dream of special status to scheduled castes. Ambedkar was against scheduled tribes getting special rights as per his submissions to the Simon Commission and it was only due to leaders like Thakkar Bapa that the special benefits were given to them and both SCs and STs were grouped under the Poona Pact and later in the Constitution.

Ambedkar and Nehru , the main driving force of making of the Constitution, did not make any provision for OBCs until a representative from Bihar pointed out that OBCs had been left out. It was then as an afterthought, that Article 340 providing for Other Backward Classes Commission was introduced in the Constitution, But when the first Backward classes Commission (Kaka Kalelkar Commission) presented its report , Nehru was so annoyed that he forced Kaka Kalelkar to write in the forwarding letter to the President , that he did not agree with the report (although he had signed it) and this should not be accepted .

Dr. Ambedkar also kept mum. No doubt, Kalelkar report was consigned to the dustbin and later Mandal Report providing reservation for OBCs, was also given the same treatment by Nehru's successors. However Mandal Report was accepted by VP Singh government and despite ugly and violent All India agitation against it by the Congress and BJP supporters, it became law after the 9-judge bench of the Supreme Court put its stamp on it in Indira Sahani Case (1992). Scheduled Castes and Tribes had so far remained indifferent to OBCs reservation and infact opposed them when they joined hands with upper castes in toppling Karpoori Thakur Government in 1978 who had announced reservation to OBCs according to Kalelkar Report. But the agitation over Mandal Report brought them in support of reservation for OBCs as they feared that this agitation might endanger their own reservations. This is the bitter chapter of the history of the reservations.

The Supreme Court bench in Indira Sahani Case allowed the reservation for OBCs but with a rider of creamy layer concept (which is exterior to Constitution) and refusal of reservation in promotions. Although SCs and STs were not affected by this judgment they feared that this might apply to them. They put pressure on the Government to safeguard their reservation in promotions and the Government in order to please their vote-bank provided this safeguard by amending Constitution to this effect in 1995. The provision of this amendment were not extended to OBCs. It was decided in Indira Sahani case that the quota of posts which would remain unfilled, would not lapse but would be carried forward. This allowed the Government to fulfill the empty quota posts with general category candidates after lapse of some period on pretence of work suffering due to vacant posts. Again, the Constitution was amended to the effect that empty quota posts may be filled with only reserve category candidates. This created a situation in which accumulated quota posts could be filled only if new jobs were created.

While this tussle between the politicians and the bureaucrats was going on, another controversy arose about the accelerated seniority. Since the candidates of the reserve category was placed above general category candidates in seniority, they were promoted earlier than general category candidates which was considered as accelerated seniority or double promotion. This not only created bad blood between the reserve category officers and general category officers but also resulted in dominance of reserve category officers in higher posts. This accelerated seniority resulting in accelerated promotion was sanctioned by another constitutional amendment (85th). Side by side, the Parliament also amended article 335 permitting the lowering of standards for evaluation of SCs and STs. Now, there was no room for general category bureaucrats to maintain their supremacy in higher posts. These rules of recruitment and promotions were also pinching the judiciary setup. Ultimately, they found a way out. They took refuge under the Article 16(4) which provides that reservation

will be subject to the condition of adequate representation. The court said that unless the Government proves that the group benefitting from promotion is inadequately represented reservation in the promotion cannot be made. Now, the only way by which it can be ascertained whether or not a particular group (class of citizens) has got adequate representation, is cast-census for which no Government was willing. This means a ban on reservation in promotion.

The Government is once again trying to overcome this hurdle by constitutional amendment [may be by nullifying Article 16(4)] but it will not be easy task since the amendment will surely hit the basic structure of the Constitution. The OBCs- based Samajwadi Party has vehemently opposed reservation in promotion, since the OBCs have been totally left out from this promotional reservation facility. The demand for inclusion of OBCs in promotional reservation will not be accepted by the general category bureaucrats and may be by the courts too. What will be the final outcome of this controversy, cannot be predicted, but the best way to solve this tangle would be to adopt the formula of seniority-cum-merit in promotions, instead of merit-cum-seniority, which was once in vogue in Government services and which enables a person to get his promotion in normal course unless he earns a really bad report. The ‘merit-cum seniority’ formula is an instrument of mischief in the hands of upper caste bureaucrats to by-pass the reserved category candidates.

Some intellectuals belonging to high castes and having chronic grudge against reservations, are using this stalemate on reservation for condemning the whole scheme of reservations saying that any form of reservation runs the risks of bad faith (Pratap Bhanu Mehta in India Express on Aug 28th); they can simply be ignored.

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