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The Creamy Layer and Reservation

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ABSTRACT: Two hundred years after the French Revolution, the world saw the unification of Germany, the end of the cold war and the end of the authoritarian regimes in East Central Europe, the Baltic countries, and the former Soviet Union, and with the earlier transition from dictatorship to democracy in the Philippines, Argentina and Brazil, the worldwide movement towards liberty, equality and fraternity was celebrated. Alexis de Toceuville has prophesied the “irresistible revolution advancing century by century”. India has been no exception, the irresistible revolution has changed the hierarchical structure of the society. Dr. B.R. Ambedkar said, “we must make our political democracy a social democracy as well”. He then added, “social democracy means a way of life which recognise liberty, equality and fraternity as the principles of life.” The founding fathers of the Constitution has drafted the Constitution with an aim to achieve the goal of social revolution, i.e., to bring India out of medievalism which is based on caste and reconstruct India on the modern foundation of Rule and Law and secular education. The quest for development, that is, freedom from hunger, illiteracy, poverty, chronic diseases, and expansion of social opportunity. Moreover, to rectify past injustices and to act as an instrument of inclusion of the downtrodden sections of the society into the democratic processes, reservation to scheduled castes and scheduled tribes were given and later to Other Backward Classes (OBCs). Reservation as a whole is a growth facilitator. Caste acts as an umbrella where masses live, and by giving reservation based on caste, the masses get an opportunity to participate in the process of institution building. This has transformed the umbrella nature of Indian politics because liberal education, secular institutions, one man one vote, and affirmative actions has drastically changed the socio-economic and political status of the Backward Classes and Other Backward Classes. Thereby, BCs, and OBCs have shown improved mobility at various levels at the national levels, at the state levels and in many cases also at the village levels. This is an investment in the Indian democratic process which will act like a fulcrum for the economic growth. In 1990, the implementation of the Mandal Commission led to the introduction of Quota for OBCs (Other Backward Classes). The Supreme Court defines ‘creamy layer’ by quoting an office memorandum dated September 8, 1993. The Supreme Court said the benefit of reservation should not be given to OBC children of constitutional functionaries such as the President, Judge of the Supreme Court and high courts, employees of central and state bureaucracies above a certain level, public sector employees, members of the armed forces and paramilitary personnel above the rank of colonel, lawyers, chartered accountants, doctors, financial and management consultants, engineers, film artists, and authors. OBC children belonging to any family that earns a total gross income of Rs.6 lakh belong to the creamy layer and they are also excluded from being categorized as “socially and educationally backward” irrespective of their social, educational backwardness. The term CREAMY LAYER introduced by the Sattanathan Commission in 1971 to exclude the reservations of civil post and services granted to the OBCs has become an instrument for resisting an investment in the democratic processes.

I. CREAMY LAYER ONLY FOR OBCs

The “creamy layer” concept is applicable to OBCs only. This concept is not applicable to the general category minority institutions, scheduled castes as well as scheduled tribes category. Hence, all non-OBCs will compete for their quota without the consideration of “creamy layer”. Justice K.G. Balakrishnan stated: “by excluding those who have already attained economic well-being or educational advancement, the special benefits cannot be further extended to them and, if done so, it would be unreasonable, discriminatory or arbitrary resulting in reverse discrimination”. The Supreme Court also indirectly reserves at least 50 per cent seats for the general category. Hence, reservation shall be such that total reserved seats does not exceed 50 per cent. The twice-born community form approximately 15 per cent and no official creamy layer percentage census is available at present. Moreover, there is no mention about the concept of “creamy layer” in the Constitution and nowhere does it prescribe any directive to exclusively discriminate OBCs.

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The concept of creamy layer undermines the Constitution since “socially backward” and “educationally backward” were the key words enshrined in the Constitution after thorough deliberations and economic criteria was never analysed in determining reservation policy. However, the Supreme Court of India and its constitutional bench has given sanctity to a concept that was brought forward during the course of Mandal Commission implementation. To some extent “creamy layer” has become a “SAFTY VALVE” to ensure peace after violence which was instigated after the implementation of Mandal Commission. How can this platonic concept can be justified by a bench interpreting the Constitution to debar only OBCs child from benefiting reservation since their parents earn yearly income of 6 lakh. Thus, the will of legislature is undermined by the platonic concept of judiciary.

Moreover, the concept of creamy layer has fundamental flaws since the crust of reservation policy is based on social disabilities arising from caste status rather than, narrow articulation on economic status. In the entire public domain the dominate position is captured by the creamy layers of Indian society. There is a circulation of elites, no one wants to move away from the elite accommodation. This is like a railway compartment where passengers does not want to give seats to fellow passengers. In the debate in Parliament that primarily focused on the definition of the ‘backward classes’ Ambedkar systematically emphasized that caste was responsible for social backwardness. However, Pandit Nehru’s view were different. For him, economic modernization would eventually eradicate caste and communal feelings, all these legacies of the past that had to be blamed for our ‘backwardness’. The second backward classes commission, headed by Bindhyeshwari Prasad Mandal, recognised caste as the main factor in the backwardness of the OBCs. The Commission evolved an index based on eleven indicators subdivided into three categories – social, economic and educational, ultimately, social indicators were given greater weightage than the other criteria and thus the OBC were defined as a caste group. The exclusion of the ‘creamy layer’ from the ambit of the quotas recognising that economic factors have to be taken into account while assessing social and educational backwardness is an attempt to create panic within OBCs and to divide the large chunk of OBCs.

Sociologists like Dipankar Gupta advocating violence and integrating ‘creamy layer’ by writing that, advocates of OBC reservation seem to believe that once an OBC always an OBC, they are culturally incapable of sustaining their ‘creamy layer’ status without the reservation. Thus, Dipankar Gupta writings reflects biased nature of elitism where he is defying the laws of the land and does not believe in constitutional provisions. Though, affirmative action in the USA recognises that there are multiple factors of exclusion and discrimination working in society (race, gender, and economic factors). But in India caste based reservation is needed because caste is the one of the most important factors that have influence over the functioning of day to day life. Hence, affirmative actions should become the “basic structure” of society if the objective of inclusive development is to be achieved.

The worldwide revolution towards liberty, equality and fraternity got liberal dimensions in India when reservation based on castes was implemented in post Independence. The aim was to transform the basic contradicting socio-economic structure of the Indian society. The backward classes converted their numerical strength into a crucial electoral resource, which frustrated the upper castes as they failed to retain their domination. This resulted in social turmoil in Hindi heartland as political maneuvering degenerated into a naked struggle for power between different castes. It also segregated the backward castes and competition among themselves was evident. The Yadavs, Kurmis, Koeris, Dushad and Chamars who are little ahead with regard to organisation, income and education, are in a better political environment, hence, they have better opportunity to participate in building modern productionist democratic society. However, a majority of them are still alienated from the mainstream of socio-economic and political participation. Affirmative actions, should become the “basic structure” of society if the objective of inclusive development is to be achieved.

II. HISTORICAL CONTEXT

Reservation for SCs, STs and BCs have evolved as a natural outcome of various movements for their rights to education, share in governance and broad social reform, during the national movement and post-Independence. When Hunter Commission in 1882 took steps to extend education to the untouchables in the regions outside the Hindi

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heartland, it resulted in violence by the castes who had monopoly over education and government jobs. Since caste became the instrument of deprivation, it also became the base for various movements to acquire access to modern liberal and secular education so that upward mobility could take place.

The forward looking and egalitarian maharajas took a bold step in regions outside the Hindi heartland mainly in princely state of Kolhapur (1902), princely state of Mysore (1921) and princely state of Travancore (1935). Here, the reservations were based on social and economic inequality (most non-Brahmin castes got reservation). One important aspect was that when these Maharajas extended reservation to most non-Brahmins castes, no violence was seen, and the upper-caste population cooperated with the process of social reform. Moreover, the various movements that were launched outside the Hindi heartland by Jyotirao Phule in the form of the Satya Shodhak Samaj and self-respect movements of E.V. Ramaswamy (Periyar) made radical attacks on Brahminism, whereas, the prominent movements launched in the Hindi heartland, that is, the “Janao Andolan” or “Triveni Sang” never challenged the basic foundation of the socio-economic and political contradictions.

At the national level, it was Dr.B.R. Ambedkar’s visionary effort that led to inclusion of reservation of seats for SCs in the central and state legislatures (Government of India Act, 1935).

Thus, wide gap existed between Hindi heartland and regions outside it with respect to social reform, at the time of Independence.

III. IDEA OF RESERVATION IN POST-INDEPENDENCE INDIA

Radhakrishnan believed that India must have a “socio-economic revolution” so that a fundamental change in the structure of Indian society could be achieved. In lieu of this, Pandit Nehru constituted first Backward Class Commission on January 29, 1953 headed by Kaka Saheb Kalekar, however, its recommendations were not accepted by the centre government. The government's fear was that the recognition of specified castes as backward might serve to perpetuate the existing distribution on the basis of caste.

The second Backward Classes Commission was constituted on December 20, 1978, during the Janata Party rule at the Centre, to examine the desirability of making a provision for reservation in different institutions of modern India. The Commission, headed by Bindheshwari Prasad Mandal, submitted its recommendations to Home Minister Giani Zail Singh in December 1980. There are approximately twelve recommendations i.e. reservation of jobs, providing coaching facility, upgradation of cultural and academic environment, etc. Moreover, the report also emphasized on need for structural change in the land tenurial system through land reform and creating technical and financial institutions to help OBCs entrepreneurs. After 10 years, V.P. Singh implemented some of the recommendations, which led to street rioting, mainly supported by the student wings of the Congress and the BJP. After the 1992 Supreme Court ruling, reservation for OBCs in central services become effective from September 8, 1993, after an expert committee appointed by the centre evolved criteria to identify the “creamy layer” among the OBCs. Since the implementation of few recommendation of Mandal Commission, there has been tremendous improvement of the status and position of BCs and OBCs, in socio-political and economic terms.

IV. COMPARISON BETWEEN HINDI HEARTLAND WITH REGIONS OUTSIDE IT

The anti-reservation slogans like “reservation militates against merit and excellence” have mainly come from peoples who have affiliation to zamindari heartland. This region has no concrete exposure to reservation in educational institutions in both pre or post Independence, whereas, the western and southern regions have experienced reservation in educational institutions in both pre and post Independent India, Tamil Nadu had 69 per cent reservation even before the recommendations of were implemented Mandal report. There is quota system in Kerala and Karnataka, which has been operative prior to Independence. At present, Karnataka has 50 per cent reservation, Kerala has nearly 50 per cent

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reservation and Andhra Pradesh has 49.5 per cent reservation. Thus, a great leap was made in the regions outside the Hindi heartland, and this social mobilization in west and south India, helped in economic development of the region.

However, in the absence of social mobilization, the Hindi heartland lagged behind. It was only after Independence, that the constitutional provisions that guaranteed reserved seats in assemblies and parliament were enforced, reservation in education institutions, government and public sector has brought the fruits of democracy to the BC and OBCs. However, the paradox was that powers of implementation rested with the state legislature. These legislatures belonged to or depended upon locally dominant land holding castes to mobilize the rural vote and win state and national elections. As a result, they never voiced their concern for the alienated castes who never received the fruits of democracy. The last Indian census (2001), reveal alarming regional disparities in India's socio-economic pattern. The Hindi Heartland accounts for 45 per cent of India's population. The annual population growth of this region is apparently 2-3 per cent against the national average 1.9 per cent. The per capita GDP growth is estimated at 1.3 per cent against the national average of 3.8 per cent. half-hearted implementation of policies of affirmative action and absence of social reform movement, upeded the participatory possibilities of development. The slow growth in Hindi heartland could swamp the positive effects of growth in better performing regions - south & western India.

Reservation as a whole is a growth facilitator, as masses get an opportunity to be a part of governance. Moreover, investment is driven by infrastructure development and infrastructure can only develop in areas where there is minimum social stability. In a longer run, reservation gives an opportunity for social adjustment which would help in achieving social stability.

V. SUGGESTIONS

In order to reduce the gulf between different regions, central government must implement reservation in private sector, public and government aided educational institutions. Due to the failure of land reform, most backward castes (MBCs) are still not benefiting from reservation, as the majority of them are engaged in agriculture sector. In the post-reform period, the government jobs are shrinking, hence, reservation in the private sector is essential. The market lays emphasis on efficiency and merit, and in that sense the market is caste-neutral. In some way the market is a liberating force as it does not pay attention to the distinction of purity and pollution. But, at the same time, the market does not give special advantage to those who start from very serious handicaps. Something must be done to those castes who suffer from social abuse, who are landless, agricultural labourers and are illiterate. The state cannot withdraw its responsibility in this sphere. To ensure that new opportunities created by globalisation reach broad sections of the population, state need to play a pro-active role.

Hence, the government should guide the private sector to invest in education and training colleges for BCs and OBCs along with reservation in jobs, so that global competitiveness could be maintained. On the other hand, the government can give benefit in taxes, raw materials and cheaper transportation facilities to those private firms who have invested in bringing back the alienated castes into the decision-making process. In this way the potential of majority could be utilized in building a modern productionist society.

As all these suggestions need huge sum of money, so increasing agricultural growth is essential. Moreover, land reform has failed to bring back the BCs and MBCs into the mainstream, and in the absence of alternative policy land should be given to the tiller on the basis of castes. This will help in removing benami transfer of property and there will be maximum use of agricultural land. This will give the sense of participation to BCs and MBCs, which will enhance the productivity of land. Along with this, subsidy given to farmers must be thoroughly invested because on the name of subsidy few big farmers are making money. The government could form a commission to look at the viability of reservation of agricultural land and reservation of agricultural subsidy based on castes. This will reduce the sense of alienation and social inequality which will give way to elimination of social turmoil.

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VI. CONCLUSION

Thus for sustained, rapid economic growth, productive interaction of the society's members with one another is the need of the hour. Oppressed people leading sub-human lives cannot help in delivering such growth. Ending their oppression will ensure sustained growth. Growth and economic diversification will break the correlation between caste and occupation. To conclude, India badly needs a reservation policy that sees empowerment and economic growth as two sides of the same coin, that helps in promoting the self-dignity of each individual. Moreover, it will remove the regional, social and economic differences and transform the themes of social justice into internationally competitive market. But, this to happen, India badly needs reservation policy, then only Gandhi vision will come true i.e. "true objective of democracy was that the weakest should have same opportunity as the strongest."

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