

International Refereed Journal of Reviews and Research

Volume 11 Issue 2 May 2023

International Manuscript ID : 23482001V11I2052023-105

(Approved and Registered with Govt. of India)

Reservation in the Private Sector

Dr. Vikas Chaudhry

C.R. Law College,

Hisar (Haryana), India

Abstract

The adoption of New Economic Policy (NEP) by India in the 1990s which is based on Globalization, Liberalization and Privatization has brought many multi-national corporations/companies (MNCs) to India. The foreign direct investments (FDIs) have increased and an upswing in the Indian economy is witnessed. The government is withdrawing from various business activities with a view to concentrate more on administration and governance of the country. The shrinking of the public sector has indicated the loss of job opportunities to the backward and scheduled classes. Thus, the eyes are on the expanding private sector to make reservations for such classes. According to the Report of Working Group on empowering Scheduled Castes (SCs) appointed by the National Commission on Scheduled Castes (SCs), the Scheduled Castes (SCs) have lost about 1,13,430 job opportunities in the central government during the period 1992-1997 constituting a decline of 10.07 percent.⁴ There is an implicit assumption in this demand that employment opportunities are increasing in the private sector because it is expanding. Private initiative is encouraged in the field of education also, so there has been constant demand of creating reservation provisions in the Private institutions as well.

KEYWORDS : *Discrimination, Reservation, Private Sector, Mandal Commission, Voluntary Affirmative Action, Backward Classes, Schedule Caste (SC)/ Scheduled Tribe (ST)*

INTRODUCTION

Post Independence India has been trying hard to overcome the backwardness bequeathed to it by the 200 years of colonialism. The basic law of the land i.e the Constitution of India also incorporates various provisions for the Furtherance of socioeconomic development. The Indian society since the Vedic times has been trapped in the rigid caste- system'. Prior to the ADOPTION AND ENFORCEMENT of the Constitution, the upper classes enjoyed the societal privileges at the cost of the lower and Schedule Castes! Tribes to the extent that the basic rights like education , human dignity, access to public places, elite job opportunities etc were denied to them. The lower caste people were treated as untouchables. Originally, the caste system was introduced on the basis of division of Labour in the society and was calculated to promote economic efficiency. It was possible for a member of one caste to change to the other caste. but as the time passed, the caste system became rigid and the social status of a person was determined by the caste he possessed. This led to a huge socio-economic gap between the upper and the lower classes/castes.

It is axiomatic that the foreign rule had eaten away the economy of India which led to a great technology gap between India and the west. It had also withered away the love and feeling of brotherhood existing among the various classes of Indian society. At the time of independence. India was left with shattered economy, and wrecked socio-political system. There were vast communal and caste differences, which had captivated the Indian society. Various political leaders from time to time advocated for the upliftment of lower classes. The father of the nation Mahatma Gandhi assuring dignity to the Schedule Castes and underprivileged, raised voice against untouchability practiced by the Upper Classes and called them "Harijans" i.e God's own people. Promulgating the rule of law and establishing India as a democratic state, the fore

Fathers of Indian constitution tried to lay a strong social foundation. With regard to this equality provisions were incorporated. The very introduction of the constitution i.e the Preamble to the constitution declares to secure to all its citizens EQUALITY of status and of opportunity. Primarily Art 14-18 are the father provisions which contain a comprehensive law relating to 'right of equality', where in Article 17 specifically talks about abolition of untouchability thereby ensuring equal and dignified treatment to all the classes and castes existing in India. The equality provisions contained in the constitution are in conformity with the International Human Rights Instruments which India ratified in the year 1979. However, it was felt that equality can be talked amongst equals. And where there was huge socio- economic disparity among the various castes such principles might sound "utopian". So, the first positive action was taken in the very first year of inception of the Constitution i.e in 1951, when clause (4) was added to Article 15 which provides "Nothing in this article or clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educational backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". Similarly Article 16(4) creates reservation in the public employment i.e Nothing in this article shall prevent the State From making any provision for the reservation of appointments or posts in favor of any backward class of citizens which in the opinion of the State, is not adequately represented in the services of state. At the time of their incorporation, these provisions were said to be a temporary measure introduced to uplift the socially and economically backward classes.. However, so many years have passed and under the present political scenario there does not seem to be any intent to eliminate such provisions. Rather after every decade or so these provisions are revised and the percentage of reservation is increased. In every election manifesto fresh promises are made to promote the cause of lower classes. The

constant renewal of these provisions and the consequential increase in the percentage of reservation every time, itself questions the efficacy of these provisions. More than fifty-five years have passed since the constitution came into force and the government is unable to improve the condition of lower classes and class discrimination is still prevalent in the society, thus, it is implied that the so called enabling provisions are not implemented for the required purpose rather used for the desired UfO5C by the political parties i.e to maintain their vote bank. Till date the burden of reservations was on to Public Sector/State³but with the passing of 104th amendment bill, 2006 (93rd Amendment Act, 2006) the brunt is to be borne by the Private Sector as well.

RESERVATION IN PRIVATE SECTOR

Almost all the parties are advocating reservation in the private sector, in reality their main objective is not to uplift the socially backward classes but to maintain their vote banks. With the emergence of dalit parties like Bahujan Samaj Party (BSP) and other regional dalit splinter groups, the Scheduled Castes/ Scheduled Tribes vote bank of other parties has shrunk. After the parliamentary elections of 2004, the congress which did not get the support of scheduled castes/scheduled tribes to the expected extent decided to join the left for translating the verbal demand into a reality. The Common Minimum Programme of the United Progressive Alliance (UPA) government promised to enact a Law to implement reservations in the private sector.

However, the other segment of the society i.e general category is not happy with such a proposal. Their contentions are that such proposal if implemented would ruin the economic growth of the country. Private sector depends on merit and efficiency. Profitability is the baseline of their business. So if they have to forgo meritorious candidates for the sake of socio —economic justice then probably they would not take initiatives to develop business in India and for India. It will also give a set back to the

foreign investments in India and on the social front it would enlarge the caste gaps because the general category feels that it is a discriminatory approach of the government. Disregarding the resentment shown by the upper classes, the government seemed to have been convinced with its approach and has given first shot of law for reservation in private sector by passing 93rd amendment act, 2005¹. The so called Amendment Act enables the government to create reservations in the Private un-aided educational institutions. It is to be noted that in this regard the Apex court has already passed a judgment negating reservations in the private sector. In August 2005, the Supreme Court abolished all caste- based reservations in un-aided private colleges². But on December 21, 2005 the Lok Sabha passed the 1th constitution amendment BILL,2005, rolling back the Supreme court's judgment and introduced a new clause i.e clause 5 into article 15 to allow for reservations for SC's /ST's as well as other backward classes in private unaided educational institutions other than minority institutions³. With this amendment, it seems that the government wants to attract back the drifted away Dalits and OBC's who have aligned with other regional outfits.

Before we discuss the implications of reservation in the private sector, it is necessary to know who are Scheduled Caste (SC)! Scheduled Tribe (ST) and Other Backward Class (OBC).

Scheduled Caste (SC) / Scheduled Tribe (ST)

The constitution of India does not define as to who is a Scheduled Caste (SC) / Scheduled Tribe (ST). Clause (24) of Article 366, defines that " Scheduled Castes mean such castes, races or tribes or parts of or groups within such tribes or tribal communities as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution".

Clause (l) of Article 341 provides that “the President may with respect to any State or Union Territory, by Public Notification, specify the castes, races or tribes, which shall for the purposes of the Constitution be deemed to be scheduled castes in relation to that State or Union Territory, as the case may be”.

Clause (25) article 366 states that “Scheduled Tribes” means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 342 to the Scheduled tribes for the purposes of this constitution.

Clause (1) article 342 explains that “Scheduled ‘tribes” are those tribes or tribal communities or parts or groups thereof, as the president may by public notification specify.

In Valsamma Paul v. Cochin University’ AIR 1996 SC 1011 it has been laid down that acquisition of the status of scheduled castes etc., by voluntary mobility into these categories or transplant in backward class by adoption, marriage or any other voluntary act, would not entitle a person the benefit of reservation either under article 15(4) or article 16(4), as the case may be.

Thus Article 341 and Article 342 empowers the President to draw up a list of Scheduled Castes/Scheduled Tribes. If such notification is in respect of a State it can be done after consultation with the governor of the State concerned. Any inclusion or exclusion from the Presidential notification of any caste, race or tribe is can be done by Parliament by law and not by subsequent notification. To determine whether or not a particular caste or tribe is Scheduled caste or Scheduled tribe, the notification made by the President under Article 342(2) respectively shall be final.

BACKWARD CLASSES

Like the Scheduled Caste? Scheduled Tribe, the Constitution does not define “Backward classes”. It is for the Central and State Government to specify such classes

of persons for the purpose of the Constitution. Unlike Scheduled castes, Backward Classes are found amongst all religious groups Hindus, Muslims, Christians etc.’ However under article 340(I) the president is empowered to appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally Backward Classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps to be taken by the union or any state to remove such difficulties and to improve their condition.

The commission so appointed shall investigate the matters referred to it and present to the President a report setting out the facts and found by them and making such recommendations as it thinks proper Article 340 (2). ‘The President is required to lay down the report of the commission together with a memorandum explaining the action taken thereon before each house of Parliament. Article 340(3). After the receipt of report of the commission appointed under clause (I), the president may, by order, specify backward classes. The first Backward Class commission appointed in 1953 was asked to determine the criteria on basis of which a class can be considered as a Backward Class. The commission could not find a suitable criteria on the basis of which a class he considered as a Backward Class. But the actual fiasco started when the Mandal Commission appointed in 1978 to consider affirmative policies for the backward classes, though submitted its report in 1980 but was subsequently brought to lime light in 1990 by then Prime Minister V.P Singh, who announced implementation of Mandal Commission’s recommendations.

The commission which was chaired by B.P Mandal used 11 indicators — social, educational and economic — to determine backwardness and estimated that 52% of the total population (including SC’s and ST’s) belonging to 3,743 different castes and communities was “backward”. The report called for reserving 27% of all services and

public sector undertakings under the central government for the other backward classes (OBC'S) over and above the existing 22.5% reservation for SC's and ST's. The announcement of implementation of report was met with tremendous protests and resistance. Many cases of self-immolation were reported and finally a writ petition was filed in the supreme court against the implementation of Mandal Report. The supreme court in the famous case of Indra Sawhney Vs Union of India AIR 1993 SC 477 in 1992 upheld the 27% reservations for other backward classes subject to the exclusion of socially advanced persons / sections (creamy layer) from amongst the OBC's. It also directed the government to evolve a suitable criterion for the identification of this creamy layer. However, till then the constitutional provisions and courts verdict was limited to government institutions or govt. aided institutions. So, the private institutions were not under the embargo of reservation.

However, with the passing of the 93 Amendment Act, 2005, which introduced reservation for scheduled castes/scheduled tribes and other backward classes in private educational institutions, again a huge outrage of anger has been witnessed. The government is adding to the agony of the general category student as it is also proposing 27% reservation for OBC's in the Central Government funded higher educational institutions like Indian institute of technology (IIT), Indian institute of Management (IIM). The officials are happy with the government's proposal as this will give them power to regulate the admission/selection process. The dissent shown by students resembles to the Mandal- I situation. So, it can be said as Mandal — II - an unfortunate sequel which is giving distress to general category. There has been strong resentment shown by all the quarters of upper class. They feel that it is a discrimination against them. There were rallies protesting such move of the government. Though

these are the staunch reactions of the general category but let's examine the legal implications of such policy.

Implications of the reservation policy

The implications of the proposed policy of extending reservations to private sector can be analyzed from three angles

- 1) That of the implementation.
- 2) Cost effectiveness and impact on efficiency.
- 3) That of the likely beneficiaries.

1. Implementation of Reservation in private sector

Identification of Scheduled Caste (SC)? Scheduled Tribes (SI') and Backward Classes- It is not justified to implement reservation policy as there is no uniformity of castes included in the OBC lists across the States. In Karnataka for example, almost all castes including Brahmins come under Backward Classes. Does it make sense to extend reservation to all castes like that and call it reservation. Even if the Mandal Commissions recommendations, which specifically listed OBC's in each State, are followed there still remains the issues of excluding the creamy layer among Other Backward Classes. On the other hand even the Scheduled Caste (SC)! Scheduled Tribes (ST) lists are not free from dispute.. for example, the washer man caste (dhobis) is included in the other backward classes list in the other states. This has happened because of the defective list of Scheduled Caste (SC)! scheduled Tribe (ST) which were prepared by the colonial provincial government and revised in haste by the later State governments. Consequently, the deserving Scheduled Caste (SC)! scheduled Tribe (ST) have not enjoyed the benefits of the guaranteed reservations to the expected extent. The discrepancies in the Scheduled Caste (SC)! scheduled Tribe (ST) list had been recognized way back in 1960 and a demand was made to revise and rectify these

lists; Accordingly, an advisory committee on revision of lists of Scheduled Caste (SC)! Scheduled Tribe (ST) was appointed in 1965 under the chairmanship of the then law secretary, Lakur. The committee recommended the descheduling of 18 Scheduled castes and 13 Scheduled tribes constituting 2.23 crore people. This came to a little more than one third of the total Scheduled Caste (SC) / Scheduled Tribe (ST) population. This came as a shocking surprise to the political parties who were not prepared to let go a major chunk of their vote bank, so the recommendations were criticized and a sincere attempt to weed out the undeserving castes! tribes had to °return empty handed. With such defective lists of Scheduled Caste (SC)! Scheduled Tribe (ST) and Other Backward Class (OBC), how can reservation be imposed in the private sector.

2. Efficiency and Cost Effectiveness

Public departments are known for their inefficiency and low productivity. Private enterprises cannot afford to become inefficient or lose on productivity as they are accountable to shareholders. If the government enterprise incurs losses, the government can pour in the public money to share them up but if the private enterprise incurs losses because of low productivity it will have to eventually fold up. The positive signs that the Indian economy has shown, is the result of tremendous growth of private sector. It is not to be forgotten that educational institutions are the source of human resource for employment. As the private sector beckons on efficiency and merit, so in case of reservation implementation in the private sector educational institutions, the required trained and efficient staff would not be available to the companies and the private sector will meet the same fate as public sector, which crashed because of inefficient and sluggish approach of its employees.

There is another angle to the cost of reservation in the private sector. Merits for civil services and jobs in public sector are mainly determined by the marks secured in university examination and/or in prescribed tests. At the most, articulation and ability to make decisions may be expected as additional qualification for higher level of civil services jobs. In private sector marks and articulation are not the only necessary criterion for the special skilled jobs, capacity to work hard, an ability to make quick decisions, a pleasant personality, and an attitude to get well along with others in the organization are all required. A reservation policy in the private sector may impose regulation on the selection process and set the standard yardsticks for selection which in a way will take away the freedom of selection that a private enterprise enjoys.

The private sector in India has gradually moved away from the practice of appointing personnel until their retirement age to making contract appointments to get over the costs imposed by stringent labor laws. Further, the constitution has been amended to add Article 16(4A) which provides for reservation in promotions for Scheduled Caste (SC) and Scheduled Tribe (ST). If this policy is imposed on the Indian Private Sector Industry, the industry will fail to attract skilled and talented manpower.

3. Beneficiaries of Reservation :

In the whole debate on reservation in the private sector there is an implicit assumption that job opportunities are growing. This is a doubtful assumption because most of the countries whose economies are driven by the private sector are experiencing 'jobless growth' resulting from the spread of sophisticated technology. In India it is not only the use of sophisticated technology but also the stringent labor laws that are creating resistance to employing more labor. So job opportunities may not increase in the private sector as rapidly as some expect'.

Reservations have been in existence for more than fifty years and yet have not improved the lot of those in the middle and lower rungs of Scheduled Caste (SC) Scheduled Tribe (ST). Only the so called 'Creamy Layer' of the Scheduled Caste (SC) Scheduled 'Tribe (ST)' groups and the privileged among the backward Classes has benefited out of it. The marginalized members of these communities have not been touched at all, rendering the entire exercise inequitable. Without any accompanying movement of social awakening among the target communities, reservation has degenerated into no more than a race for systemic spoils that has only served to create new layers of elite.

Criticism and Impact of the 93rd Amendment Act, 2005

Due to the negative impact of the 93rd amendment act, 2005, it has met with criticism on the following points;

- 1) One that the minority educational institutions under art 30 (1) are specifically left out. Hence, it seems that the target is only non-minority. When the reason for imposing reservation is to uplift the deprived classes, there seems to be no reason as to why such provision is created against non-minority of the society.
- 2) 'Reservation Policy' has already become a permanent feature which as such is not acceptable to general category. Hence increased and new reservation would only promote 'class distinction' rather than 'equality' among the classes.
- 3) In various educational campuses, the reservation policy has led to 'cold war' between the 'general category' and the 'reserved category'. It has been showed by a news channel that in All India Institute of Medical Sciences (AIIMS) campus and in such other educational institutions the 'reserved category' students are called as scheduled caste etc. The general category students do not intermingle with reserved category students.

4) The 'feeling of deprivation' which was earlier felt by lower class and today it is felt by upper classes. India has already witnessed a number of communal riots. It is feared that such enactments would lead to communal animosity and the outpour of anger can go to any extent. Therefore, in the private sector. The 93rd amendment has already caused great dissent among the students especially the professionals. In a protest against it the doctors have gone in for indefinite strike and are burning the effigies of IIT minister Arjun Singh whose announcement has changed the fate of the students. Now the general category students will either have to languish or move abroad for higher studies. But it is again a matter of concern as to how many can afford going abroad. The Indian ministry is in no mood to increase the number of seats in the colleges. With the first shot of law of reserving seats in private college, the government is also keen on reserving a quota for SC / ST and OBC in the private companies or MNC. The Commerce and Industry Minister said that the government may bring a law to ensure reservation in the private sector jobs if the industry failed to come out with adequate voluntary response on affirmative action for "all inclusive" growth.

The government has been time and again using the tool of reservation in the name of affirmative action for the underprivileged ones least recognizing that it has social commitments towards other categories as well. Indian economy has already faced the brunt of imperialist interest and the inactive approach of government officials post independence. To pace up with the global economy, it turned to privatization which focused on merit and excellence. Relying on the commitment of private sector, the foreign investments are pooling in and various multinational corporations have come to India. But with the government proposal to induce reservation policy, it is apprehended that many Multi National Corporations (MNCs) would wind up their business.

VOLUNTRARY AFFIRMATIVE ACTION IN PRIVATE SECTOR

Some industrialists have suggested that as a compromise voluntary affirmative action be introduced instead of formal reservation. They have indicated that they will be glad to initiate affirmative action as in US, where there is no constitutional reservation quota for minority groups. The supreme court of America has upheld the use of race conscious and gender conscious racial imbalance in traditionally segregated job categories, unnecessary trammel to the interest of non-minorities should not be done'.

CONCLUSION

Though voluntary affirmative action seems to be a good option but it cannot be expected in India where social responsibility has not yet become an essential part of our organizational culture. Even the constitutional! legal obligations are ignored and violated. Discrimination is practiced because society tolerates it. In such a social environment, legal enforcement of anti discrimination policy becomes necessary. but in order to safeguard the interests of the non-minorities, the unresolved defects of the very reservation policy which has so far being implemented in the public sector should be done away with and the government should try to introduce some minimum reforms in the labour laws, so that the cost of reservation becomes bearable. On the alternative, instead of forcing private sector to reserve seats for underprivileged, the government should offer fiscal incentives, tax relief to the organizations for taking voluntary affirmative action. The need of the hour is to build a strong, united and progressive India and not divided and weak India.

References

1. Article 15 (4) and 16 (4) of Indian Constitution.
2. 93rd Amendment Act, 2005 of Indian Constitution.
3. Universal Declaration of Human Rights.
4. International Covenant On Civil and Political Guides.

International Refereed Journal of Reviews and Research

Volume 11 Issue 2 May 2023

International Manuscript ID : 23482001V11I2052023-105

(Approved and Registered with Govt. of India)

5. Indra Sawhncy Vs Union of India AIR 1993 SC. 477
6. Valsamma Paul v Cochin University AIR 1996 SC 1011
7. Bhanu Partap Mehta Affirmation without Reservation Economic Political Weekly (2004).