

## ***Solution for Reservation-Related Problems***

On 18<sup>th</sup> June, 2008, Rajasthan Government assured five percent additional reservation to *Gujjars* along with a few more nomadic communities in a bid to end the month-long violent agitation of *Gujjars* which paralyzed life in and around Rajasthan. However, the way *Gujjars* forced the Government to concede to their demand for reservation; it is going to blast open a Pandora's Box and will bring even more grief to the nation in near future, in the form of similar agitations by other communities.

In India, vote bank equations compel political parties to desist from raising any issue or argument which may be termed as anti-reservationist and thus could be used by their opponents against these parties and these are branded as indifferent for the cause of people of the weaker sections who have remained oppressed for centuries. Such constraints have effectively put a lid on initiating pragmatic measures, by successive Governments in India, which could provide sustainable stimulus to the people of the weaker sections for their early empowerment and simultaneously shaking off their veil of complacency, which has somehow crept in due to reservation related policies.

**In this presentation, an innovative approach, herein referred as indirect reservation, is advocated for handling reservation related issues in the country. It can expedite pace of empowerment of weaker sections by gently prodding them to improve their performance level. Moreover, it can,**

**also, gradually diminish the intensity of reservation related conflicts among the various stake holders.** Mine is not a comprehensive survey on the entire gambit of reservation related problems, because merely probing of its historical prospective may not solve any problem. Here, I shall briefly discuss reservation related issues and then suggest a viable method which can effectively solve most of the shortcomings of the existing reservation policies, without compromising interests of either those who are enjoying protection under reservation or those who are not covered through reservation, and eventually, the need for reservation will itself fade away in a couple of decades.

During the hearing of petitions questioning the 93<sup>rd</sup> Constitutional Amendment relating to Central Educational Institutions (Reservation in Admission) Act, 2006, providing for 27 percent quota for Other Backward Castes (OBCs), senior advocate Mr. Foli Nariman argued in the Supreme Court of India on the 19<sup>th</sup> September, 2007: *“It is not as if caste has always been the starting point for determination of the socially and educationally backward classes. There are other criteria sufficient to identify backward groups or communities, for example income of the family – below the poverty line; educational status; location of residence – rural or urban area; type of living accommodation – kutchha house or no house/rented – urban/rural; occupation or profession of father/guardian – landless, unskilled labourer, etc.”.* Mr. Nariman further argued: *“There are a whole lot of people in other religions (other than Hindus) who are equally backward”.*

Senior advocate, Mr. Ram Jethmalani who supported reservation for OBCs, counter-argued on the 30<sup>th</sup> October, 2007: *“Past injustice done to the backward classes for centuries is still continuing and that injustice is required to be remedied. What is wrong in providing reservation to them? The present generation*

*must make some sacrifices for injustice done by their ancestors*". Mr. Jethmalani further argued that the Supreme Court is bound by the legislative judgment of the representatives of people (Parliament) and thus cannot set aside the law for reservation even if it may differ with the views of the legislature.

The aforesaid arguments and counter-arguments can also be extended with regard to grant of reservation to candidates of Scheduled Castes (SCs) and Scheduled Tribes (STs). Though, people of the country argue less about extending reservation in jobs and admissions in educational institutions, to the people belonging to SCs and STs. However, now, trouble is brewing up there, too. Many other groups of people are demanding that they be also included in the group of SCs and STs. As a result of this scramble for gaining entry into the group of SCs and STs, clashes are being witnessed between those groups who have already been notified as SCs and STs and those groups who aspire to be notified as SCs and STs. It is because the former groups feel that the latter ones will start competing with them for a share in the welfare schemes which are exclusively meant for them. On the similar pattern, scores of such demands have been heard in the past, too, regarding shifting of people of some sections of general category to other reserved categories or shifting of people of OBC category to SC/ST categories. Some of these demands have been accepted by the various Governments, as the shifting of *Jats* from the general (GN) category to the category of OBCs by the Vajpayee-led Government at the Centre. Thus see-saw battle between the seekers of status of weaker sections and approval or rejection thereof by the Government keeps on simmering.

Recent agitations in June, 2007 and later in May-June, 2008 by the members of *Gujjar* community regarding their demand that they be shifted from the category of OBCs to STs, quickly

spread to Uttar Pradesh, Haryana, and national Capital of the Country, too. At times, this agitation also appeared to snowball into a major clash between members of *Gujjar* community, who wanted to be notified as STs, and the members of *Meena* community, who are already notified as STs and opposed the demand of the former for the reasons mentioned in the preceding paragraph.

Therefore, the issue of reservation should be tackled in such a manner that it does not start hurting people so much that they start feeling oppressed and then demand reservation for themselves and in the process vent their anger through violent agitations.

On 24<sup>th</sup> November, 2007, members of *Adivasis* community of Assam took out a rally in Guwahati to press their long standing demand for including them in the list of STs in Assam. (Notification of a group of persons as SCs/STs/OBCs, sometimes varies from State to State. *Adivasis* are already notified as STs in many other states of India but not in Assam.) However, local residents of Guwahati city clashed with the rallyists when they became unruly and damaged property in the city in mob frenzy, thereafter, violent clashes broke out between the two factions and in the ensuing violence, merciless beating of rallyist men and women of *Adivasis* (tribal) by the local residents (non-tribal) took place. Such incidents/clashes only bring bad name to the country.

Now, to further compound the already vexed problem of reservation, another ticklish issue has been added to its kitty. In December, 2007, National Commission For Scheduled Castes accepted recommendation of Justice Rangnath Mishra Commission for Religious and Linguistic Minorities that reservation should be provided to *Dalit* Christians, too, but with a rider that this reservation should be beyond existing

15 percent reservation for SCs. It was also said that if SC converts to Sikhism and Buddhism could retain their reservation status then as to why SC converts to Christianity and Islam be not allowed retaining their reservation status as SCs. All these arguments may seem valid but if one adds 15% reservation for SCs, 7.5% reservation for STs, 27% reservation for OBCs, and if additional reservation quota for *Dalit* Christians and *Dalit* Muslims is sanctioned then it may breach the ceiling ruled by the Supreme Court of India that reservation should not exceed 50 percent of the total.

It is apparent that schemes like reservation for the weaker sections of society were instituted through our Constitution to provide initial push to the people who have remained oppressed and marginalized for centuries in this country due to caste-based excesses of dominant sections. There is no doubt that window of reservation has so far served people of weaker sections, considerably, to progress in this competitive world or else they might have remained marginalized due to their weak background in comparison with other sections of people which are considered empowered. People also argue that those persons of weaker sections whose earlier generations have enjoyed fruits of reservation, whereupon they should be considered fairly empowered and belonging to creamy layer of weaker sections, should not be extended reservation anymore so that remaining persons of weaker sections have early chance to empower themselves through the protection provided by reservation.

I feel it might not be the intention of Constitution makers that to compensate for the centuries old oppression of weaker sections, now reverse wave of oppression be created whereby people of present generation of some other sections be penalized for the excesses committed by their forefathers. Since

such a judicial system which demands an eye for an eye cannot be contemplated in a civilized society.

No one stresses openly that intervention through reservation for weaker sections should remain in force for all time to come. Even the framers of Constitution contemplated that the tool of reservation should remain operative initially for ten years thereafter its utility should be probed. However, even after six decades of the Independence, no one thinks that the concept of reservation has achieved the purpose for which it was instituted and thus it can be shed away, now. From this, one can conclude that the people of weaker sections could not attain parity even after six decades. Thus the noble goal of reservation as an affirmative action for a limited period to bring forward the weaker sections of people who are socially and economically backward by giving them a gentle push, has not succeeded so far, which Constitution framers thought might make a significant impact in ten years.

In the pre-reservation period people wanted to get rid of backward group tag but now during post-reservation era, even those people who were earlier considered belonging to forward groups, claim that they are backward so that they could also enjoy protection enjoined under reservation. When more and more people seek to be categorized as backward instead of forward, one is tempted to think that our country is moving backward as more and more people are becoming backward.

**Therefore, if we are to create an egalitarian society, early, where all the people enjoy equitable status and have equal opportunity to achieve prosperity, we will have to shed away the temporary crutches of reservation sooner than later, otherwise the prolonged use of these crutches will incapacitate Indian society for ever. And we will end up**

with a caste-based fractured society whose various groups of people will ever remain suspicious of each other and social strife will be witnessed every now and then. Such a scenario will move our country and its people towards a dark tunnel of despair and chaos.

Since reservation is one of the most sensitive and hottest issues in India, a sudden change in present frame work of reservation is almost impossible. Thus need of the hour is that we should take such steps which would protect the weaker sections of society and simultaneously empower them so much that the need for reservation itself gradually fades away. Only thereafter, the dream of our Constitution framers and for that matter of any well meaning society, to create real equality among all citizens of the country, can be materialized.

I think, at this point of time, we should not argue whether we should have reservation for the weaker sections or not. We should also not touch upon the quantum of quota of reservation assigned to SCs/STs/OBCs as it will stir the hornet's nest. Instead, we should proceed to provide indirect reservation to the candidates of SCs/STs/OBCs categories, without altering their quota share under reservation. For this purpose, we should find out from existing data, say, of last five years that what was the median of achievement level of successful candidates of the four categories of people, viz., GN/SCs/STs/OBCs, in various reputed and standardized examinations, like, (a) CBSE examination of class XII; Joint entrance examination for IITs; AIEEE examination for Engineering Institutions; All India Pre-Medical/Pre-Dental entrance examination; CAT; MAT; etc.; examinations for IIMs; which are held for granting admission in Institutions of higher learning at Central Level and (b) various Union Public Service

Examinations; JRF & NET Examination of the University Grants Commission; other all India level recruitment examinations; which are held for finalizing selection in jobs at Central level. The main idea of choosing data of reputed examinations is that their objectivity level is high and secondly, these have a large data base, thus their data will be more reliable statistically. Differences in medians of (i) GN category and SC category, (ii) GN category and ST category, and (iii) GN category and OBC category, will give a fairly clear picture with regard to level of difference in performance of SC/ST/OBC category candidates vis-à-vis GN category candidates. Say, we find out that median difference in percentage terms for the candidates belonging to GN-SC, GN-ST, and GN-OBC categories is 20%, 22%, and 12%, respectively. Then instead of assigning direct quota for the candidates of various reserved categories, we can give an additional weightage, equivalent to the difference observed in the medians of achievement level of candidates of these categories vis-à-vis the median of achievement level of candidates of General category, i.e., achievement score of SC candidates be raised by 20%, ST candidates be raised by 22%, and OBC candidates be raised by 12%, for the various tests which are held for selection of candidates for admissions or jobs. Thereafter, a combined merit list of all candidates can be made for the purpose of selection for admissions as well as jobs. This system will have many benefits some of which are mentioned below:

- **This will unleash spirit of competitiveness and the people of every category will try to improve upon their performance as it will enhance their chance of selection if they perform better than candidates of other categories.**

- Those who are benefitted by reservation have lower level of motivation in comparison to those who do not have protection of reservation. Thus the gulf between achievement level of those who enjoy reservation and those who do not enjoy reservation, will keep on widening if reservation quota system continues in its present form. If the indirect reservation as advocated above is practised, this gulf in achievement level of general category candidates vis-à-vis reserved category candidates will eventually reduce, meaning thereby that the process of empowerment of weaker sections of people has taken off in the right direction.
- The tag of backwardness (SC/ST/OBC) will not be visible, once a combined merit list is prepared. It will induce feeling of uprightness among candidates of weaker sections, too, who otherwise do not always enjoy equitable status with their colleagues and develop complex leading to strained relations within colleagues, which is not a healthy trend by any yardstick.
- The system of reservation will not throw up unpleasant surprises, since now even the bottom most candidates who sometimes secure very poor score in an entrance test, find their place in the list of selected candidates. Because as per the existing rules, entrance test is relevant only up to the point of preparation of inter-se merit among candidates of respective reserved categories and its score has no meaning as far as selection of candidates of reserved categories for admission for higher studies is concerned, provided these candidates have at least pass percentage in the concerned qualifying examination. This ignominy should better be avoided lest we should make a mockery of our country, its

people, and its reservation policies. Moreover, a person who does not possess the bare minimum aptitude for a particular trade, he should not be thrust into that trade only because jobs are available there.

By the aforesaid narration, I do not mean that there are not enough bright candidates in the pool of candidates belonging to the reserved categories. There are a large number of bright candidates in the reserved categories, too, and some are so bright that they sometimes outclass candidates of general category, with their brilliant performance. Indian history is full with many such examples, Dr. B.R. Ambedkar, the chief architect of Indian Constitution and Shri K.R. Narayanan, former President of India, are some of the examples to evince that gifted souls can take birth in any family of any community and these do not search the tag of forward caste families before taking birth on this earth. Thus people with gifted talent do take birth in every community. It is the societal customs which do not provide adequate opportunity to the souls who are born in under privileged families, and thus debar many a soul with talent to blossom in full bloom in this world and serve the mankind to their fullest potential. And here comes the role of a Government to ensure that such colossal waste of talent is checked forthwith.

Now, I proceed to elaborate as to how the system of indirect reservation should be taken forward, with a view to expedite empowerment of weaker sections as well as lessening their dependence on the protection available under the umbrella of reservation.

After preparation of a combined merit list of all categories of candidates (wherein candidates belonging to SC/ST/OBC

categories will be having advantage of additional weightage as discussed earlier), the next step should be to gradually prune this additional weightage and reduce it completely over a period of time, say, within 20 years (this time period can be more or less depending upon the pace of empowerment of SC/ST/OBC candidates). To start with, additional weightage given to candidates in their respective reserved categories should be reduced gradually, say, by 5 percent every year, i.e., if existing additional weightage is 20 units for SC candidates then in the following year it should be reduced to 19 units. However, the regulators should compute with statistical tools, say, after every 2 years, whether this reduction has adversely affected chances of selection of candidates of the reserved categories in the Centre controlled/aided organizations? Case I: If it has not affected the number of selected candidates vis-à-vis their allotted quota percentage then it shows that level of empowerment of persons of weaker sections has improved. Case II: If it is noticed that the number of selected candidates has fallen in comparison with the previously allotted quota percentage for them, say, by one percent or more, i.e., selection of SC candidates has fallen below 14% of the total seats, then any further reduction in their additional weightage should be put on hold, till the percentage level of their selection reaches to the existing quota limits. Case III: If it is observed that the number of the selected candidates of the reserved categories has increased in comparison with the previously allotted quota percentage for them then it is the most heartening scenario as it is the real indicator that the pace of their empowerment has gathered momentum. In this scenario, quantum of additional weightage given for these categories can be reduced at an increased pace.

I have a hunch that there is larger probability of recurrence of Case III scenario. Because, now, the candidates of the

reserved categories will be able to improve their level of achievement at a faster pace as a result of newly acquired motivation which will open up opportunity for them to improve upon their chance of selection in comparison with the general category candidates who are already at a high pedestal from where moving further upward becomes increasingly difficult. To clarify this scenario, I take up example of sprint athletes. Suppose, there is a group of 100 athletes of a country where sports are highly developed and these athletes clock a median time of 10 seconds for a 100 meter dash, then there is very remote chance that this group can reduce median of its racing time further by a wide margin; even a reduction of 0.05 seconds would require a commendable effort on the part of this group. Now, consider a group of 100 athletes from another country where sports are not adequately developed, supposing this group clocks a median time of 11 seconds for a 100 meter dash, then there is very high likelihood that these athletes can easily improve upon their median clocking time by a significant margin, say, by 0.5 seconds or more, without insurmountable difficulties if they are properly trained.

**It implies that when the score of a person is in the middle of performance ladder, he has a better chance to climb higher than the one who is near the top of the performance ladder. Similarly, the indirect reservation for weaker sections will initially benefit them more and will constantly motivate them to improve their achievement level further, which will culminate in their true and early empowerment, which was the dream of the framers of our Constitution as well as the cherished desire of all the major political parties of the country.**

My contention is that if people of the weaker sections are provided adequate food, meaningful security, quality education,

reasonable healthcare, housing, etc., then this alone will empower them so much that they would not need additional push of reservation. In this endeavour, the system of indirect reservation will steadily empower people of the reserved categories and consequently render the need of reservation superfluous over a period of time in the same manner as an infant leaves the lap of his mother and then takes shaky steps with the help of his elders and then finally starts walking without any external help. The day the need for extra push for the reserved category candidates through the reservation window is not required, it will be a great day in the history of our country. And the political leaders, who take us in that era due to their foresight and wise policies, will always be remembered to have eradicated the ills plaguing the caste-based and fragmented Indian Society.

It will not be out of place to mention, though it is obvious to all, that centuries old division of Indian society in caste-based factions, has only blunted the edge of development of India and subjected a major population of this country towards abject helplessness, oppression, and sufferings. It is not that only weaker sections have suffered due to blunted development but, on the whole, population of the entire nation has suffered on account of it and lost its independence to intruders for many centuries. And, therefore, it is the need of the hour that this caste-based strife should be put to an end for once and ever, and all the people of India should be provided equal opportunity to live and lead a dignified life.

However, there is a catch that if we adopt the method of indirect reservation then initially some unscrupulous persons may try to scuttle selection chances of candidates of the reserved categories by foul play or some people may just charge unreasonably that the candidates of the reserved

categories are being denied admissions or jobs at the Centre controlled/aided institutions by intentionally lowering achievement score of these candidates. This situation can be tackled in a very simplistic but effective manner as follows: In the regime of indirect reservation, too, every Centre controlled/aided organization should be required to maintain separate record for admissions or jobs granted to SC/ST/OBC category candidates as is being done now. Further, all such organizations should be required to calculate the percentage of selected SC/ST/OBC category candidates and if it falls below their existing quota limit of 15%/7.5%/27%, respectively, then such organizations must send a comprehensive report of the record of the tests conducted by them for selection of the candidates to the District Social Welfare Officer in case it falls below 90%, and to the National Commission For Scheduled Castes in case it falls below 80%.

The persons who are found guilty of manipulating achievement score of the candidates of the reserved categories, with a view to unduly benefit others, should be severely punished. This alone would ensure that selection percentage of SC/ST/OBC category candidates does not fall below existing level of quota limits, arbitrarily. Moreover, the data of selection for admissions or jobs in Centre controlled institutions should be regularly monitored by the various regulatory bodies as is being done now, as an additional check to ensure that indirect reservation methodology is not misused by anyone. If political rulers agree to adopt indirect reservation methodology then solution can be found out for any loopholes which can cast negative effects on the prospects of selection of candidates of the reserved categories.

**A by-product of indirect reservation will be that the scramble for entry into the club of SC/ST/OBC categories**

will also slow down thereby increasing prospects of enhanced peace as well as decline in turmoil in the country. There will be fewer agitations and even lesser conflicts between the proponents and the opponents of the reservation policy. Everyone would see the end of the dark tunnel of caste-based divisive system, where after no one would require reservation as there will be equality among all sections of people of this country and the country will forge ahead at a blistering pace as its talented souls will be nurtured everywhere which will harness their true potential resulting in long lasting prosperity to this country.

In the existing system of reservation, beneficiaries become complacent because they know that their chances for selection are somewhat limited by the quota limit, and it hampers pace of their growth and empowerment. However, in the proposed system of indirect reservation, candidates of weaker sections will have considerably higher motivation to improve upon their performance, because it will enhance their chances of selection dramatically.

I appeal to the proponents of reservation policy that they should appreciate these aspects of indirect reservation and press for its early implementation. Political parties should also not lose any goodwill by pressing for implementation of the indirect reservation system as by its adoption, absolute percentage of selected candidates of the reserved categories will not be lowered. As far as the people opposing the reservation policy are concerned, they, too, should not oppose this system of indirect reservation because as on today, also, people of the weaker sections are already enjoying protection under the umbrella of reservation, which these opponents cannot change as no major political party will ever support them. However, in the new system there would be a ray of

*Some Other Needed Reforms*

---

hope that one day reservation would not be required by anyone. Moreover, by the early empowerment of the people of the weaker sections, productivity and prosperity of the nation will increase much faster which will benefit one and all. Once the system of indirect reservation starts functioning smoothly at the Centre, it can be adopted at the States' level, too.

**However, there is a word of caution; if we are unable to dispense with the existing quota system and reservation debate is not put to an end soon; and if we do not value merit and competence for any reason whatsoever, we cannot compete in this modern world, as a result thereof, prosperity of the country will remain severely compromised for all times to come. In the end, I will also plead that since mankind could make mistakes, societies should be receptive to the new ideas rather than remaining stuck to rigid doctrine of the existing reservation policies. Accordingly, the people who matter in this country must seriously weigh the pros and cons of the methodology of indirect reservation as suggested above, as here is a chance which we should not miss!**

••