

Independent India's journey of social justice



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In the preamble to the Indian Constitution, it is social justice which is held aloft above economic justice and political justice. Right from the day the Constitution was framed, social justice for the people of the Scheduled Castes and Scheduled Tribes was guaranteed. Proclaiming elimination of untouchability, the Constitution professed equality for all in the eyes of law.

The basic tenet of social justice is that all are equal. While the Constitution has prohibited discrimination on the grounds of religion, caste, gender and place of birth, it tries to ensure justice for those discriminated against on these grounds. It has ensured reservation for SCs and STs in educational institutions, government jobs and legislatures. The first amendment to the Constitution removed all stumbling blocks to the reservation for the people backward in terms of social status, economic condition and educational state.

The Supreme Court judgment (State of Madras vs Champakam Dorairaj) delivered in 1951, which held caste-based reservation violative of the Constitution, led to the First Amendment that was very firm in holding on to the reservation system. However, even now the judiciary and the states face off over the issue. It was Jawaharlal Nehru and B.R.Ambedkar, who argued in Parliament eloquently for the need to give constitutional protection to the reservation for the Backward classes of the society. They vehemently supported the First Amendment which set a precedent in the trend of amending the Constitution contrary to the court judgments.

Mandal Commission

Back in 1978 during the Janata Party's reign, a commission was set up under the leadership of Babu Bindeshwari Prasad Mandal to identify the people across the country backward in terms of social status and education. The commission report, submitted in 1980, had used 11 parameters to assess the backwardness of the people in terms of social status, economic condition and educational state and identified 52 per cent of the Indian population as backward, recommending 27 per cent reservation for them in government jobs and educational institutions.

When V.P.Singh was Prime Minister, he tried to implement the Mandal Commission recommendations. But the initiative was met with strident opposition. In the Indra Sawhney vs Union of India case (1992), the Supreme Court kept the higher income groups away from the purview of reservation for the backward classes in union government jobs and educational institutions. Moreover, the apex court fixed the cap of reservation at 50 per cent. In the union government jobs and in the public sector companies, the higher income groups are not allowed in the reservation for the other backward classes. However, the 69 per cent reservation adopted by the Tamil Nadu government still continues under Article 257 (A) of the Ninth Schedule.

While the reservation for the other communities socially and educationally backward still continues, the 103rd amendment to the Constitution has envisaged 10 per cent reservation for the Economically Weaker Sections (EWS) in the forward communities. At the same time, the states' power of identifying the backward classes is in question. By the way, the Supreme Court has not upheld the reservation granted to the Marathas in Maharashtra.

Census postponed

The Supreme Court's verdict that struck down Maharashtra's Socially and Educationally Backward Classes Act, 2018, granting reservation to the Maratha community will not, of course, affect the reservation system in practice in Tamil Nadu. But the need has arisen across the country for a scientific approach to the issue of identifying the backward classes and determining the inner reservation for them. The only panacea is the caste-based census. Way back in 1931, a caste-based census was undertaken. On the basis of that census, the present reservation for the backward classes has been evolved and practiced.

While some states have been insisting on caste-based census, the union government has adopted a dilatory approach in view of the electoral politics.

It is a matter of consolation that the National Commission for the Backward Classes set up in 1993 got the Constitutional recognition following the 102nd amendment. There's no gainsaying that this development has warmed the cockles of hearts of social justice proponents. But there is a general perception that the Commission's activities have to get deeper and more intense. While there have been consistent efforts to empower the socially, educationally and economically backward classes, the social justice outlook has so expanded that it is now accommodative of transpersons, senior citizens and the differently abled. The Transgender Persons (Protection of Rights) Act, 2019 is a vital initiative from this perspective. However, the

practical procedures to get an official certificate for transpersons are quite cumbersome, triggering discontent among the persons concerned.

Increasing violence

Though the backward classes have got representation in government jobs thanks to the reservation system, it is not sufficient, taking into consideration their proportion to the overall population. In the union government's educational institutions, scores of seats reserved for the backward classes remain unfilled. In the higher posts in government employment, there is no proportional representation for the backward classes. In the promotions either, there is no reservation followed. On the contrary, in the subordinate staff postings there is sufficient proportional representation for the backward classes. So, the courts keep projecting the idea that in promotions of subordinate staff there is no need for following reservation.

All said and done, poverty, illiteracy, lack of access to sanitation facilities, oppression and discrimination are still prevailing among the SCs, STs and backward classes. Particularly, crimes against the SCs/STs are, of late, increasing. In 2011, the number of cases of atrocities perpetrated on them was 33,719 and it rose to 50,291 in 2020. The percentage of cases pending in courts across the country under SCs and STs Prevention of Atrocities Act is 90.5, as of 2020. But the tragic point is that in most of these cases, the accused are eventually acquitted.

In fact, it is the reservation policy in practice, which is the practical version of the social justice principle. But at present, that too is faced with challenges.

The union government is in the process of implementing its privatization policy with gung-ho zeal. In case public sector companies go over to the hands of the private sector, what will befall the legally protected reservation policy and its scrupulous implementation?

That is a million dollar question facing us all that we can't evade at all.

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