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Provision of Reservation Policy in Indian Constitution

Our Constitution is replete with the ideals of liberty, equality and justice in social and political fields. Accordingly, it abolishes all discrimination against any class of persons on the ground of religion, race or place of birth. It is in pursuance of this ideal that the Constitution has abolished communal representation or reservation of seats in the Legislatures or in any public office on the basis of religion.

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The Indian National Congress had taken a favourable decision on the issue of social uplift of the untouchables and in its Annual Session at Calcutta in 1917, and passed a resolution to that effect.⁽¹⁾ The focus of the resolution was on how to bring social justice to the depressed classes and removing their disabilities forced by retrograde customs. By 1922, the Congress Movement came under Mahatma Gandhi's leadership. He gave it a new life. The objective of raising the social and economic status of the depressed classes was included in the Bardolipprogramme of the Congress. The All India Congress Committee remained passive on the issue of untouchables doing nothing except showing lip sympathy to them by passing resolutions. The problems of the untouchables engaged significant attention from holding the First Round Table Conference (1930) and this recognized the fact that the interests of the untouchables were different from those of the caste Hindu. For sharing the work of the Round Table Conference various committees were formed.

The First Round Table Conference was given a memorandum by Dr. Ambedkar which covered adequate representation of the Depressed Classes in Legislatures, measures against boycott or threat of boycott, protection against discrimination, adequate reservations in services, right to redress against prejudice action, or neglecting their interests, formation of special department for taking care of untouchables and representation in the Cabinet. In the First Round Table Conference, the Congress was not a party. Mahatma Gandhi, after a compromise between the Congress and British, Government was chosen to represent the Congress. Gandhi resisted special representation to the

untouchables; to this Dr. Ambedkar's reaction was very bitter. He took Gandhiji's opposition to separate representation for the untouchables as a war against them.⁽²⁾

The Muslims, the Sikhs, the Depressed Classes, the Christians and the Anglo Indians concluded a pact. It was read out to the then British Prime Minister on November 13, 1931. Gandhiji's reaction to this pact was very pungent and sharp. The recognition which the minorities gave to the Depressed Classes angered Gandhiji. He could understand the claims of other minorities except those of the untouchables. Since it was agreed that the number of untouchables in legislatures and administrative service would be fixed in proportion to their population, a very unkind under estimation of their population was made. The Congressmen were not interested in the population of the untouchables, but when they came to know that the seats were offered to them on the basis of their population and would take a slice from their bread, they went out. Gandhiji feared that since the untouchables had been spread in the caste Hindu population all over the country, the caste Hindus could do great harm to the untouchables in the manner they would like due to the economic dependence of the untouchables on them.

After negotiations between Gandhiji and Dr. Ambedkar the Poona Pact came out. But the differences between Gandhiji and Dr. Ambedkar did not end there. The Congress deprived the untouchables of their seats in the executive. There was a fear of injustice to them. In ordinary life there was a problem of security. Gandhiji did not take a firm stand on the question of untouchability. He proclaimed that untouchability in any form and in any manner would be crime,

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while he cautioned that taking an untouchable into the Ministry would be a dangerous principle and, that the protection of the neglected classes should not be carried to an extent which would harm them and the country. The high caste Hindus and particularly Brahmins were occupying important positions in the Ministry and Administrative services. The Brahmins were trying to maintain their dominance by employing less qualified non Brahmins. No doubt, the public opinion was sympathetic to the untouchables and it was not prepared to surrender their rightful claims to them.

It became clear that the interests of the Depressed Classes were not safe in the hands of the Congress and it was necessary to ensure certain safeguards for them in the constitution itself. It was to be done through the guarantee of minimum representation to them in legislatures, executives and administrative services.⁽³⁾ The problems were not to be solved by showing lip sympathy to the Depressed Classes. The congressmen refused to accept the fact that the problem of untouchables was of political nature they always dubbed it as social. But in changing India, the untouchables were also assuming a political force. With the idea of equality before law brought forth by the Britishers, a new era started for the untouchables. Some Princely States adopted quite philanthropic attitude towards the untouchables. This led to awakening among the untouchables. Efforts were made for abolishing untouchability. Dr. Ambedkar for the first time demanded liberties for the untouchables at a stretch as their rightful claim.

Our Constitution is replete with the ideals of liberty, equality and justice in social and political fields. Accordingly, it abolishes all discrimination against any class of persons on the ground of religion, race or place of birth. It is in pursuance of this ideal that the Constitution has abolished communal representation or reservation of seats in the Legislatures or in any public office on the basis of religion.

It is also necessary, in this context, to make special provisions for the advancement of those who are socially and economically backward. Our Constitution, therefore, provides certain measures to help the backward sections to come up to some level with the rest of the nation, as well as certain permanent safeguards for the protection of the cultural, linguistic and similar rights of all the community and every section thereof.

Article 46 of the Directive Principles enjoins upon the State to take special care in promoting the education and economic interests of the weaker sections of the people and in particular Schedule Castes and Schedule Tribes and to protect them from social injustices. Any such provision made by the State cannot be challenged on the ground of being discriminatory.⁽⁵⁾

Article 14 guarantees to every person the right not to be denied equality before the law or equal protection of laws. Article 15 prohibits discrimination by the State on grounds only, of religion, race, caste, etc. with regard to access to

public places. Nothing in this Article shall prevent from making any special provisions for the advancement of socially, and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes. The Article guarantees equality of opportunity in matters of public employment. It prohibits discrimination in respect of public employment on grounds of religion, race, caste, etc. but the State can make reservation of appointments or posts in favour of any backward class of citizens not adequately represented in the service of the State. Article 17 abolishes untouchability.

Article 275 provides for grants in aid to the State for promoting the welfare of Schedule Tribes. Articles 330-342 make special provisions for safeguarding the interests of Scheduled Castes, Scheduled Tribes, Anglo Indians, and Backward Classes.

The Constitution does not define as to who are the persons who belong to Schedule Castes and Scheduled Tribes. Articles 341 and 342, however, empower the President to draw up a list of these castes and tribes. Schedule Castes and Scheduled Tribes are those castes or tribes as the President may by public notification specify. If such a notification is in respect of State it can be done in consultation with the Governor of the State concerned. Any inclusion in or exclusion from the President notification of any caste, race, or tribe can be done by Parliament by law. The Constitution provides the following special provisions for the protection of the interests of Schedule Castes and Scheduled Tribes.⁽⁶⁾

The reservation of seats in the Lok Sabha and the State Assemblies (Article 330 and 332) Article 330 provides for the reservation of seats in the Lok Sabha for Schedule Castes and Scheduled Tribes. The allocation of seats in the Lok Sabha shall remain till the year 2000. But in Article 330 (1) the president is empowered to appoint a Commission consisting of such persons as he thinks fit to investigate the condition 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 that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to grants that should be made by the Union or any State for that purpose and conditions subject to which such grants should be made.

Under Article 5(4) the State is empowered to make special provisions for the advancement of socially and educationally backward classes of citizens. Under Article 16(4) the State is authorized to make provisions for the reservation of posts for backward classes, if in the opinion of the State, they are not adequately represented in services.

The Constitution does not define the expression "backward classes".⁽⁷⁾ It is for the Government to list the backward classes for purposes of Articles 15 (4) and 16 (4). There is no uniformity in the matter and each State lists backward classes in its own way. The Backward Classes Commission appointed in 1953 was asked to determine the

criteria on the basis of which a class may be considered a backward class. The Commission did not suggest criteria for such a classification.

In *Ram Krishna Singh V. State of Mysore*, an order of the Government classified 95 percent of the total population of the State as backward classes.⁽⁸⁾ The Classification was not based on social and economic backwardness but on caste and religion. The Mysore High Court held the order invalid. The Court observed that the determination by the Government with regard to backward classes is not final and the court could examine the question as to whether the determination was based on a reasonable principle. The question whether a particular class of citizens is backward or not is a justiciable issue.⁽⁹⁾ The court can also examine whether the percentage of reservation provided for backward classes in any particular service is reasonable. If the reservation is found to be excessive, unreasonable or extravagant, it would be challenged as fraud on the Constitution.

In *Devasan V. Union of India* the 'Carry Forward Rule' framed by the Central Government was held invalid on the ground that the power vested in the State Government under Article 16(4) cannot be so exercised as to deny reasonable equality of opportunity in matters of public employment to members of classes other than backwards. In this case the number of vacancies which came to be reserved by virtue of 'Carry Forward Rule' was nearly 68% of the total vacancies which was reasonable and hence the rule was declared invalid.

References :

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- (3) *Ibid.*
- (4) *Ibid.*
- (5) *Ibid.*
- (6) *Ghoshal : A History of Indian Political Ideas, p. 210.*
- (7) *Motwani, K. : Manu Dharma Sastra, p. 103.*
- (8) *Ibid.*
- (9) *Samujh, Ram : Reservation Policy, p. 332.*

