

ORIGIN, GROWTH AND RECENT TRENDS **RESERVATION POLICY IN INDIA**

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The Government of Bombay Presidency declared that 'all schools maintained at the sole cost of Government shall be open to all classes of its subjects without discrimination. But this policy was hardly enforced. For instance a Mahar boy was refused admission and the Bombay Education Department justified the action of the school by saying that 'it would not be right for the sake of a single individual, the only Mahar who had ever yet come forward to beg for admission into a school attended only by pupils of caste, to force him into association with them, at the probable risk of making the institution practically useless to great mass of natives. By 1923 the same Government decided to cut off aid to educational institutions that refused admission to members of the Depressed Classes.³ But often the reform movements addressed, issues. Which were considered anachronistic and superstitious. The reform movements were concerned not with the evils of caste system as such, but of 81 broader social issues like widow remarriage and education of women and opposition to child marriage. As Galanter says they are issues, 'which reflected higher caste practices, and options' Caste system as such was not challenged⁴. Some authors tried to discover 'Brahmanism' as the root reason for the discriminatory behavior.

Jyotiba Phule, a social activist felt the necessity of reforms within the Hindu fold. In 1860 he called attention to the deplorable conditions in which the depressed classes lived and also the discriminatory treatment meted out to them. In 1858 the Government of Bombay Presidency

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(present Maharashtra and Gujarat were parts of it) declared that 'all schools maintained at the sole cost of Government shall be open to all classes of subjects without discrimination.' During that time the British Government took a serious view of the question of depressed classes. In 1880s, the British administration set up scholarships, special schools and other beneficial programmes for the Depressed Classes. The progressive minded princes in the native states like Baroda, Kolhapur, and Travancore took similar initiatives.⁵ Tracing the historical evolution of the policy of reservation, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes stated;

Eight years later in 1918, The Maharaja of Mysore, having received a petition from the depressed class people, appointed Miller committee to go into the question of adequate representation of non-Brahmin communities in the services of the State. When the First World War started in 1914, Britain began to pay more attention to the war and perhaps to elicit the support of the people in India Britain thought about some Constitutional reform. In the political history of India an association in Madras Province initiated representation to the depressed classes. There was also a strong public opinion in favour of this demand. A minute of dissent by Sir C. Sankaran Nair clearly reflected this trend in the political atmosphere of that time. According to him, "the non-Brahmin and depressed classes have awakened to sense of their political helplessness and to their wretched condition, and no longer contend to rely upon the Government which has left them in this condition for the past hundred years, claim a powerful voice, in the determination of their future."⁷ Thus increasing political awareness among the non-Brahmin Classes and Britain's need to have Indian people's co-operation in war efforts prompted the British rulers to adopt a policy of encouraging the 'gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British empire'

A SIGNIFICANT POLITICAL MOVEMENT IN MADRAS PROVINCE

In fact the non-Brahman movement had organized into the South India Liberal Federation in 1916. Later it came to be known as Justice Party after the name of its English newspaper, edited by T. M. Nair, a physician by profession, "As a first step, the party agitated for reserved seats for non-Brahmins in the legislative councils, ushered in by the Montague-Chelmsford Reforms."¹⁰

The main objective of the Justice Party was getting communal representation in the Government offices.

In reply to question raised in the Madras legislative Council in the year 1914 it was answered that the total of registered graduates of the Madras University was 650 of whom 452 were Brahmins, 12 non-Brahmin Hindus and 74 belonged to other communities. The Madras legislative Council, the Senate of the Madras University and other local and public bodies composed of a large number of Brahmins and the non-Brahmins had hardly a chance of entering these bodies. Out of the 128 permanent District Munsifs in 1919, 93 were Brahmins, 25 non-Brahmin Hindus and rest consisted of Muslims, Indian Christians and Anglo-Indians. Out of 1007 Gazetted posts 609 were filled with Brahmin as against 398 posts held by non-Brahmins, Muslims and Christians. Out of 17,225 clerical posts 9813 were held by Brahmins...

Moreover not a single non-Brahmin was elected to the Legislative Council during the first three decades since it started functioning in 1882 when it was started to 1917. Thus it was no wonder that when under the Government of India Act 1919 elections were held the *Justice Party* came out successful and formed ministry. The Indian National Congress had not participated in the elections. It was this Government of Madras that introduced what was later termed as 'Communal G. O.', which, in the post-Constitutional period, was challenged in *Chempakam Dorairajan v.State of Madras*.¹² It will not be wrong to state that there was a widespread awakening among the 'depressed classes' and this led to their claiming for adequate representation in the legislatures.

The result of the First Dispatch on Indian Constitutional Reforms was that the existence of depressed classes was recognized for the first time in Indian History under the Government Of India Act 1919 with the result that among the fourteen non-official members nominated by the Governor general to the Central Legislative Assembly, one was the representative of the 'depressed classes'. In the provincial legislatures the depressed classes were represented by four nominations in the Central Provinces, two in Bombay, two in Bihar and one each in Bengal and United Provinces. In Madras ten members were nominated to represent nine specified depressed classes.

It was after the Act of 1919 that the Scheduled, Castes, popularly known as depressed classes became a 'political entity' for consideration in future set up of constitutional reforms. A thorough examination of the Report of the Thirty second Indian National Congress shows that the Congress has mustered enough strength to pass a resolution to urging the people of India to remove all disabilities that were imposed by custom upon the depressed classes.

In Madras Province Periyar E. V. Ramasamy spearheaded the non-Brahmin Movement. He declared that 'communal justice' was only a means to an end the end would be casteless society. Periyar E. V. Ramasamy broke with Congress in 1925 on the issue of dominance of Brahmins within the Indian National Congress in the Madras Province and started the Self Respect Movement with a view to bringing about all round change in Tamil society."¹⁴ So with the positive urge to protect the rights of depressed classes, there emerged the negative force of anti-Brahmanism. Often casteism was identified with Brahminism and due mainly to the impact of Western ideals of equality and socialism the non-Brahmin, if not anti-Brahmin, movements emerged in different part of India.

The Government of India Act 1919 had a provision that a statutory Commission would be appointed after ten years to report on the matter of establishing a responsible government in India. In keeping with this provision, the British Government appointed Simon Commission. The Commission did not have any Indian member in it and was 'all-white' one, in spite of protests from the Indian province. The Commission went through memoranda from Government of India, from Committees appointed by the provincial legislative councils and from non-official sources. Obviously, the final report contained recommendations for reform. One for the recommendations was the need to safeguard the minorities and other depressed classes of people. The report of the Commission focused the issue of the depressed classes not only as a social issue of caste, but also as an issue with serious political ramifications. The Commission was of the opinion that the uplift of the depressed classes depended on their gaining political influence. If not participation in the governmental processes. Obviously the representatives of the depressed classes were to be present in the legislature. Many provinces like Bihar and Orissa suggested they would opt for 'nomination' because the depressed classes were too backward to choose their own

representatives. But the commission did not favour this idea for it felt that depressed classes needed opportunities for getting used to ideas and practices of self government.

THE ROLE OF COLONIAL CONSTITUTIONAL REFORMS IN ESTABLISHING EQUALITY

The depressed classes demanded a separate electorate. But the Commission did not favour this. However the Commission was not against reserving seats for them. The Commission recommended to reserve seats for the depressed classes in general constituencies and these seats would be filled by election in which both depressed classes and others would participate. In 1923 government decided not to give grants to those aided schools that refused admission to the children of the depressed classes. In 1928 Government of Bombay set up a Committee under the chairmanship of O. A. B. Starte to identify the Backward Classes and recommend special provisions for their welfare. In the meanwhile under the leadership of Ambedkar the Depressed Class people had begun to articulate forcefully their demands. The Simon Commission, which came to study and make recommendations for Constitutional reforms held negotiations and consultations with different groups of people. The representatives of the 'untouchables' participated in them. In the words of Galanter, "Dr. Ambedkar, by this time recognized as an important spokesman, appeared before the Commission to demand reserved seats for the untouchables in legislative bodies, special educational concessions, and recruitment to Government posts recommendations substantially accepted in this Commission's report.

The depressed classes in India present definite problem in the political and social evolution. They are the resultants of historical forces, religious, economic and social. They are the embodiment of exploded (sic) social ideas and the disabilities imposed on them original framers of Hindu polity have been aggravated by long centuries of segregation and neglect. The origin of these classes and the beginning of their woes rightly belong to the domain of historical research but their betterment, economic and educational, is an imperative problem. Their class-consciousness is growing, stimulated partly by the sympathy of the Government and partly by the belated awakening of the Hindu social conscience.

In the Report submitted in 1930 backward people were categorized: (a) Depressed Classes, (b) Aborigines Depressed Classes, (b) Aborigines and Hill Tribes and (c) Other Backward Classes. But there was stiff opposition to the recommendations of the Simon Commission Report. Therefore the British Government convened a Round Table Conference in November 1930, to which delegates from different parties and interest groups were invited. Unfortunately the Indian National Congress, which claimed that it was the only organization that truly represented the people of India, did not participate for it was engaged in the Civil Disobedience Campaign against the Government. Though Gandhi, the unquestioned leader of the National Movement, was opposed to any kind of reservation, later changed his position and conceded to setting up separate electorates to religious minorities like Muslims, Sikhs and Christians. But he opposed vehemently

separate electorate for the 'depressed classes'.¹⁷ The Round Table Conference ended in failure. Subsequently the British Government appointed Lothian Committee in December 1931, to formulate a system of franchise whereby all sections of the people would be represented in the legislatures. The Committee was specifically required 'to investigate the need, justification and methods to ensure adequate representation for the Depressed Classes.' As one writer observes:

The Hindu members of the Lothian Committee, the members of the provincial Franchise Committees, and the Hindu witnesses in several provinces conspired to minimize the number of untouchables. Perjuring themselves, the witnesses denied the existence of untouchables in their province. In the United Province, for example, the Franchise Committee reported the number of untouchables as just 0.6 million as against the 1931 (census) figure of 12.6 million. In Bengal the Franchise Committee figure was 0.07 million whereas the census figure was 10.3 million. Before the RTC the census figures of the untouchables had not been challenged. When the upper castes found that the untouchables would get representation and facilities based on their population, they resorted to lies to deny the existence of untouchables. Is not such a calculated conspiracy to deny the right of the untouchables going on in different forms even today?

SIMON COMMISSION REPORT AND AFTER

In 1931 six months after the publication of Simon Commission Report, a Round Table Conference was convened in London to review the Commission's Report and how a new Constitution for India could be worked out on the basis of the recommendations of the Commission. Ambedkar and Rao Bahadur Srinivasan represented the Depressed Classes in this Conference.

The focus of the Conference was the position of minorities in the future structure of Government in India. Ambedkar and Srinivasan demanded separate electorate and adult franchise. But the separate electorates were not to be a permanent feature. But the discussion went on without reaching an agreement. Subsequently there was convened the Second Round Table Conference. The time Gandhi also participated; but he vehemently opposed to the system of separate electorate for the Depressed Classes. He criticized the separate electorate as a device of the British strategy of 'divide and the'

Members of the depressed classes qualify to vote, will vote in general constituency. In view of the fact that for a considerable period those classes would be unlikely by the means alone, to secure adequate representation in the legislature, a number of special seats will be assigned to them... These seats will be filled by election from special constituencies in which only member of the 'depressed classes', electorally qualified, will be entitled to vote. Any person voting in such special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the depressed classes are most numerous and that except in Madras, they should not cover the whole area of the province.²⁰

THE POONA PACT

Gandhi was opposed to this award.²¹ After a month he started a fast unto death to resolve the issue of representation of depressed classes of people in the Assembly. A modern historian writes: ...his (Gandhi's) friends as well as his opponents wondered why he chose this particular issue for so terrifying a tactic, since it seemed directed more against the untouchables than the British Government. Gandhi considered this issue central to the very survival of Hinduism.

However for that reason he was willing to concede more reserved seats to Ambedkar for his party than the British had done. All he asked was the depressed classes should not think of themselves as members of any religious community but Hindusim.”²² Gandhi openly declared, ”I believe that if untouchability is really rooted out it will not only purge Hinduism of a terrible blot but its repercussion will be worldwide. My fight against untouchability is a fight the impure in humanity.” The mediators between Gandhi and Ambedkar put in all their effort and both of them met at Yervada jail where Gandhi had been a prisoner of the British Government. It was here that he started his’ fast unto death’ against the separate electorate for Depressed Classes. Now the responsibility of saving the life of Gandhi fell on all sections of Indians. But Ambedkar had a different opinion. It did not seem that Ambedkar at first took the fast of Gandhi seriously. On 19 September 1932, he issued a statement focusing on the following points.

1. Why should Gandhi stake his life on a relatively small issue as the communal question?
2. Why were the Depressed Classes singled out whereas at the RTC Gandhi had opposed special rights to all except Muslims and Sikhs?
3. His conscience was not aroused if the nation was split by the arrangement of special electorates for classes and communities other than the depressed classes-Why?
4. It there was any class, which deserved special political rights, it was the depressed classes.
5. The only path for the depressed classes to succeed in the struggle against organized tyranny was a share in political power.
6. The Mahatma staked his life to deprive the untouchables of the little they got.
7. The Communal Award itself was a compromise between the two principles of separate electorates and joint electorates.
8. At the time of RTC the Mahatma was opposed to any system of special representation to the Depressed Classes even in a system of joint electorates. Gandhi had suggested a convention-based scheme under which the losing

untouchable candidate would obtain a court verdict that he was defeated because of untouchability and continue to contest and keep on getting court verdicts *ad infinitum*.

All Mahatmas had failed in the mission of removing untouchability and absorbing the depressed class. Reformers who preferred to sacrifice principles at moments of crisis rather than hurt the feelings of their kindred could not be trusted by the depressed classes.

The Mahatma's fast would result in acts of terrorism by his followers against the depressed classes. Gandhi's fast was releasing reactionary forces and fostering hatred.

If the Mahatma did not want hatred reaction and terror to spread on a large scale, he should reconsider the decision to fast unto death.

But Gandhi viewed the Award 'an attack on Indian unity and nationalism and harmful to both.' By that time Gandhi had become hero of millions in India and even the depressed class leaders like M. C. Raja thought it their duty to save the life of Gandhi. Hence the mediators between Ambedkar and Gandhi actively intervened and at last Ambedkar agreed to meet Gandhi at Yervada prison. After much haggling they reached an agreement.

According to this historic agreement depressed classes would get 147 seats in the provincial councils instead of 71 promised in the Ramsay MacDonald's award. The Depressed classes could get 18% of the seats in the Central Assembly also. The British Government accepted this agreement between Ambedkar and Gandhi and incorporated it as an amendment to the Communal Award of the Prime Minister of Britain. Subsequently Gandhi ended the fast and the following week was celebrated as Untouchability Abolition Week.²⁴ It seems that Gandhi knew the rising political awareness among the backward classes and depressed classes. These developments reflected in the next Constitutional document namely Government of India Act 1935.

The Government of India Act 1935 replaced the term 'depressed classes' with 'Scheduled castes'.²⁵ Accordingly separated lists of scheduled castes were notified for various provinces in 1936. The Act also defined 'Scheduled castes' as 'such castes, races or tribes or groups within castes, races or tribes which appear to His Majesty-in-Council to correspond to the classes of persons formerly known as the depressed classes as His Majesty-in-Council may specify'. Even though seats in the legislature were reserved both for the 'minority' communities and for the 'depressed classes', reservation in the public service was denied to the 'depressed classes', whereas the minority communities enjoyed 'reservation' in the public services. The reason stated

for this was: “In the present state of general education in these classes the Government of India considers that no useful purpose will be served by reserving for them a definite percentage of vacancies out of the number available for Hindus as a whole, but they hope to ensure that duly qualified

candidates from the depressed classes are not deprived of their opportunities of appointment merely because they cannot succeed in open competition.”

POLITICAL STRATEGIES OF GANDHI AND AMBEDKAR

While Gandhi started Harijan Sevak Samaj to uplift the Depressed Classes, Ambedkar formed the Independent Labour Party (1936) to put pressure on Government for obtaining ore resources for the Depressed Classes. Later in 1942 it became All India Depressed Classes federation, When in 1942 Gandhi and the Congress opposed was efforts and started the famous ‘quit India’ movement, Ambedkar, by contrast supported the British policy and its was efforts. He became a member of Viceroy’s Executive Council. He used his position in the Government to further the interests of the Depressed Classes. During this time in a ‘Memorandum’ he submitted to the Government, he demanded reservations not only in legislative seats but also in education and Government employment. This was perhaps a crucial moment for the Colonial Government and thus his demand was accepted and this became the basis for the policy of India when it was framing the Constitution. Ambedkar played his card well by cooperating with the Colonial government and made available some concrete gains for the Depressed Classes. The Independent India could not go back on this commitment of the previous government. It had to recognize these gains and the framers of the Constitution had to evolve a policy of protective discrimination based on this already accepted principle. The pertinent question here is, would the framers of the Constitution have incorporated protective discrimination clauses in the basic law if Ambedkar had not made the British Government recognize the plight of the depressed classes and won for them the valuable concessions from the them Government.

Thus in 1942 the scheduled castes obtained 8.5 per cent reservation in Central services. The framers of the Constitution adopted the policy of reservation as the continuation of the policy

that had been followed by the British Government in India. In many Provinces and native States Legislations were enacted for uplifting the Depressed Classes. Thus the socio-political scenario of the thirties of the twentieth century was one in which the so-called Depressed Classes had begun to articulate their aspirations and in principle at least the upper class Hindus had to recognize the rights of the Depressed Classes. In many regions in India the Hindu temples were opened to depressed Classes people. This was a significant step on the path of the social uplift of the Depressed Class. And rightly Ambedkar was able to articulate effectively the aspirations of depressed classes and adopt befitting political strategies to make gains for them.

The maharaja of Travancore issued Temple Entry Proclamation in 1936.²⁷ In 1938 Madras Presidency enacted Madras removal of Civil Disabilities Act followed by Bombay Government's Bombay Harijan temple Entry Act, 1943 and the United Provinces Removal Social Disabilities Act, 1947. Perhaps these initiatives in the form of even legislations paved the way for a silent socio-political revolution and this changing scenario became the backdrop for the discussions of the framers of the Constitution.

CONSTITUENT ASSEMBLY OF INDIA

At the same time at the pan-Indian stage Constituent Assembly came into existence in December 1946, But the birth of the Constituent Assembly was not without the birth Constituent Assembly was not without the birth pangs.²⁸ Though not a sovereign body in the beginning, the Constituent Assembly assumed sovereignty later. Comparing the Constituent Assembly of India with Philadelphia Convention (1787) and to the States-General of France (1789) a scholar points out that the American and French bodies constituted towards the end of eighteenth century were 'articulate only in the general, while in India a strong political factor had emerged by the time the Constituent Assembly was convened. That was the party system. It is in and through the political parties that the socio economic forces in India had crystallized.'³⁰

The Constituent Assembly worked for about three years in framing the largest constitution of the world. The ideals, about which the freedom Movement had spoken, were to be translated into Constitutional provisions. One of them was the protection of the socially backward communities. The rhetoric of establishing an egalitarian society found its vociferous expression in the words of

Nehru.⁵¹ According to Anirudh Prasad, “At that time the issue of reservation was pleaded, explained, accommodated and accepted with the national spirit to assimilate sections of society including the intended beneficiaries of the reservation policy into the main stream of national life.” In the present context of affairs in regard to these unfortunate countrymen of ours who have not had these opportunities in the past, special attempts should be made, of course, in the educational and economic field and even in the political field to see that they have a proper place till they find their own legs to stand upon without the external aid.

CONSTITUTIONAL OBJECTIVE

The debate on the resolution moved by Nehru in the Constituent Assembly regarding ‘aims and objects’ that later formed the Preamble of the Constitution, clearly reveal the sentiments of different sections of the people. Even though majority of the members wholeheartedly supported the resolution Ambedkar had his own apprehensions. He said:

...I must confess that, coming as the Resolution does for Pandit Jawaharlal Nehru who is reported to be a socialist, this Resolution, although not-controversial is to my mind very disappointing. I should have expected him to go much farther than he has done in that part of the Resolution. As a student of History I should have preferred this part of the Resolution not being embodied at all. When one reads that part of the Resolution, it reminds one of the Declarations of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that after the lapse of practically 450 years, the Declaration of Rights of Man and the principles which are embodied in it has become part and parcel of our mental makeup. I say they become not only the part and parcel of the mental make-up of modern man in every civilized part of the world, but also in our country which is so orthodox, so archaic in its thought and its social structure hardly anyone can be found to deny its validity. To repeat it not as a Resolution does, is to say the least, pure pedantry. ..The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies...Leaders of the Congress party were very articulate in upholding the rights of the Depressed Classes and offer them adequate safeguards for exercising those rights. But doubts were also expressed regarding the effectiveness of these measures.³⁴ On the one hand a member from Madras criticized separated electorate as an effective safeguard for Scheduled Caste

reservation: ..Even if the Harijans are given this percentage of votes and this kind of electorate system, the Harijans are in a position to withstand the attractions that they will have to face at the time of elections. So many parties can set up candidates and they can purchase the Harijans and put up any candidate they desire, and any candidate can come u in the Assembly, and certainly he may not represent the community though he may get percentage of votes that is desired by this system. As long as the Scheduled castes, or the Harijans, or by whatever name they may be called, are economic slaves of other people, there is no meaning demanding either separate electorate or joint electorates or any other kind of electorates with this kind of percentage (cheers) (sic). Personally speaking I am not in favour of any kind of reservation in any place whatsoever.

On the other hand a Harijan Member, Nagappa vociferously argued for reservation for the ancient people who had been exploited by those who came later and dominated them. Quoting the number of Scheduled caste members and their population in various parts of the country, he tried to focus on the point that 'reservation' was essential with regard to Scheduled Castes and Scheduled Tribes. Unlike Scheduled Caste representatives, the Scheduled Tribes representatives expressed their voice of dissent by asserting that they being the original inhabitants need to be treated with dignity. Jaipal Singh from Bihar said:

..If there is any group of Indian people that has been shabbily treated, it is my people. They have been disgracefully treated, neglected for the last 6000 years. The history of the Indus valley civilization, a child of which I am, shows quite clearly that it is the new comers most of you here are intruders as far as I am concerned-it is the new comers who have driven away my people from Indus to the jungle fastness. This Resolution (Resolution Regarding Aims and Objects, moved by Nehru) is not going to teach Advisees democracy. You cannot teach democracy to the Tribal people; you have to learn democratic ways from them. They are the most democratic people from earth. What my people require is not adequate safeguards as Pundit Jawaharlal Nehru has put it. They require protection form Ministers that is the position today. We do not ask for any special protection. We want to be treated like every other Indian...the whole history of my people is one of continued exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder, and yet I take Pundit Jawaharlal Nehru at his word. I take you all at your word that now we are going to start a new chapter, a new chapter of Independent

India where there is equality of opportunity, where no one will be neglected. There is no question of caste in my society. We are all equal. Have we not been casually treated by the Cabinet Mission, more than 30 million people completely ignored? It is a matter of political window dressing that today we find six tribal members in the Constituent Assembly. How is it? What has the Indian National Congress done for our fair representation? Is there going to be any provision in the rules whereby it may be possible to bring in more Adivasis and by Adivasis I mean not only men but women too.

Again he remarked:

...I think there has been juggling of words going on to deceive us. I have heard of resolutions and speeches galore assuring Adivasis of a fair deal. If history has to teach me anything at all, I should distrust this Resolution, but I do not.

The discussion went on to the question of representation in the legislature and man expressed hope that the proposed Constitution would guarantee equality and at the same time protect the rights of the Depressed Classes. But they are also voices of frustration. For instance H. J. Kandekar came with his own experience. He said, "I remind you of the Poona pact. I place before you the example of my own province. In Central Provinces where we constitute 25 per cent of the population and we are entitled to 28 seats, we are given only 20 seats in pursuance of Poona pact. Where have our eight seats gone? Harijans cannot tolerate such injustice. They should be given representation according to their numerical strength."³⁷

Provision regarding 'untouchability' in the draft Constitution was generally welcomed. Eventually the fundamental right of 'not being subjected to any discrimination' came to be qualified by the provisions to procure 'protective discrimination' According to Nesiiah, unlike Martin Luther King, Jr, Ambedkar was in position of authority for as the Chairman of the Drafting Committee of the Constitution and Minister of Law, 'he was vested with both real and symbolic authority at the highest level'. Hence he was able to intervene effectively for the emancipation of Dalits. According to one member the inclusion of Ambedkar in the cabinet showed that there was a change of heart on the part of the caste Hindus.³⁸ But later events revealed the fact that it was not really a change of heart, but only a political expediency that

made the Congress leadership offer Ambedkar such a position. But the relevant question is whether Ambedkar could or did exercise any real power.³⁹ It would be safer to say that his skill as a lawyer was utilized by the then Congress Government.

CONSTITUTIONAL PROVISION FOR PROTECTIVE DISCRIMINATION

As the Preamble of the Constitution envisions achieving equality is sine qua non of a democratic polity, the Constitution of India has incorporated provisions, both general and specific, for this purpose. 'Equality as a right' is envisaged in the Constitution under

Article 14, 15 and 16, whereas 'equality as a policy' is implied in those provisions that ensure reservation for the socially and economically backward class of people, which inevitably includes scheduled castes and scheduled tribes. The right to be treated with respect and concern as anyone else is implied in Article 17 and also in The Protection of Civil Rights Act. To a certain extent Abolition of Titles in Article 18 also emphasizes equality among citizens. Articles 25 to 28 confer certain rights relating to freedom of religion on all persons in India. Again Article 46 directs the State to take steps to protect educational and economic interests of the weaker sections and in particular, of Scheduled Castes and Scheduled Tribes. The Universal Adult Franchise adopted by the Constitution also goes to show that the Indian Union is committed to political equality.

The specific provisions are made for safeguarding the right and interests of Scheduled Castes and Scheduled Tribes as well as other backward classes. Articles 15(2),

(3) and (4)⁴³ and Clause (3),(4),(4A) and (4B) of Article 16 that come under Part III titled fundamental Rights and Articles 330 to 342.

Every fundamental right guaranteed by the Constitution is qualified by certain restrictions. The 'right' is for the individual citizen; but the unbridled right might bring more harm than good. Hence to protect the social interests, restrictions on the rights of the individual do become essential. Whether there is too much of a right or too much of a restriction, is to be decided by

the Court. What in legal parlance has come to be called 'balancing of interests' is of course, the responsibility of the Judiciary.⁴⁴

Obviously when this balancing is done the court must look into the question of what is 'societal interests'. It does not mean equal status of the citizens alone, because the

equal status' to a significant extent, especially in an industrialized society, depends on the 'economic equality' A meaningful economic equality could be achieved only with the development of economy. The latter is possible only when people are given opportunity to develop their inherent talents. But unfortunately this fact is forgotten and 'protection' has come to mean only providing government jobs, which are comparatively less productive. Hence it is expedient that a new thinking is needed in this area.

During the debates in the Constituent Assembly it was generally agreed that sufficient protection for the backward communities was to be given. The attitude of the Christian leaders was not in favor of reservation per se. Anirudh Prasad comments:

Rajkumari Amrit kaur, a Christian opposed both reservations of seats and weight age for any community. She had reasons to argue so first, in her opinion there was no reason to believe why the interests of any individual or community would not be safe in the hands good persons irrespective of their religion. Second, privileges and safeguards really weaken those who demand them. Third, reservation or weight age was wrong in principle and when it was given on the ground of religion, it was doubly wrong, for all religions stood for brotherhood of man and none for separatism. In her opinion reservation and special privileges would lead to the fragmentation of the Indian Union.⁴⁵

However the framers of the Constitution did not heed to such warnings. Even leaders like Nehru had apprehension regarding reservation. He observed:

There is a great danger, whether you deal with an individual or group or community, of giving certain props to that community which give it a false sense of strength which does not belong to

it, and when they are removed, suddenly make the community weak. A nation ultimately ought to stand on its own feet. So long as it relies on some external prop, it is not strong. It is weak. So these external props, as I might call them, that is reservation of seats and the rest-may possibly be helpful occasionally in the case of backward groups, but they produce a false sense of strength, and ultimately, therefore, they are not so nearly as important as real educational, cultural and economic advance which gives them inner strength to face any difficulty or any opponent.⁴⁶

Another danger that lurks behind reservation is that it consolidates the scheduled castes and the members of the caste do not want any removal of caste identity. The ramification of reservation goes further that most of the educated young persons, who cannot find government employment because of the fact that they belong to the 'brain drain' in the country. Having no vision to foresee such consequences the Constituent Assembly eventually made a compromise mainly because of political compulsions.⁴⁷

REPRESENTATION IN LEGISLATURES

Regarding representation in Legislature, a joint electorate was accepted. Thus separate electorate and weightage were rejected. Reservation of seats for minorities based on religion was also not accepted by the Constituent Assembly. But reservation of seats for SCs and STs in Lok Sabha and State legislatures for ten years was agreed upon. But the period has been extended from time to time. Presidents and Governors were to nominate members to represent unrepresented Anglo-Indian community in Lok Sabha and State legislatures. In State or Central cabinets no statutory reservation for minorities was provided, by the President at the Center and the Governors at the states could appoint practicable numbers of ministers from minority communities. This was aimed at the smooth functioning of democracy. But the political realities point out to the fact that the

Chief Minister exercises the power to choose his or her ministers. He or she might choose ministers as political expediency warrants.

REPRESENTAION IN SERVICES

The Constituent Assembly did not envisage any reservation for minorities as such, Backward classes were to be given adequate representation in the services under the state. The claims of people belonging to Scheduled Castes and Scheduled Tribes were to be taken into consideration. Thus there arose mainly three categories of people who deserved the benefits of Protective Discrimination: the backward class, the Scheduled castes and the Scheduled Tribes. Speaking in the Constituent Assembly, Ambedkar elaborated on this aspect. He was not in favor of giving undue reservation for it would have an unfavorable impact on the whole concept of reservation itself.⁴⁹ Again the reservation policy should be carried out in keeping with administration (emphasis added) Special provision for Anglo-Indian Community to posts in Railway, custom, postal and telegraph services of the Union for the continuance of reservation was under the stipulation for periodical reduction and the reservation was only for a maximum period of ten years from the commencement of the Constitution. The rights of the depressed classes of people were to be protected and for this purpose an administrative mechanism was designed. Provisions were made for appointing special officers for Scheduled Castes and Scheduled Tribes and a Statutory Commission for socially and educationally backward classes. Scheduled Castes and Scheduled Tribes could be comparatively easily identified. But the issue of identifying ‘socially and economically backward’ classes is more complicated. Considering the ‘uppercases as a whole, as economically forward cannot be justified. Many influential caste groups demand that they should be included in the ‘backward’ list so that they could continue to enjoy the benefits of ‘protective discrimination’. According to Sivaramaya⁵⁰ Indian policy is based on four principles: compensation (for past injuries), Protection (of the weak under article 46 of the Constitution), Proportional equality and social justice (incorporation distributive justice and social welfare.) regarding the first principle, whether it is reasonable that the present generation should shoulder the burden of the sins of the past generation when they had their own notions of social morality and custom-based laws. The second principle of ‘protection’ for the weaker section can be justified, but there must be valid, reasonable and legal parameters for assessing ‘weaknesses’ of individual or class. The third principle of proportional equality too can only be transitory. Social justice, the fourth principle, is couched in such a vague phrase that it could be interpreted according to the predilections of the person who interprets.

RECENT TRENDS-RESERVATION OF SEATS IN OCAL SELF GOVERNMENT INSTITUTION (LSGIs)

Two recent trends are available in this regard: one is, new states, which predominantly Tribal have been formed. This could offer sufficient political power for the Tribal's to govern themselves and come up in life. But how far could they play an effective role in the pan-Indian politics is a pertinent question that might be answered only in future. Moreover could it help bringing them to the mainstream of Indian life? Secondly the LSGIs regime envisaged in the Constitution (Seventy-Third and Seventy – Forth Amendment) Act 1992, has given rise to legislation regarding Panchayat Raj at the village level and Nagar Palika at the urban level. This is significant in the sense that one, the object of participatory democracy demands that people at the village level should understand the intricacies of democratic mechanism. Here too the Scheduled Castes and Scheduled Tribes are given the benefit of reservation. For instance Constitution (seventy-third Amendment) Act 1992 adds to the Constitution anew Part (Part IX) titled ‘Panchayats’. In this Part, Article 243D provides that there shall be reservation of seats for the Scheduled Castes and Scheduled Tribes in every Panchayat and ‘number of seats so reserved shall bear as nearly as may be, the same population of Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. The same Article in clause 2, 3 and 4 provides for the reservation of seats for Scheduled castes and Scheduled Tribes women as well as for other women. Again the State legislature is empowered to make provisions for women Chairpersons in Pnachayaat. But these reservations are interlinked with Article 334 that specifies the time limit for the reservation of seats in the legislative bodies.

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5. V.A. Pai Panandiker, ed., *The Politics of backwardness: Reservation Policy in India* (New Delhi 1997) p. 94.
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12. S. S. Jaswal, *op.cit* pp. 97-98
13. P. Jagadeesan, *op.cit* pp. 97-98.
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15. Quoted in J. R. Kamble, *Rise and Awakening of Depressed Class in India* (New Delhi 1979) p. 86.
16. Lord Irwin, Viceroy of India, Hoped that by releasing Gandhi, he would be able to reach an agreement with him. In March 5, 1931 Gandhi-Irwin Pact was announced and 'civil disobedience' was discontinued. Again as per the agreement Gandhi took part in the Second Round Table Conference held from September to December 1931. But the conference failed to solve the problem of 'communal representation' in the legislative bodies.
17. Thomas Mathew, *Caste And Class Dynamics – Radical Ambedkarite Praxis* (New Delhi 1992) p 12.
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21. med at 'divide and rule' Bipin Chandra, India's 114