

Moments in a History of Reservations

Though the subject of reservations has figured prominently in public debates ever since the recommendations of the Mandal Commission Report were sought to be implemented in 1991, there has been very little discussion by the beneficiaries of reservations. This paper looks at some of the more significant historical, constitutional and legal moments in the evolution of a reservations policy in India.

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The subject of reservations is a vast one. Even in terms of a historical account of reservations in India, it would be impossible to cover most of its aspects in the space of one paper. This article, therefore, provides brief entry-points into some of the more significant historical and legal moments concerning the development of a reservations policy in India, all of which require much more attention and analysis.

A great deal has been written against reservations policies since the acceptance of the Mandal Commission Report in 1991 in favour of reservations in higher education and government services for the other backward classes of India. Very little has been written by the beneficiaries of reservations, whether in book form or in the form of articles in the national press. Those who are vociferous and loud in their criticism of reservations invariably belong to the dominant groups, who have been enjoying the benefits of, if not a monopoly over, education, wealth, land and public services. On the other hand, the worst victims of the condemnation, persecution and exploitation of contemporary society have been the shudras, dalits (untouchables, unseeables and unapproachables) and women.

There is a difference between the bird's point of view and the worm's point of view. There are many scholars and intellectuals in India whose vision get easily stigmatised by phrases and slogans borrowed from the west and other lands. Writers belonging to the Hindu upper castes – not Muslims, Christians or Buddhists – have often asserted that it was the British who introduced the policy of 'Divide and Rule' into India. The phrase 'divide and rule' was in fact originally deployed by the dominating classes of Rome who conquered a large portion of the world and had to devise ways and means to maintain their empire and supremacy. But if we seriously and earnestly study the history of man, the principle of divide and rule

was really devised by the brahmins in India who framed laws and rules in the name of Dharma and Brahma to divide society vertically and horizontally and exploit large numbers of people – poor, deprived, ignorant and divided – so that a few on top may continue to enjoy the good things of life – power, prestige, privileges. Reservations were not introduced, as some Hindu writers have asserted, so that the British could 'divide and rule' Indians.

The reservation or quota system was introduced in Malta before it was even mentioned in India. Yugoslavia had five nationalities and six linguistic groups. Power had to be shared and a kind of quota system was established to keep the country united. Americans, whether they admit it or not, were influenced by the Indian experiment and 'affirmative action' was introduced in the 1960s with a view to giving a share to the discrimination – African-Americans, Native Americans and other ethnic minorities. Other countries of Europe and America including Great Britain are now thinking along the lines of some reservation or affirmative action for ethnic and other minorities who are victims of discrimination by the dominating groups.

In the Indian context, reservations were introduced during the last decades of the 19th century at a time when the subcontinent could be broadly divided according to two main forms of governance – British India and the 600 princely states. Some of these princely states were progressive and eager to modernise through the promotion of education and industry; and by maintaining unity among their own people. Mysore in south India and Baroda and Kolhapur in western India took considerable interest in the awakening and advancement of the minorities and deprived sections of society. It should not surprise us then that the very first records of implementing reservations policies are from these princely states.

British India was facing problems right from the 18th century when Lord Cornwallis took over as governor general in 1786. The East India Company was reeking with corruption. Administrators often find scapegoats and Cornwallis was no exception: He blamed the Indians for maladministration and inefficiency which resulted in large losses of revenue. Cornwallis introduced certain reforms and closed the doors to employment for the Indians, except in the lower ranks of administration. Scions of the upper castes and affluent families turned to other professions, especially the profession of law.

Another event which affected Indians in the services was the introduction of English as the official language by Lord Macaulay. It was decided in the council with Lord Macaulay as law minister that while Madrassas and Sanskrit schools would be allowed to function, official business was to be conducted in English. "The cause of English was still further advanced by the regulation introduced by the first Lord Hardinge that all public services were to be filled by an open competition examination held by the Council (the successor of the Committee of Public Instruction), preference being given to the knowledge of English. Virtually, English education was made the only passport to higher appointments available to the Indians, and hence its popularity and rapid progress were equally assured" (Mazumdar, *An Advanced History of India*:818). While the benefits of English education were reaped by members of affluent and newly emerging middle class people, the masses remained ignorant and backward.

Brahmins in the Madras presidency and the Bhadrak in the Bengal presidency took advantage of the new educational policy and the central place of the English language within it and occupied most of the posts available in the administration. Brahmins in Madras comprising barely

3 per cent of the total population occupied more than 80 per cent of the posts. In the princely state of Mysore the Tamil brahmins monopolised all the jobs. Kannadiga brahmins had a very small share in public services. The maharaja of Mysore was well advised by his ministers and the resident and some reforms were introduced with a view to giving a larger share to the Kannadiga brahmins, vokkaligas and lingayats beside the untouchable castes and the Muslims. Reservations were thus introduced in 1918 in favour of a number of castes and communities that had little share in the administration.

The introduction of English as the official language antagonised the Muslims, who perhaps unwisely decided not to learn the language of the infidels. It was through the efforts of the famous Muslim leader Syed Ahmed Khan that education was given prominence and schools opened. As the largest religious minority, Muslims had a grievance that they had very little share in the administration of the country. The British had also changed their attitude towards them. Upper caste Hindus, on the other hand, were taking advantage of the educational facilities provided by the British as well as the Christian missionaries and were organising and agitating for political power. They had a large share in the bureaucracy.

Muslims, however, appreciated the importance of political and administrative power. A delegation of Muslim nawabs, landlords, and prominent persons led Agha Khan, leader of the Ismaili Sect, waited upon the viceroy and presented a memorandum demanding a share in the administration in proportion to their population. The viceroy gave it sympathetic consideration and provisions were made in the government of India Acts of 1909 and 1919 granting the Muslims due share and other facilities.

The untouchables – or the depressed classes as they were then called – had joined the presidency armies and fought battles under the command of British officers. They had contributed a great deal towards the creation of the British empire. In the army, untouchable soldiers got their first opportunity to learn to read and write and were also exposed to new ideas. Untouchables also worked as camp-followers and domestic servants – as cooks, butlers, bearers, sweepers, gardeners, ‘ayahs’ and so on – for British families in their cantonments. The brahminisation of the Bengal Army led to mutinies and

also to a reduction of soldiers of untouchable origin in the Bengal army. They however, continued to be enlisted in the presidency armies of Bombay and Madras. The British changed their recruitment policies according to their political needs. Christian missionaries contributed a great deal towards awakening the untouchables and promoting literacy, in spite of discouragement by the British officers, many of whom thought that missionary work was a nuisance. Some of them changed their attitude later on.

Ibbetson, the famous Census Commissioner, wrote “untouchables are politically not important”. This was because they were asking for concessions and facilities for their upliftment and had not organised themselves as a political force. It was only with the arrival of Ambedkar that they acquired a leader of stature and education who could also make a political difference.

I Provisions of Communal Award

The question of reservations was also discussed in the round table conferences and provisions were made in the Communal Award of 1935 in spite of opposition by Mahatma Gandhi. Seats were reserved in the legislature in favour of Mohammedans, Sikhs, Marathas, Europeans, Parsis, Anglo Indians, and Christians. As regards the depressed classes the following provision was made:

Members of the ‘depressed classes’ qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely by this means alone, to secure any adequate representation in the legislature, a number of special seats will be filled by election from special constituencies in which only members of the ‘depressed classes’ electorally qualified will be entitled to vote. Any person voting in such a 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.

Mahatma Gandhi saw a danger to hinduism in these specific provisions of the communal award in favour of the most deprived and disadvantaged sections of society and threatened to go on a fast unto death.

Under this pressure an agreement was signed between the Hindu leaders and the leaders of the depressed classes to save the life of Mahatma Gandhi. This agreement is known as the Poona Pact, and its provisions included the following:

- (1) There shall be seats reserved for the depressed classes out of the general electorate seats in the Provincial Legislatures as in Table.

Table

Madras	30
Bombay with Sind	15
Punjab	8
Bihar and Orissa	18
Central Provinces	20
Assam	7
Bengal	30
United Provinces	20
Total	148

- (2) Election to these seats shall be by joint electorates, subject however, to the following procedures:

All members of the depressed classes, registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the depressed classes for each such reserved seat, by the method of the single vote; the four persons getting the highest number of votes in such primary election shall be candidates for election by the general electorate.

- (3) Representation of the depressed classes in the central legislature shall likewise be on the principle of joint electorates and reserved seats by the method of primary elections in the manner prescribed for in Clause 2 above, for their representation in the provincial legislature.

As regards the share in the administration, the following provisions were made in the Poona Pact:

There shall be no disabilities attaching to any one on the ground of his being a member of the depressed classes in regard to any election to local bodies, or appointment to the public services. Every endeavour shall be made to secure fair representation of the depressed classes in these respects subject to such educational qualifications as may be laid down for appointment to the public services.

As against the 78 seats allotted to the depressed classes in the state legislature, the Poona Pact gave 148 seats. However, untouchables lost the right to elect their own representatives and this right was transferred to the Hindus. The result was that those who were elected remained faithful to the parties and leaders who

adopted them as candidates and funded their elections.

The Poona Pact had far reaching effects and obstructed their progress in other fields also. The government issued orders regarding reservation in services vide resolution No F 14/17-B 33 dated July 4, 1934 (*Gazette of India*, part I, July 7, 1934). Reservation in public services was provided for all minorities excepting the depressed classes:

3 In regard to the depressed classes it is common ground that all reasonable steps should be taken to secure for them a fair degree of representation in the public services. The intention of the caste Hindus in this respect was formally stated in the Poona Agreement of 1932 and His Majesty's government in accepting that agreement took due note of this point. 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.

Ambedkar was appointed member of the Viceroy's Executive Council and he submitted a memorandum 'On the Grievances of the Scheduled Castes' detailing their grievances, and also demanding reservation in public services, scholarships and stipends for study within the country and abroad, a share in contracts, and so on. This was duly recommended by the viceroy and referred to the secretary of state, who accepted the recommendations. The scheduled castes were allowed 8.5 per cent reservation in central services and other facilities for the first time in the history of India in 1942.

As already mentioned earlier, under pressure from upper caste Hindus and also for political reasons the doors of the armed forces were closed to the untouchables in the early decades of the 20th century. However, the British needed more mercenary soldiers during the second world war. People were therefore liberally enlisted in the Air Force, Navy and Army besides in units such as Supply Corps, Engineering Units, Civil Pioneer Force and so on.

After the transfer of power in 1947, a drafting committee with Ambedkar as chairman was set up to draft the constitution of India. Some members of the constituent assembly were opposed to the

provision of reservations in favour of the scheduled castes. Scheduled castes members, mostly belonging to the Congress, were worried about losing reservation because Sardar Vallabhbhai Patel, president of the minority committee, was opposed to reservation. They approached Ambedkar, who in turn advised them to speak to Mahatma Gandhi, and remind him about the promise made in the Poona Pact. Provision was made in the constitution of India for reservation in the legislature for 10 years ending in 1960. This has recently been extended up to 2010. Provision was also made for reservation in public services. This has no time limit. Surprisingly, prime ministers, political leaders and journalists have been making speeches and writing articles giving the impression that it is reservations in public services which have been extended for ten years. Reservations made under Article 335 read together with Article 46 has no time limit prescribed under the constitution. Reservation was also made in favour of Anglo Indians for a shorter period in view of the difficulties and disabilities peculiar to them.

II Constitutional Provisions

Article 46 contains the provisions regarding the interests of the weaker sections of society:

The state shall promote with special care the education and economic interests of the weaker sections of the people, and, in particular of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

Who is a member of the scheduled castes and scheduled tribes has been defined under Article 366 of the Constitution.

Art 366(24) 'scheduled castes' means such castes, races or tribes or parts of or groups in such castes, races or tribes as are deemed under article 341 to be scheduled castes for the purposes of this Constitution.

(25) 'Scheduled Tribes' means such tribes or tribal communities or parts or groups within such tribal communities as are deemed under Article 342 to be the scheduled tribes for the purposes of the Constitution.

Initially, only members of the scheduled castes professing Hinduism and four castes among the Sikhs (Kabirpanthis, Ramdassias, Sikligars and Mazhbis) were included in the list in accord with the provision made in the scheduled castes order appended to the Constitution. In 1956

it was extended to include all scheduled castes professing Sikhism.

Ambedkar revived Buddhism and started mass conversion to Buddhism in October 1956. The government of India issued orders declaring them ineligible to any of the concessions admissible to scheduled castes. In 1990 scheduled castes professing Buddhism were also included among the scheduled castes.

There is no such restriction with regard to the people belonging to the scheduled tribes who return themselves as animists, Hindus, Christians or Buddhists. Article 14 guarantees equality: "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 concerns discrimination against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Article 16 (1) guarantees equality of opportunity in matters of public employment etc.

Reservations in public services and educational institutions were created with a view to giving a share to the members of society who had been denied opportunities in the past. This naturally antagonised those sections of society who had been enjoying the monopoly of power. Immediately after the adoption of the constitution, the provision of reservation under Article 16 was challenged through a writ petition filed in the Madras High Court (*State of Madras vs Champakam Dorairajan*, April 1951). The case came before the Supreme Court of India. It was held that the communal government order of the Madras government fixing the proportion of students of each community that could be admitted to state educational institutions was ultra vires under Article 29(2) (which states that no citizen shall be denied admission into any educational institution maintained by or receiving aid from the state on grounds only of religion, race, caste, or language) and was not saved by the provisions of Article 16. There was considerable protest in the southern states as the result of which the Constitution was amended for the first time, and Clause 15(4) added:

Article 15(4): nothing in this article or in Clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.

Those who are opposed to reservations in public services have challenged all

orders issued by the government under Article 15(1) or under Article 16. Article 226 (on the enforcement of fundamental rights by a High Court) or Article 32 (concerning moving fundamental rights before the Supreme Court) are invoked and writ petitions are filed before the High Court. Sometimes the government comes before the Supreme Court, and sometimes it is the petitioners, if they feel aggrieved, who do so. Judicial process has routinely and effectively been used to obstruct the progress or to delay the implementation of reservation orders.

Post-independence India has witnessed many landmark cases which have affected the administration as well as interests of the scheduled castes, scheduled tribes and other backward classes. In the famous case of Balaji versus Mysore state in 1962, reservation orders were challenged on the grounds that the lists of backward classes were prepared only on the basis of caste and that this was unconstitutional. The Supreme Court struck down the Mysore Backward classes list. Similar claims were again taken up in the Chitrallekha case (*Chitrallekha vs state of Mysore*, 1964). In this case, the Supreme Court interpreted the Balaji case somewhat differently. It was pointed out that two principles were prominent from the observations in Balaji's case namely (1) 'the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness' and (2) though it is a relevant factor to determine the social backwardness of a class of citizens, 'it cannot be the sole or dominant test'. In another landmark case, namely, *Jayasree versus state of Kerala* (1976), the Supreme Court accepted the logic of the Kerala High Court that economic backwardness plays a part in social and educational backwardness. In the Thomas case (*State of Kerala versus N H Thomas*, 1976) the Supreme Court upheld caste based reservation. The Supreme Court also observed that the aim of the Constitution is to eliminate caste from the affairs of the state. Yet certain backward castes have to be recognised and classified for compensatory measures so that caste can be abolished ultimately.

The implementation of the recommendations of the Mandal Commission was challenged and opposed not only by angry students belonging to the Hindu upper castes, but also by the Supreme Court bar association. A writ petition was filed in the name of Indira Sawhney, one of the practising advocates of the Supreme Court.

Even though the rights of scheduled castes had nothing to do with the subject of the OBCs of the Mandal commission report, certain items affecting them were included as issues. Justice Ahmedi raised an objection and did not comment on the issues during the proceedings. The promotion of scheduled castes was discussed and the Supreme Court held that there should be no reservations in promotion. In spite of all the opposition to Mandal, reservations in favour of the other backward classes to the extent of 27 per cent was upheld and the agitationists were disappointed.

Besides these there are landmark cases like the Rangachari case (*Rangachari vs General Manager*, 1962), Devadasan case (*Devadasan vs Union of India*, 1964; which was ruled out in the Indira Sawhney case), Hira Lal case, and the recently decided PGIMS Chandigarh Case (reservation in medical colleges) and Ajit Singh Janjua case (seniority in promotion case) which have adversely affected the interests of the scheduled castes and scheduled tribes.

Reservations were originally provided for the scheduled castes and scheduled tribes. It was extended to the other backward classes at the national level in 1993. Several states have passed their own laws and granted reservations to backward sections of society. It was held by the Supreme Court of India that reservations can be made under an executive order. However, in view of the recent judgments of the Supreme Court affecting the scheduled castes which have stirred the minds of the scheduled castes and scheduled tribes, the government is under pressure to enact a law so that the judiciary may not decide against the deprived and disadvantaged sections of society.

Besides the scheduled castes, scheduled tribes and other backward classes, Christians of dalit origin and backward sections of Muslim society are also staking their claim for a share in governance. After independence and the creation of Pakistan, Muslims have not been able to enter public services. There is a genuine need to make provisions in order to make the bureaucracy more representative. Women who comprise about 49-50 per cent of population also deserve consideration for reservation – and not only in the legislature but also in the bureaucracy.

As in the days of old when some people raised the various cries, 'religion in danger', 'dharma is in danger' or 'Islam is in danger', nowadays a new slogan is being raised: "abolish reservations because merit and efficiency are in danger". This is often heard in the Supreme Court also. Those who have been opposing reservations in public services and educational institutions do so because their personal interests are in jeopardy. Those who made the provisions in the Constitution had the interest of the nation in view. If more and more people take part in decision making – which also means in the execution and implementation of these decisions taken in a democratic manner – the country will benefit. Those who want to maintain the status quo and consider their personal interests above the national interest, oppose reservations. Dominating groups who have been enjoying a monopoly of power are also notorious for corrupt practices. Be it said to our shame that our country's name appears among the first four most corrupt countries of the world. One wishes this pernicious development had also attracted the attention of the patriots and champions of merit. [E]

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