



INDIAN SOCIETY AND THE POLICY OF PROTECTIVE DISCRIMINATION: ISSUES OF IDENTIFICATION AND WELFARE

Sheikh Idrees Mujtaba¹, Shahnawaz Hussain Bhat², Rubeena Ali Bhat³

ABSTRACT

India is a highly stratified and hierarchical amalgam of castes, tribes, classes, regions and religious groups. This gradation, based on the notions of purity and pollution, holy and unholy, haves and have-nots is expressed in innumerable facets of discrimination, which are at times very severe. After independence, one of the broad objectives of the constitutions was to remove these forms of discriminations through the policy of protective discrimination. And, thus many efforts were undertaken to provide opportunities to enable the people to reach at least minimum standard of health, economic security and civilized living. However, many arms are raised to question the effectiveness of the identification process of the beneficiaries under the policy. That has it met the aims and objectives set in and that how far have the benefits percolated to the deserving ones? Close to seven decades after independence, if people still protest for reservation, then there are some serious dents which if left unattended for now will pose a serious threat to the peace and the actualization of social justice. The present paper is an attempt in this regard to assess the identification issues particularly with respect to castes. Employing the secondary sources, the paper finds that even after years of independence, the policy witnesses more inclusions than exclusions in the list of reserved castes and classes, thereby suggesting that either the welfare through the policy is ineffective or it be restructured to level the gradations in the society.

Keywords: *Discrimination, Gradations, Identification, Purity and pollution, Stratification, Welfare.*

INTRODUCTION

India, a great union, is also a country of paramount diversities. While as the unity led its freedom from the clutches of imperialism, the diversities continued to pose some serious threats to the federal structure and to the lofty Constitutional goals like *liberty, equality, fraternity and justice*. Nevertheless, the country set on the daunting task to mitigate the differences grounded on caste, class, race, region and religion. Called by positive or protective discrimination, or known by affirmative action or compensatory justice, everywhere the motto was clear to promote a world which harbours pluralism and guarantees the distribution of benefits and burdens in such a way that the sufferings and inflictions that have been rooted in the historically discriminatory practices are

¹ Research Scholar (Ph.D.), Department of Sociology, Aligarh Muslim University, Aligarh (UP), India, E- mail: jdrees.mujtaba@gmail.com

² Research Scholar (Ph.D.), Department of Sociology, Aligarh Muslim University, Aligarh (UP)

³ Research Scholar (Ph.D.), Department of Sociology, University of Kashmir, Srinagar (J & K)



mitigated. Considering the extent of diversities, in this second most populous country of the world, indeed this is a highly commendable endeavor. Suri (Suri, 2014) states that, “India is the only democracy in the world that made explicit constitutional and legal provisions for compensatory discrimination, popularly known as reservations, for the advancement of the historically depressed and socially backward sections of the society.” Nonetheless there were challenges, more within than outside the state, about the unity and integrity of the state and its subjects. To some extent, the speculations were put to rest by witnessing the outcomes of the policies and programmes implemented in this regard. However, the ground realities of these policies, now-a-days highlight the murkier side also. In this backdrop, the paper analyses the issues of identification and welfare process emanating from the policy to the castes and classes which are distributed in Scheduled Castes (SCs) and Other Backward Classes (OBCs) categories in the country.

II. INDIAN SOCIETY: INEQUALITIES

India, the seventh largest country by area and the second most populous country of the world with a population of 1,210,854,977⁴ persons, is the largest democracy of the world. This population as shown by Census 2011 constitutes 17.5%⁵ of the world's population which crossed the 7 billion mark on 30th October, 2011, accounts for only 2.5% of the total land area of the world. It has long been reckoned as the most stratified of all known societies in human history (Dipankar Gupta, 1991). It is one of the oldest civilizations of the world having deep and elaborate socio-economic, cultural, linguistic and religious diversities. This complex and diverse civilization is believed to be the compendium of the famous races viz. Aryans, Dravidians and Mongols with their respective socio cultural attributes resulting in the flamboyant Indian civilization when it comes of a series of immigrations that Historians record. This created the racial and the linguistic diversities across the borders of the state. There are numerous races which even now characteristic of the distinct geographical boundaries within the country. The different cultures arising out of such settlements evolved with time and are thus specific to a region and place. The advent of Islam in the country filled the gap of religious diversity and these days India harbours followers of all the major religions. These altogether have framed India into a stratified zone, which may have divisions and subdivisions, distinguishing from each stratum by the respective notions of hierarchical categorization.

The hierarchy, one of the most important values of Indian society, permeates in each and every sphere of life. Hierarchy of role institutionalization i.e. caste system is a distinct characteristic of Indian society. It has been the source of unequal distribution of status, wealth and power in India. Sociologists and anthropologists explain the origin of caste system from Varna system. The human-hood was divided into inferior and superior beings according to their levels in the elaborated hierarchy according to the caste rules. “In every region Brahmins occupy highest and untouchables lowest position in every region of the country. Everywhere untouchables were deprived of status, wealth, power, and civic amenities. They were subjected to many kinds of atrocities through the practice of untouchability justified in terms of ‘purity and pollution’” (Srinivas, 1966:3). The justification of

⁴ Census Report 2011, Government of India

⁵ www.worldometers.info/world-population/india-population Accessed on 16-05-2015



which was provided by the high caste groups to consolidate their position atop. 'The Brahmin writers who propounded the structure of society placed them at the top and gave them the privilege of declaring the study of the other castes, including the Kings' (Srinivas, 1966:5). Milton Singer has also endorsed this supremacy by the high castes, while stating that, 'the elites in the traditional Indian society interpreted the Indian tradition in such a way that they could perpetuate their position of ascendancy' (Singer, 1964). Number of sociologists like G. S. Ghurye (Ghurye, 1932), M. N. Srinivas (Srinivas, 1991), Andre Beteille (Beteille, 1991) etc have extensively discussed these caste rules and regulation based on the notions of purity and pollution. Amongst them Marc Galanter has consolidated the caste confinement and restriction rules applicable in the society which have been perpetuating the discrimination and the menace of untouchability.

- Denial or restriction of access to public facilities, such as wells, schools, roads, post offices and courts.
- Denial or restriction of access to temples where their presence might pollute the deity as well as the higher caste worshippers.
- Exclusion from any honourable, and most profitable, employment and relegation to dirty and menial occupations.
- Residential segregation, typically in a more extreme form, than the segregation of other groups, by requiring them to remain outside the village.
- Denial of access to services such as those provided by barbers, laundrymen, restaurants, shops and theaters.
- Restrictions on style of life, especially in the use of goods indicating comfort or luxury. Riding on horseback, use of bicycles, umbrellas, footwear, the wearing of gold and silver ornaments, the use of palanquins to carry bridegrooms-all of these were forbidden in many areas.
- Requirements of deference in from of address, language, sitting and standing in presence of higher castes.
- Restrictions of movement. Untouchable might not be allowed on roads and streets within prescribed distance of the houses or the persons of higher castes.
- Liability to unremunerated labour for the higher castes and to the performance of the menial services to them. (Galanter, 1984:15)

Considering the above stringent divisions, the rights and privileges were meant only for a few. For rest others, even to question for a right or a privilege was the risk of life. There were the pressing issues that needed immediate attention when India became independent. The people at helm of the affairs realized this paramount requirement, as Ambedkar had sought utmost attention of the members of the constituent assembly⁶ towards the forms of inequalities by saying that, "we must begin by acknowledging first that there is complete absence of two things in Indian Society. One of these is equality; on the social plane, we have in India a society based on privilege of graded inequality which means elevation of some and degradation of others. On the economic plane we have a society in which there are some who have immense wealth as against many who are living in poverty... In politics we have equality and in social and economic life we have inequality. We must remove this

⁶ A committee, consisting of indirectly elected representatives, constituted to draft a constitution for India prior to Indian independence from Britishers in 1947.



contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up” (Singh, 1982).

III. POLICY OF PROTECTIVE DISCRIMINATION

In the wake of the gradations in the Indian society, the architects of the Constitution designed it in such a way do as to incorporate the policy of protective discrimination by which the application of the sacrosanct ideals of the constitution like liberty, equality, fraternity and justice could be translated into action. Thus, a number of welfare programmes were initiated ranging from constitutional provisions, acts of legislature or the welfare schemes. “It has been striving to strike a balance between its commitment to an overarching conception of equality in terms of basic freedoms and the imperatives of compensatory discrimination in favour of specified castes and communities” (Suri, 2014). This form of discrimination, solely meant to alleviate the differences between the people of higher and lower strata, is on the whole termed as compensatory discrimination or affirmative action or positive discrimination or for that matter ‘protective discrimination’.

It began with the preamble itself mentioning that nation must strive for ‘*justice-social, economic and political*’. In the fundamental rights it has stressed on the equality- of law and of opportunity (Article 14), prohibition of discrimination on grounds of race, caste, creed, colour, region or religion (Article 15), equality of opportunity in matters of public employment (Article 16) and abolition of untouchability (Article 17). Article 15 amongst these, presents a decent commentary proscribing any form of discrimination on a range of accounts. It states that,

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment;

(b) the use of wells, tanks, bathing ghats (banks), roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (Basu, 1976)

The access to and use of many public places have been granted to every citizen of the country irrespective of religion, caste, race etc one is associated with. The equality has been also furthered with the constitution granting the rights of reservation in the educational institutions and in employments as special provisions under the article. For untouchability, which is amongst the major obstacles for the weaker sections in the way of advancement, there are sanctions for whosoever practices the menace. Article 17 states that, “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law’⁷. Besides there are many provisions that direct the state to strive for promoting the educational and economic interests of the weaker sections.

⁷ Constitution of India, Article 17



Many acts of legislature were also enacted by the government of India in this regard, where the main concern mostly was to ward off the social stigma attached to the race and caste. Following are some of the important legislations which have not only categorized the offences of discrimination, untouchability, atrocities, injustice, etc, as transgressions of the civil and personal rights but have pronounced the punishment in the respective categories.

- The Untouchability (Offences) Act, 1955
- The Protection of Civil Rights (PCR) Act, 1955
- The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- The National Commission for Backward Classes Act, 1993
- The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

The range of punishments in the form of penalties and imprisonments varies with the offence. For example, in untouchability offences act the punishment ranges from imprisonment upto 6 months whereas the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has mentioned the punishment upto 7 years. Moreover, the weaker sections are also benefitted with a number of welfare schemes. They are benefitted with the scholarship schemes at every level of the study and even for the education outside the country. They have ample opportunities to learn and train themselves with some crafts or skills and earn a respectable living for themselves in the society. For fertile business ideas, they are blissfully provided with subsidized loan facilities. The highlight of the affirmative action is the reservation. The weaker sections like SCs, STs, OBCs are provided the reservations is education and employments in the break-up of 15% for SCs, 7.5% for STs and 27% for OBCs. Politically the groups like SCs and STs have also the reservations in the decision making bodies at the national and state level and in the municipalities and panchayats as well. Having said all this it must be a matter of great concern for the governments at every level to evaluate the effectiveness of the wide range of developmental matters. There are many arguments for and against the policy of reservation in place, followed by questioning into achievements of the welfare measures so far undertaken by the state machinery. But only time is to answer whether there exercises are effective or futile.

IV.ARGUMENTS FOR THE POLICY OF PROTECTIVE DOSCRIMINATION: A TEXTUAL ASSESSMENT

Scores of scholars, social activists, sociologists, economists and anthropologists have argued on whether the reservation is required or not. People speak in favour and against it as well. If we analyse the arguments in favour of the affirmative action or for that matter the reservations, the issue has been discussed on the subjects like centuries old sufferings, differences in domestic environments, accessibility to the welfare mechanisms, etc. In an article, '*Job Reservation and Efficiency*', A. M. Shah is of the opinion that 'the ability and talent are not confined to particular groups but occur in every section of population. The existing differences between hereditary groups can be explained largely on the basis of difference in the domestic environment, in the way



children are socialized, in the kind of nutrition and healthcare they receive, and finally, the schools and colleges they are sent to. Very large numbers of children in rural and urban India hail from homes where there are first generation literates' (Shah, 1996a). This differential treatment has been earmarked by Article 14 of the constitution itself which states that, "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."⁸ Thus, the 'equals' will be treated equally whereas the 'unequals' will be treated differently. The underprivileged sections can't compete at par with the privileged sections. The outcry of meritocracy is meaningless without equality, hence first the equality must be ensured and then the race for competition and merit must begin. Many of the castes these days have been trying to maintain the caste specific occupations. There are some lower ordered castes in the caste hierarchy that are still restricted to undertake the menial jobs like clearing the filth, removing the night-soil, dumping the dead bodies, mending shoes etc. Under the broad sense of equality, people from all castes and creed must be engaged in all kind of works from class I to class IV jobs. This mechanism is made to float at all the levels of society directly or indirectly via the socialization. People are made to accept the purity and pollution based hierarchies to the extent that they admit that we are destined to do this and that kind of job.

Decreasing employment opportunities make the reservation more necessary to these deprived sections. The low Social-Economic-Status (SES) has seen considerable improvement particularly to those who have availed the benefits of reservation. The lower economic condition hampers the progress of the lower echelons and deprives them for advancing in the fields of education and politics. However, with the initiation of the programmes like free and compulsory education along with the midday meal schemes many such families are encouraged to register their children for education in the schools. The reservation for the more backward castes and tribes further encourages them to continue their work by virtue of which they can make significant grounds in the fields of education, economy and also in politics.

Satish Deshpande on the contrary viewed this system of reservation as not being able to fulfil the intentions it has been created for. In an article, 'caste and classlessness', he states that the purpose of equality as was intended by the rights of equality and non-discrimination was a nationalist effort to mount an all-round assault on caste. However, the caste reservations are still there as a hindrance for the dream as this is an unbridgeable divergence. This way according to Deshpande, "makes the 'annihilation of caste' seem more like a disabling dream than an empowering utopia" Deshpande (Problems of caste)

V.ISSUES OF IDENTIFICATION AND WELFARE

Apart from these scholarly observations, if we assess the policy of reservation in terms of facts and figures collected from the data presented by census, following different issues of identification are highlighted in the extensive policy.

- There is more inclusion in the numbers of beneficiaries of castes and tribes than exclusions. Table 1 shows that there is a rise of almost 500% from 1950 to 2006 in other backward castes.

⁸ Article 14, The Constitution of India



Table 1 Increase in numbers of OBCs over the years

Year	1950	1955	1980	2006
Other Backward Classes (No.)	1373	2399	3763	5013

Source: Prepared from the date on a report in The Hindu on September 13, 2007

Similarly, the Scheduled Castes and the Scheduled Tribes have increased with every successive year. Their collective population figures are shown in Table 2.

Table 2 Population Increase of STs and SCs Since 1981

Census Years	Population in Lakhs	
	Scheduled Tribes	Scheduled Castes
1981	504.48	912.05
1991	627.51	1123.43
2001	773.39	1330.11
2011	1045.25	1666.35

Source: Computed from Census Figures

Apart from the rapid increase in the Schedules Tribes and Scheduled Castes population, the other strong reason for the increase in the numbers of Schedules Tribes and Scheduled Castes with every successive census years is the inclusion of the castes and tribes in the population more than delisting the creamy layers amongst them.

- There are many protests by numbers of people who have demand the inclusion in the lists every now and then. The recent fierce agitations by Patels in Gujarat led by Hardik Patel Under the banner of Patidar Anamat Andolan Samiti⁹ is also of the same stature demanding inclusion in OBC Reservation. The movement was started in July, 2015 and has not reaped any results as such.
- Many incidents happened have earlier taken place that too demanded inclusion in the lists. For example the Gowari stampede, that took place in Nagpur in 1994, killing 114 people.¹⁰
- The reservation are not granted in institutes of excellence like
 - Homi Bhabha National Institute, Mumbai and its constituent units
 - Tata Institute of Fundamental Research, Mumbai
 - North-Eastern Indira Gandhi Regional Institute of Health and Medical Science, Shillong
 - National Brain Research Centre, Manesar, Gurgaon
 - Jawaharlal Nehru Centre for Advanced Scientific Research, Bangalore
 - Physical Research Laboratory, Ahmedabad

⁹ http://articles.economictimes.indiatimes.com/2015-08-18/news/65530430_1_community-viramgam-reservation accessed on 15.12.2015

¹⁰ <http://www.nagpurtoday.in/nmc-pays-tributes-to-gowari-community-martyrs/11231158> accessed on 15.12.2015



- Space Physics Laboratory, Thiruvananthapuram and
- Indian Institute of Remote Sensing, Dehradun¹¹.

Thus, it in itself has virtually perpetuated the divisions within the divisions. There may be some other professions which require high skill and intelligence, like that of doctors, engineers and even teachers, then what is the reservation aimed at, when you have these unskilled but reserved entering in the fields of medicine, academics and engineering. The process can be said to perpetuate the differences through these unskilled people employed under the reservation quota. They can be sometimes a big hindrance in the speedy development of the nation as a whole.

- Another argument against the reservation is that it has entered in the political atmosphere to the extent that some political parties are even formed on this caste agenda like Bahujan Samaj Party (BSP)- a third largest political party of India today. There will be no practical empowerment till caste based politics is expunged from the political system of the country as these parties create the caste based consciousness to the places where it was never discussed.
- The reservation till date must have uplifted the reserved people. As Shah argues that, “in the last 60-70 years how can castes, which have large number of representatives in the state legislatures and ministries be treated as ‘backward’?(Shah, 1996b). Thus it again questions the identification and benefit allocation to the castes.
- One of the important questions asked to counter the reservation is that, ‘is it fair to extend reservation to the children of professors, scientists, bureaucrats, MPs and MLAs belonging to the SC, the ST and the OBC? When these people are already enjoying the creamy class facilities, then why can these be excluded from the list of beneficiaries
- There are many harsh but true statements against the reservation which have been doing rounds in the media like
 - “One needs to know about caste much earlier before he learns his blood group”¹²
 - “In our country now, you can't go forward unless you're a backward”¹³
 - “When an Indian casts his vote, he too often votes his caste”¹⁴

The debate can be encapsulated in the following statement of Yogendra Yadav. He says ‘policies and politics of social justice have reached a dead end in contemporary India. This does not, however, mean a futile or wasted journey. India’s bold experiment with politics of social representation and policies of affirmative action in the twentieth century is among the largest and more successful examples of social engineering across the globe. The system of reservations for Scheduled Castes and Scheduled Tribes in government jobs and legislatures continues

¹¹<http://pib.nic.in/newsite/erelease.aspx?relid=23895> retrieved on 22nd Sep, 2015

¹²http://www.hindustantimes.com/india/the-debate-over-reservation/story_fJYjBP3HAPZBLSMTn0mwSJ.html Accessed on 6th July, 2017

¹³<https://www.ndtv.com/opinion/who-deserves-reservations-supreme-courts-big-verdict-752861> accessed on 7th July, 2017

¹⁴<http://www.bbc.com/news/world-asia-india-34082770> accessed on 4th April 2017



to yield positive outcomes, better than anything that existed earlier, or any scheme that seeks to replace it. What we face today indicates a wrong turn, or perhaps a missed turn, in an otherwise rewarding journey. Nor is it necessarily the end of the journey; often reaching a dead end provides opportunity to turn around, look back at the path tracked, do a course correction and resume the journey with renewed vigour' (Yadav, 2009) .

VI.SUGGESTIONS

The policy of protective discrimination has no doubt been very influential in ameliorating the life conditions of the lower caste and tribal groups in the country. But it has not reached to the grass-root levels as the above discussion reveals. Following are the suggestions to improve the policy in its efficiency levels.

- A high level committee should be established so as to completely assess the life conditions of all the caste and tribal groups of the country. A complete account will help redesigning the structure favourable according to the household economic position to improve the desired return of the policy.
- Within the groups the benefits should be allocated according to the different economic levels and the extents of beneficiaries in the households.
- The benefits should be scrapped from the all kinds of jobs that require high skill and competence.
- The downtrodden, discriminated and marginalized groups must be aided financially so that they can compete with others outside.
- Reservation policy should be restructured in such a way that it in any care may not mar excellence and merit.

VII.CONCLUSION

But even after the passage of 65 years, India has not translated the spirit of the Preamble or for that matter of the Constitution into action. The direction of social justice is still missing from the general masses and the percolation of the welfare measures by the government are yet to be documented. What matters is the capability of a person and his contribution to the society. By giving reservations to SCs, STs and OBCs we are inflicting handicaps on those who are 'more advantageously placed' due to their birth in a particular caste. This type of reservation policy will be responsible for dividing society on caste lines. This is the demand of time that the present policy of reservation in public sector should be reviewed without considering its politics repercussion, for the real good of the general public. Reservation of kinds must be abolished; if found essential, it should not be based on caste, creed or birth, but on the financial as well as economic status and benefit should reach the grassroots level, to the really needy ones. Reservation in education, reservation in service, no examination fees for SCs and STs, reservation in elections, reservation..., how long will this go? The question is still a matter of concern given the fact the electoral roles of the major political parties are based on this very concept of reservation. There are ranges of arguments presented, volumes recorded, books written, but India, in the 71st



year of independence has still no staunch remedies to ward off the centuries old frames of exploitation and discrimination.

It is high time for the scholars, academicians, policy makers, social activists, Government officials as well as the genuine representatives of SCs, STs and OBCs to sit across the table and deliberate upon the welfare measures and hence come out with a more acceptable welfare programmes that can percolate to dry areas for the redressal.

REFERENCES

- [1.] Basu, D. Das. (1976). *Shorter Constitution of India*. Calcutta: S. C. Sarkar.
- [2.] Beteille, A. (1991). Caste, Class and Power. In D. Gupta (Ed.), *Social Stratification* (I, pp. 326–338). New Delhi: Oxford University Press.
- [3.] Galanter, M. (1984). *Competing Equalities*. Delhi: Oxford University Press.
- [4.] Ghurye, G. S. (1932). *Caste and Race in India*. Bombay: Popular Prakashan.
- [5.] Gupta, D. (1991). Hierarchy and Difference: An Introduction. In D. Gupta (Ed.), *Social Stratification* (I, pp. 1–22). New Delhi: Oxford University Press.
- [6.] Government of India, Census Report 2011
- [7.] Shah, A. M. (1996a). Job Reservation and Efficiency. In M. N. Srinivas (Ed.), *Caste Its Twentieth Century Avatars*. Gurgaon: Penguin Books.
- [8.] Shah, A. M. (1996b). The Judicial and Sociological view of Other Backward Classes. In M. N. Srinivas (Ed.), *Caste Its Twentieth Century Avatar*. Gurgaon: Penguin Books.
- [9.] Singer, M. (1964). *Emerging Elite: A Study of Political Leadership in Cylone*. Cambridge: M.I.T Press.
- [10.] Singh, P. (1982). *Equality, reservation, and discrimination in India: A constitutional study of scheduled castes, scheduled tribes, and other backward classes*. New Delhi: Deep & Deep Publications.
- [11.] Srinivas, M. N. (1966). *Social Change in Modern India* (Reprint 20). New Delhi: Orient Blackswan.
- [12.] Srinivas, M. N. (1991). *India: Social Structure*. Delhi: Hindustan Publishing Corporation.
- [13.] Suri, K. . (2014). Caste Reservations in India: Policy and Politics. *The Indian Journal of Political Science*, 55(1), 37–54.
- [14.] Yadav, Y. (2009). Rethinking Social Justice. *Seminar*, 601.