



The Reservation Jumla

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(This editorial is based on the article “The Reservation Jumla” which appeared in The Indian Express on 8th January 2019.)

In a significant move to address demands of **“the economically weaker sections of the people who are not covered by any of the existing schemes of reservation”**, the Central government decided to amend the Constitution to provide 10 per cent reservation for the general category in direct recruitment for government jobs and admission to higher educational institutions.

Reasons for Increasing Reservation Demand

- **The Indian economy is not generating enough attractive jobs;** nor is our education system training graduates properly enough to participate in the economy. In the context of that failure, there has been a clamor amongst the educated upper caste groups like Rajputs for a reservation route to be opened up for them. This is in a context where public sector jobs are scarce.
- **Farmers Distress has also been another reason for demand in the reservation,** as the agriculture dominant upper caste is now facing an economic slowdown. This might have contributed to the recent demand of Jats, Marathas, and Patidars to be included in the other backward classes (OBC) category so that they could shift away from agriculture.

Concerns

- **Reservations in India have become a political necessity.** Reservation is only seen as a tool to get access to the vote bank.
- Affirmative action was designed for those who have suffered social discrimination and historical wrong that certain caste/ tribal groups experienced for centuries, not as a poverty alleviation, employment measure.
- **It will open Pandora’s box with other communities** also demanding the reservation

as the deterrence of 50% limit would be already breached.

- **This would also further the caste-based politics**, dividing society along caste-based lines, instead of creating a more egalitarian and integrative society, as envisaged by the Constitution.
- **Other groups would also claim stakes** such as gender-based reservation, religion-based reservation etc.
- This divisive trend for clamor for jobs, education would incite vote bank politics, threatening the cohesive structure of India in the long run.

Challenges for Introducing Economic Based Reservation

- **It breaches the 50 percent ceiling on reservations** laid down by the Supreme Court in Indra Sawhney's case.
- In the 1992 Indra Sawhney case, the Supreme Court said that such quotas cannot be provided for poverty alone. It has to be poverty plus social and educational backwardness and the backwardness should reflect historic injustice through generations.
- **The court then said that reservations beyond 50% will hit Article 14 (right to equality)**. Half of jobs and seats in educational institutions must, therefore, be for the general merit category.
- **Equality is part of the basic structure, the court insisted**. Hence this step will also violate the Supreme Court ruling of Kesavananda Bharati which said that any amendment which offended the basic structure of Constitution would be ultra vires.
- **It would require a special majority in the parliament** to get passed and may face legal hurdles as well.

Positive Impact of Economic based Reservation

- **The reservation has historically been associated with caste**. And often in our imagination, there was a stigma that the upper caste put on those who had come through the reservation. By including upper castes under the sign of reservation, it dissociates caste and the stigma of reservation.
- 10 percent reservation will be in addition to the existing cap of 50 percent reservation for the Scheduled Castes, Scheduled Tribes, and the Other Backward Classes, taking a total reservation to 60 percent. Among the sections it targets are the poor among the upper castes.

Previous Attempts at Economic based Reservation

- **States:**
 - Many states also tried to introduce quotas for the economically weak among unreserved categories in addition to reservations for socially and educationally

backward by inserting these laws in the Ninth Schedule, placing them beyond judicial review. The apex court blocked that route in the Coelho case, insisting that no law placed in the Ninth Schedule can violate the basic structure of the Constitution.

- Some insisted that quotas for the SEBCs were an example of vertical reservations and were different from horizontal quotas such as those provided for the physically challenged, etc.
- **Centre:**
 - In the wake of the upper caste backlash against the VP Singh government's decision to implement the Mandal Commission recommendation to extend reservations to OBCs, Prime Minister Narasimha Rao, in 1991, had introduced 10 percent reservation for the poor among forward castes.
 - But in 1992, while upholding reservation for OBCs as per the Mandal Commission recommendation, the Supreme Court, in the Indra Sawhney & Others vs Union Of India case, directed that reservation be restricted to maximum 50 percent.
 - It also said that separate reservation for economically poor among forward class was invalid as Article 15(4) provided for only socially and educationally backward classes, and not economically backward classes.
 - Any Constitutional amendment has to be in keeping with the basic structure of the Constitution. Individuals from SC, ST and OBC have been discriminated against, and systemically and collectively excluded from education, administration, modern areas of employment.

Way Forward

Journey to a less unjust society in India must follow some basic propositions

- **Equal opportunities in school education are imperative.** This would address problems of unequal access, uneven completion rates, and asymmetrical dropout rates, to progressively diminish the need for reservations.
- **It is necessary to recognize that discrimination, hence exclusion, is multi-dimensional.** It is not only about caste but also about religion, gender, ethnicity and, ultimately, income.
- **It is also essential to accept the idea that affirmative action must be limited to first-time entrants or first-generation learners.** And, even with this correction, reservations cannot suffice, without an Equal Opportunities Commission to ensure implementation.
- Whatever will be the decision of Government, it must unite rather than divide, integrate rather than separate people. After all, we are a society plagued by so many divides that our quest for inclusion or social justice should not accentuate those divides.

- Reservations served an important social purpose in independent India, to address the problems of embedded discrimination. But more of the same is no longer a solution. The answer lies in expanding educational and employment opportunities. **It would ease conflict, soften divides, and progressively reduce the need for affirmative action.**