

Resist the Supreme Court's Attempt to Dismantle the Framework of Reservation

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At the apex court of India, things are getting curiouser and curiouser. On 19 October a five-judge Constitution bench headed by Chief Justice Y. K. Sabharwal heard a batch of petitions challenging the validity of four constitutional amendments relating to various aspects of reservation for the SCs and STs in government jobs, including the issue of reservation in promotions. It should be noted that Parliament had to resort to these amendments to overrule some of the earlier rulings of the Supreme Court. The constitution bench upheld all the amendments, but in doing so it chose to come down heavily on the very concept and policy of reservation as a corrective measure against centuries of social oppression and exclusion faced by the SC/ST communities.

Let us see what the judgement says. The court has now imposed an absolute ceiling of 50% on different categories of reservation put together, a ceiling that the state cannot breach even if it had "compelling reasons". The ruling also points out that "reservation was an enabling provision and states were not bound to make reservations for SC/St's in promotions". Moreover, every such provision of reservation would have to be backed by "quantifiable data establishing the backwardness of the class and its inadequate representation in public employment". In other words, if the Supreme Court can have its way, reservations would henceforth depend entirely on judicial mercy.

This latest judgement has also extended the concept of 'creamy layer', so far confined to the OBCs, to the SCs and STs. The concept of creamy layer is yet to be adequately defined and established even with regard to the OBCs. But at least it can be argued that the concept when applied to the OBCs has some economic leg to stand upon. After all, sections of the OBCs have significantly consolidated their socio-economic status in the wake of agrarian reforms and green revolution, if not also by means of supplementary income from trade and organised employment. But as far as the SCs and STs are concerned, there can be little debate that they have largely been bypassed by the entire process of agrarian reforms and green revolution. Considering the overall conditions of the SCs and STs, the idea of a creamy layer therefore appears rather premature and prejudiced.

More disconcerting than the judgement is perhaps the basis on which the constitution bench has formulated its convoluted reasoning. According to the learned judges of the Supreme Court, unlike the principles of secularism and federalism the 'catch-up' principle underlying the policies of reservation does not constitute a basic feature of the Constitution. In fact, the apex court is worried that reservation is amounting to reverse discrimination and consequently a denial of 'equality' for the unreserved categories, a breach in the 'egalitarian structure of society' ! The apex court has evidently only one yardstick to measure equality — from the standpoint of the dominant and the privileged. Despite paying lip service to the shibboleths of social justice, the judgement is clearly also soaked in the typically elitist anti-reservation bias that sees reservation as being axiomatically antithetical to efficiency and excellence.

Beyond the narrow and inverted parameters of the anti-reservation paranoia, which now seem to have been stamped with the seal of judicial legitimacy by the Supreme Court, there is of course a different basis on which the policies of reservation are being debated in the country. With the

availability of public employment declining by the day, there is now a growing demand for reservation in the private sector. There is the demand for inclusion of new social groups within the ambit of reservation as also extension of reservation to institutions of higher education and training. There is also the inescapable fact that reservation is yet to bring any tangible difference to the lives of the overwhelming majority of SC/ST population. While feudal oppression and state-sponsored assaults continue unabated, globalisation has brought in its wake a more systematic and vicious attack on the livelihood and rights of the dalit-advansi people. The Supreme Court however remains cocooned in its own world of elitist concerns and the real questions encircling the everyday existence of SCs and STs have no bearing on the apex court's reasoning on reservation.

In stark contrast to the growing public demand for greater real benefits of reservation, the Supreme Court is busy restricting the scope of reservation and systematically dismantling its entire policy architecture. This is perfectly of a piece with the general policy orientation of the state in the present era of liberalisation and privatisation --- shrinking of public services and planned abdication by the state of all its social responsibilities. The Supreme Court's thoroughly restrictive and subversive ruling on reservation is no aberration, it stands in league with a whole array of anti-worker anti-poor verdicts delivered in recent times. This can only be called judicial elitism, and the victims and all enlightened progressive people can have only one response to such judicial diktats — resist them, reject them.

P.S.

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