

17.24 hrs.

Title: Discussion on the resolution regarding reservation for socially and educationally backward classes moved by Shri E. Ahamed. (Not concluded) (Not concluded)

MR. CHAIRMAN : Now the House will take up the Resolution regarding Reservation for Socially and Educationally Backward Classes to be moved by Shri E. Ahamed. Before we take up the Resolution for discussion, we have to fix the time for discussion. Shall we fix two hours?

SEVERAL HON. MEMBERS: Yes.

MR. CHAIRMAN: We have fixed two hours for the discussion on this Resolution. Now, Shri E. Ahamed.

SHRI E. AHAMED (MANJERI): Mr. Chairman, Sir, I beg to move:

"This House urges upon the Government to bring forward a suitable legislation to make provision for reservation in appointments and posts in services and for admission into educational institutions in favour of socially and educationally Backward Classes including Muslims in accordance with proportion of their population notwithstanding anything contained in any judgment of any Court of law to the contrary including ceiling on percentage of reservation."

The Reservation Policy has a history of its own in our country. This is a sensitive issue and this is an issue concerning the majority of the people of our country. When we envisage plans and programmes for the total development of the country, it is imperative to consider those who have been deprived of their legitimate share in the affairs of the country.

17.25 hours (Dr. Raghuvansh Prasad Singh *in the Chair*)

An all-out progress that we have in view cannot be achieved unless we bring those under-privileged and under-developed people along with others.

The neglect of a certain section of the people is due to historical reasons. Unjust and unfair treatment of the under-privileged by those in power and also due to indiscriminatory treatment resulted in unequal and imbalance in the development sector and a substantial section of our population has been grossly neglected. Those people, who are backward socially and educationally, have been denied their legitimate due. They have always been backward while those who have reaped the fruits of development are perpetuating what they have achieved. Ultimately, this cry for justice and also for an equal share in the administration of this country has become a fight for social justice by the weaker sections and the backward classes of our population. The question of reservation in services is a very sensitive issue. The reservation in services and educational institutions for the backward sections of the society, as I said, has a history of its own. How the legitimate rights of these backward sections of the people have been protected and safeguarded will be seen in the historical background.

The history of pre-Independent India will give a graphic account of the fight between those who have been denied their share of power and those who have already secured their share more than what is due to them. In an ordinary sense, it was a fight between the forward sections of the people and the backward classes of the people. The fight has also created an invisible behaviour between different sections of the people. In Southern India, the erstwhile Madras Presidency, which included the present Tamil Nadu, the Malabar area of present Kerala State and Andhra Pradesh, excluding Hyderabad and South Canara of Karnataka that has a problem of bringing social justice, has a history and also made an equilibrium in the matter of representation of different sections of the people in the administration.

With the advent of Justice Party, which came to power in the erstwhile Madras Presidency in 1920, the reservation in Government services started. Though it was not a well-balanced one, the reservation to some backward sections of the people in Tamil Nadu had given an impetus to the movement or the agitation by the backward classes. The role played by the great Tamil leader, including Thiru Annadurai, cannot be forgotten.

In Mysore State, the fight continued among the various sections of the backward classes which ultimately reached the granting of reservation in Government services and educational institutions. On representation by the 'Prajati Mandal' in 1921, the Maharaja of Travancore had given the eligibility to the people of the backward sections to be represented in the services. In Travancore State, the reservation system came in 1935 after a decade of a few non-Brahmins and backward classes having been given the reservation. In 1935, the Maharaja of Travancore State issued a Proclamation and thereby his subjects – those who belonged to the backward classes – became eligible for appointment in the Government services.

Later on, the backward classes in Southern India tried to stabilise the system of reservation and put up a fight to expand this benefit of reservation in other parts of the country. In Tamil Nadu, the role they had played in this matter with the cooperation of other States like Andhra Pradesh, Kerala had made an impact in the movement.

In North India, the situation was quite different. Though the leaders of backward communities tried to assert their rights for the share in power, it was negated and resisted by the strong and powerful section of people who have monopolised administration and perpetuated this.

श्री प्रियरंजन दासमुंशी : स्भापति महोदय, हाफ ऐन आवर डिस्कशन का समय हो गया है।

स्भापति महोदय : प्राईवेट मैम्बर्स बिजनेस बीस मिनट देर से शुरू हुआ था। इसलिए बीस मिनट देर तक चलेगा।

SHRI E. AHAMED (MANJERI): The leaders like Dr. Ram Manohar Lohia woke up the backward classes people, but their efforts did not bring any tangible result. A relevant mention has also been made in the Mandal Commission. This is how the South has asserted and achieved reservation whereas the North had been very much neglected in this matter.

The efforts of these leaders ultimately helped the different sections of the backward classes to realise what they had lost and also to raise from slumber and to organise for such legitimate rights in the Government services. It was only after two decades of Independence that people of North India could realise the backward power and power of the deprived people of the North. Even though in 1977, I may just mention what happened in UP and Bihar, the Government of Ram Naresh Yadav in UP made a reservation of 15 per cent to the backward classes and the Government of Karpoori Thakur in Bihar in the year 1978 made a 20 per cent reservation to the backward classes. This could not be implemented or materialised due to the stiff opposition from the forward section of the people.

As a matter of fact, only with the adoption of the Constitution it became a reality, when the people of the forward as well as the backward sections have come to the discussion. Once Dr. Baba Saheb Ambedkar made the following observation, which I feel is relevant to quote here. He said:

"Every system treats reasonably well those at the top of the social order. The critical test is as to how he treats those in the bottom. "

This is the test so far as the people of India are concerned with respect to their share in power, their role in the public affairs and the position they could achieve.

It is true that the question of denial of social justice took 30 years till the Mandal Commission has been appointed and submitted its Report to the Government. Before the constitution of the Mandal Commission, the first Backward Class Commission, as the House is aware, was set up on 29th January 1953 under article 340 of the Constitution with Kaka Kalelkar as the Chairman of the Commission.

Though it recommended various welfare measures including the reservation for the backward classes in the Government and educational institutions. The Government at that time did not accept the recommendation of that Commission on the ground that it had not applied any objective test for identifying the backward classes. Further, five out of 11 members of the Kalelkar Commission had given notes of dissent. Then, the Government also felt that the First Backward Classes Commission had classified a very large section of population as backward and the reason for the rejection of the Government, it was reported, that if special assistance had to be extended to all the people, the really needy would be slapped by the multitude. The Government also, at that time, did not agree because the adoption of the caste as one of the criteria for backwardness and preferred the application of economic criteria. In this background we will have to examine what the Constitution has provided to safeguard reservation for backward classes.

Sir, article 15 (4) and article 16(4) of the Constitution provide the reservation for the backward classes. If we take article 15(4), we will be able to see what provision has been made for protection of the privileges of the backward classes. The first amendment was made to article 15, and it says:

"Nothing in this article or in clause (2) of the article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens for the Scheduled Castes and Scheduled Tribes. "

After the Constitution came into being, the first case was against the provision contained under article 15. The Madras High Court had ruled that it shall not be made applicable to some section of people and it would be against the provision of the Constitution. In this context, the first amendment had been brought in to override the effect of the Madras High Court judgement.

Article 16(4) provides: as follows:

"Nothing in this article shall prevent the State from making any provision for the reservation in matters of promotion to any classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. "

Therefore, it had been abundantly made clear that the reservation to the backward classes should be provided on the one ground of socially and educationally backward and on the second ground, if they are not adequately represented. When there was a clash between article 14, equality before law, and article 15(4) and article 16(4), there were a number of observations made by legal luminaries. Equality before law is a basic fundamental right guaranteed under article 14 of the Constitution but the principle of equality is a double-edged weapon, even according to Mandal Commission's observation. It places the strong and the handicapped on the same footing in the race of life. It is a dictum of social justice that there is equality only among the equals. To treat an unequal as equal is to perpetuate inequality.

The humanness of a society is determined by the degrees of protection it provides to the weaker, handicapped and less gifted members.

Under this context, I may just go through what Dr. Babasaheb Ambedkar has observed about the applicability of article 15(4) and article 16(4). There are a number of decisions of the Supreme Court also. In the Indra Sawhney case, the Supreme Court has dealt at length the effect of article 15(4) and 16(4); and the hon. Judges have also quoted Dr. Ambedkar's observation on these provisions. May I read, Mr. Chairman, paragraph 26, from the judgement of Indra Sawhney versus Union of India case as reported in AIR 1993 on page 520? Their Lordships have quoted the deliberation of the Constituent Assembly. I think, Mr. Chairman, this will be very much interesting for this House if I just read a portion. It says:

"After the discussion proceeded for some more time, Shri K.M. Munshi who was the Member of the Drafting Committee rose to explain the content of the word "backward". He said, "what we want to secure by this clause are two things. In the fundamental rights, in the first clause we want to achieve the highest efficiency in the services of the State--highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in the several provinces, we want to see that the backward classes, classes who are really backward, should be given scope in the State services, for it is realised that the State services give a status and an opportunity to serve the country and this opportunity should be extended to every community even among the backward people. That being so, we have to find out some generic term and the word "backward class" was the best possible term". "

To which, participating in the debate, Dr. Babasaheb Ambedkar also made his observation which the hon. Judges who were deciding that very important case of Indra Sawhney on the reservation issue, have also observed. Mr. Chairman, this is what they said:

"Ultimately Dr. B.R. Ambedkar, the Chairman of the Drafting Committee got up to clarify the matter. His speech, which put an end to all discussion and led to the adopting of draft article 10(3), is worth quoting in extenso since it throws light on several questions relevant herein; Dr. Ambedkar says, " there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for the particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations; there ought to be no hindrance in the operation of this principle of equality or equality of opportunity". "

"Another view, mostly shared by a section of the House, is that if this principle is to be operative and it ought to be operative in their judgement to its fullest extent there ought to be no reservations of any sort for any class or community at all that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have a massive opinion which insists that although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservation in favour of certain communities which have not so far had a proper 'look in' so to say into the administration."

Therefore, Dr. Ambedkar, the Drafting Committee as well as the Constituent Assembly had given a legal sanction for the reservation whatever the philosophical interpretation about it may be brought in. This we cannot deny because a large section of people in this country – they are educationally backward, they are socially backward, they have been deprived in reaping the fruits of power -- have to be given due consideration. This is one thing I would like to say.

Another point I would like to bring is what the Mandal Commission also had said. They made certain points. Even in the Mandal Commission the question of social justice was the central theme. Whenever we see the privileges given, or the reservation given to the backward sections of the people it is bringing to a point of clash with equality of opportunity for every citizen of this country.

It is in this context I would also quote the observations made by Mr. Justice K. Subba Rao in his speech on Social Justice and Law. I think this will also be relevant when we deliberate or discuss the Resolution that I have moved. What Mr. Justice Subba Rao observed is:

" In a limited sense, the right to social justice may be defined as the right of the weak, aged, destitute, poor women, children and other underprivileged persons to the protection, of say, sought against ruthless competition of life. It seeks to give the necessary advantageous aids to the underprivileged so that they may have the equal opportunity with the more advanced in the race of life. It is a bundle of rights, in another sense it is a preserver of other rights. It is a balancing wheel between the haves and the have nots."

Therefore, despite all these things, and even after this reservation policy has been adopted, and there are inequalities and there are also the people who have been put behind the back and also neglected here.

Even in the history of the reservation policy after Independence, it was only in 1980 that the Mandal Commission had come and for one year it was in the cold storage. It was only in 1991 after Shri Narasimha Rao's Government came into power that they issued the first order.

स्भापति महोदय : कितने मिनट और बोलेंगे?

SHRI E. AHAMED (MANJERI): I will take another half-an-hour.

स्भापति महोदय : आपका भाण जारी रहेगा। अब समाप्त करिए। अब हॉफ एन ऑवर होगा।
