

SECTION – VII

COMPENSATORY DISCRIMINATION: THE DIMINISHING HOPE

The strategy of Compensatory Discrimination has been operationalized through the provision of reservations in recruitment and promotion to public services in pursuance of provisions made under **Article 16(4), 16(4A), 16(4B) and Article 335** in order to provide equitable share to SCs and STs in the administration of the country. As per instructions issued by the Central Government, at present, 15% reservation has been provided for Scheduled Castes in direct recruitment through open competition on All India basis and 16.66% in posts for which recruitment is otherwise than by open competition¹. In States/UTs percentage of reservation varies according to proportion of SC/ST population there.

As per information available from the Sixth report of the National Commission for Scheduled Castes and Scheduled Tribes (1999-2000 and 2000-01)², regarding representation of Scheduled Castes in services of Central Ministries/Departments, as on 1.1.1999, Scheduled Castes occupy 11.29% of the posts in Group 'A', 12.68% in Group 'B', 15.78% in Group 'C' and 19.99% in Group 'D' posts under the Central Government. The noteworthy aspect is that in Group 'D' posts, SCs occupy **65.57% of the total posts of Safai Karmacharis (Sweepers)** and only 16.7% of total posts excluding those of sweepers, which shows that age old caste based occupational distribution gets reinforced in Government appointments as well. It would also be clear from this data that Scheduled Castes have not yet reached the ceiling of their entitled percentage in Group 'A' and Group 'B' posts. As regards representation of Scheduled Castes in the services of Central PSUs³, as on 1.1.1999, Scheduled Castes occupy 10.35% of total number of persons employed in Group 'A', 11.05% in Group 'B', 18.93% in Group 'C', and 22.51% in Group 'D', excluding Safai Karmacharis. Their total representation was 18% of total number of employees. Scheduled Castes occupy 73.15% of the total Safai Karmachari posts in Group 'D'. Evidently the representation pattern of SCs in Central Ministries /Departments is also reflected in Central PSUs where in Groups 'A' and 'B' posts, percentage of Scheduled Castes is still short of the ceiling prescribed for them.

In the public sector banks and financial institutions, as on 1.1.2000, Scheduled Castes occupy 12.51% of the total number of jobs in the officer grade, while it was 14.80%

¹Sixth Report, op. cit., p. 181

²Sixth Report, op. cit., p. 182

³Sixth Report, op. cit., p. 183

in the grade of clerks. It was 24.46% for subordinate staff, excluding Safai Karmacharis (sweepers), while in the category of Safai Karmacharis (sweepers) they occupy 15.97%⁴. This data will show that in the officers' grade, the representation of Scheduled Castes is still short of their prescribed percentage, while it is adequate in the category of subordinate staff. In the category of clerks, the representation of Scheduled Castes has come down from the position obtained on 1.1.1999 though it is nearing the prescribed levels.

The information regarding representation of Scheduled Castes in public sector insurance companies, as on 1.1.2000, shows that in Class I category their representation in the total strength was 15.38%, while in Class II category it was 12.40% and in Class III it was 17.24% and in Class IV it was 31.35%, including those of Safai Karmacharis (sweepers)⁵. Within the Insurance Companies, the position in some is better than in others. The surprising part is that in Class II posts, the representation of Scheduled Castes lags behind when compared to Class I.

As regards Railways and its offices, the percentage of SC employees, as on 31.3.1999⁶, was 14.32% of the total strength in Group 'A', 15.77% in Group 'B', 14.77% in Group 'C' and 15.77% in Group 'D', excluding Safai Karmacharis (sweepers), while it was 16.24% in Group 'D' including Safai Karmacharis (sweepers). Scheduled Castes occupy 70.37% of all Group 'D' posts of Safai Karmacharis (sweepers) testifying to the situation elsewhere in Government. The representation is slightly lagging behind in Group 'A' and 'C' posts.

Regarding representation of Scheduled Castes in teaching posts, in Central Universities⁷, the position in the category of **posts of Lecturer** (lowest level teaching jobs) was 39% in Assam University, 9.4% in Benaras Hindu University, nil in Aligarh Muslim University, 8.5% in JNU, nil in Jamia Milia, nil in Nagaland, 29.5% in Hyderabad University, 22.5% in Pondicherry University, 8.5% in Vishwa Bharati, 12.5% in Ambedkar University, 6.4% in Delhi University, nil in Nehu & Tezpur Universities. In the category of the **post of Reader, there was no representation of Scheduled Castes** in Assam, Aligarh, Ambedkar, Nehu & Tezpur Universities. It was 0.2% in BHU, 3% in JNU, 0.7% in Jamia Milia, 4.7% in Nagaland, 2.7% in Hyderabad, 4.2% in Pondicherry, 1.4% in Vishwa Bharati, 1% in Delhi University. In the category of **post of Professor, there was no representation of Scheduled Castes** in Aligarh, Jamia Milia, Nagaland, Pondicherry, Ambedkar, Nehu & Tezpur Universities. It was 5% in Assam, 0.2% in BHU, 1% in JNU, 1.39% in Hyderabad, 0.7% in Vishwa Bharati, 0.9% in Delhi Universities. This would show that policy of reservation was not being strictly followed in recruitment of faculty members in various Central Universities. The position in State Universities is not readily available. The UGC has declined to extend reservation to the post of Readers and Professors. In certain universities, which are enjoying 100% maintenance

⁴Sixth Report, op. cit., p. 185

⁵Sixth Report, op. cit., p. 186

⁶Sixth Report, op. cit., pp 192-194

⁷Sixth Report, op. cit., pp 196-198

grant, no representation was being given to Scheduled Castes/Scheduled Tribes. In the country's 256 universities and about 11000 colleges funded by UGC, there are about 3.42 lakh teaching positions but **SCs and STs comprise only 2%** and about 75000 teaching positions meant for these communities are vacant⁸. Despite the advice of the UGC, **the Universities are not following the instructions** of the Ministry in enforcing reservations⁹.

The above information would reveal that in higher level education, there is still a great deal of resistance to application of reservation provisions for the entry of Scheduled Castes and Scheduled Tribes and there is lack of political will in Government to enforce it. Also, wherever there is institutional autonomy and no centralized recruitment through open competition, the authorities at the helm of affairs disregard instructions and constitutional provisions. If Scheduled Castes/ Scheduled Tribes can get entry into All India services, PSUs and banks, which have a more severe competition, there seems no reason why they would be found ineligible for overwhelmingly large number of posts in universities, other than a general operating bias against them in their administration. This again shows how strong the caste based social order still is in institutions of teaching and higher learning almost at par with other Institutions/ Sectors where reservation is not yet accepted. Stronger political will would need to be demonstrated in enforcing reservation provisions. Government may devise some kind of a punitive mechanism (such as stoppage of grants, etc) for pressuring those agencies which are not complying with Government instructions on the subject.

As regards reservation in teaching posts in IITs, the National Commission on Scheduled Castes/Scheduled Tribes has reported that there were **only three** persons belonging to SC/ST communities and they have also been selected on the basis of merit and not on the basis of any reservation¹⁰. In IITs also reservation is being applied only for the post of Lecturers. There are lots of problems relating to enforcement of reservation provisions in the teaching sector, which the National Commission for Scheduled Castes and Scheduled Tribes has taken up with the concerned Ministry but with little success. Similarly, of the total teaching positions in Government aided private management schools, Scheduled Castes/Scheduled Tribes account for 9.91%, whereas in the Government run schools the teachers from these two sections comprise 17.64%. In unaided private schools, they are merely 7.07%. Thus institutions outside the State control display great degree of exclusion of Scheduled Castes and Scheduled Tribes¹¹. It has also recommended the enactment of a central law on reservation so as to protect it from frequent interventions of Courts¹². This proposal is supported because there is a very large area of autonomous institutions where reservation provisions are not being complied with.

One study has brought out that Scheduled Castes/Scheduled Tribes are totally out of media work force. Thus they are deprived of any opportunity to decisively influence

⁸The Bhopal document, op. cit., pp. 97-98

⁹Sixth Report, op. cit., p. 198

¹⁰Sixth Report, op. cit., p. 197

¹¹Sixth Report, op. cit., p. 189

¹²The Bhopal Document, op. cit., p. 98

opinion making process. Similarly, there is nearly total exclusion of them from Films, Art and Culture¹³.

In the NGO sector, barring very little participation in southern States, Scheduled Castes/Scheduled Tribes are virtually unrepresented. While Government has issued directive to NGOs receiving funds from the Government that they should include Scheduled Castes/Scheduled Tribes in their governing body and in their work force, there is no such provision for NGOs which receive foreign funds. Similarly, thousands of registered societies which employ researchers and other staff on a large scale and may also receive funds from the Government, do not accept any obligation of practising affirmative action in recruitment to various positions. In the Corporate world, the major apex organizations, like CII or FICCI, do not have a single SC or ST member. In the trade and commerce, Scheduled Castes/Scheduled Tribes, if at all, may be owning petty businesses without any serious presence in the money market¹⁴.

The details of implementation of reservation provisions outlined above indicate the following:

- A. Wherever there is direct recruitment on the basis of competitive examinations, reservations have been enforced and representation of Scheduled Castes and Scheduled Tribes has been ensured. Scheduled Castes may not have reached their desired percentage in some categories, particularly Group 'A' posts, but, prima-facie, there is no evidence of any neglect. This is because procedural requirements do not allow recruitment process to begin unless reservation arrangements have been dovetailed therein. The problem is being experienced with regard to small cadres whose number is very large in Government and Government funded institutions and where implementation of reservation is unsatisfactory. In rest of the places, where recruitment takes place other than through centralized competitive examinations as in autonomous bodies, teaching institutions, etc. the position is extremely poor and there is no denying the fact that caste biases operate in a pronounced manner in disregarding Government instructions. Government have also been unable to enforce its own orders. A prescribed level of representation in teaching posts [even at the level of lecturer which the UGC has endorsed] would have afforded an opportunity for elimination of caste bias in younger generation because they would have themselves seen the lack of substance and truth in those biases. Scheduled caste persons in teaching positions would have also influenced generations of students who could have carried with them more liberal outlook in matters relating to caste based issues.
- B. There is backlog in various positions in Government pertaining to reserved vacancies. This backlog is specifically large in respect of higher level posts, i.e. under Group 'B' and Group 'A'. This shows that the Scheduled Castes still have a long way to go in occupying positions of decision making in various Government organizations. National Campaign on Dalit Human Rights in their memorandum

¹³Unniyal, BN, quoted in the Bhopal Document, op. cit., p. 98

¹⁴The Bhopal Document, op. cit., pp 98-99

to the Prime Minister has estimated this backlog at 10,00,000 in Union Government services alone though the break-up in terms of category of posts and their distributional pattern is not given. Ministry of Social Justice and Empowerment, Department of Personnel & Training and representatives of SCs/STs Commission should sit together and determine the extent of backlog and its spread in various organizations. The representative of Campaign should also be associated in this exercise so that there is no factual discrepancy between Government estimate and that of the NGO. The details of vacancies may be put on the website of the concerned Ministries. Thereafter, top priority should be given to drawing up a time bound programme to fill up these vacancies including launching of social recruitment drives. This programme may also identify handicaps which SCs suffer from in the matter of fulfilling eligibility qualifications prescribed for those posts and measures to remove them may be expeditiously introduced. Government needs to exert its authority to discipline those institutions which do not comply with reservation provisions. Similar exercise should be carried out by the State Governments in respect of reserved posts under them.

- C. The position in respect of representation of Scheduled Castes in scientific establishments is very poor. A large number of scientific and technical posts remain vacant as qualified candidates are not available. This may be attributed to lack of access for Scheduled Castes to good quality science education and consequent entry, in sufficient number, of members of these communities in science stream at School and College level¹⁵. As a result they are unable to fulfill eligibility criteria for getting admission to professional courses, which would qualify them to compete for scientific and technical positions. This is also true of legal profession where the representation remains low because of which Scheduled Castes have negligible positions in the higher level judiciary. There may also be some professional courses which are not covered by reservation provisions and therefore entry of Scheduled Castes to these positions would virtually remain barred on account of their inability to compete. Gaining entry in privately financed professional institutions would be even more difficult as members of Scheduled Castes cannot afford to pay exorbitant fee and bear other expenditure for pursuing these courses.

The nodal Ministry also needs to sit with different Ministries/ organizations which have large unfilled reserved positions in professional and technical disciplines and examine in depth why this position has persisted. A comprehensive programme to improve Science teaching at various levels for SCs and increasing the entry of SCs in technical courses may be drawn up to enable reserved seats in Science, Technology and other professional courses getting filled up. It may also identify institutions/services where SCs are poorly represented and which have not accepted reservations in their positions, such as Higher Judiciary, Defence, etc. and work out measures which may, over a period, produce sufficient number of bright professional SC candidates to compete for those positions. The representation of

¹⁵The Bhopal Document, op. cit., p. 61, also p. 107

SC women against reserved posts being very low, the nodal Ministry should prepare a comprehensive plan of action to increase their representation and monitor the impact of measures under this plan.

- D. Reservation provision is facing a new threat with the ongoing efforts of disinvestment and privatisation of PSUs. After disinvestment of Government Share, the PSUs are not likely to enforce the provisions of reservation of posts. Thus, even the limited opportunities of secure jobs to educated SC youth are shrinking. There is at best need to ensure that such PSUs which are disinvested do not scrap reservation provisions.

What then is the overall impact of reservations? Despite the limitations enumerated above, the positive aspect of compensatory discrimination is that through its provisions slowly a small middle class is emerging among Scheduled Castes whose members are enabled to throw off their earlier caste based occupations and join the mainstream society in the process of upward mobility¹⁶. There is no denying that these beneficiaries of affirmative action do encounter some biases in the behaviour of their higher caste colleagues, bosses and even subordinates within the institutions/offices they are employed which generate in them considerable agony and stress. But the economic emancipation effected as a result of a secure job with opportunities for upward mobility and a non-oppressive environment at least ensures a future for them de-linked from their centuries old caste background.

However, reservations in Government jobs including PSUs, etc. have limited potential for absorption of aspiring scheduled caste youth. It has been estimated that the total number of jobs under the Centre, including PSUs, State Governments and Local Bodies is 1.9 crore. Even if the entire quota of 15% is filled up, it would benefit 29 lakh families only¹⁷. Considering attempts at reducing Government jobs through privatization and down-sizing, the number of vacancies in future is likely to be much less. In this background, the proposal for extending the right of reservation to private sector has been vigorously advocated by the National Campaign on Dalit Human Rights, an organization representing various NGOs working for the cause of Dalits. National Commission for SCs and STs has also supported the extension of reservation in private sector to all bodies established under any law such as Companies, Cooperative Societies, Registered Societies which may be taking institutional finance partly or wholly and should be extended to other private organizations also in stages¹⁸. But the constitutional sustainability of such a proposal is in doubt. That is why even in the peak period of commitment to reservation as a strategy of empowerment of SCs and STs Government did not consider introducing reservation of jobs in the private sector. Way back in 1978, a High Power Committee under the Chairmanship of Prime Minister looked into it and did not favour it. Ministry of Finance did not also support the suggestion to enforce reservation as a precondition to sanctioning financial assistance since banks could not legally bind borrowers and

¹⁶The Bhopal Document, op., cit., p. 59

¹⁷The Bhopal Document, op. cit., p. 57

¹⁸Sixth Report, op. cit., pp 194-195

enforce it. Ministry of Law was also not in favour of imposing this condition¹⁹. With the interventions of the Apex Court in restricting the scope and ambit of reservation from time to time, it seems highly improbable that the idea of reservation of jobs in the private sector employment would muster legal sanction. The private sector too is unlikely to accept it because

1. There is no accountability of private sector enterprises to Government or to public. They are accountable to their own shareholders.
2. There may be legal difficulties in sustaining such reservations.
3. There is no security of tenure for jobs in the private sector which believes in the principle of hire and fire and is even seeking relaxation in labour laws of the country to enforce it. In the efforts at cost cutting to be competitive, number of jobs are reduced. There is also no guarantee of the continuity of a business enterprise. It may be wound up or sold away or merged with another if it runs into losses.
4. Since the responsibility for profit and loss is borne by the enterprise, autonomy of operation is the key. Therefore, those who invest their capital would not countenance such restrictions on their autonomy.

This proposal, therefore, has no chance of getting materialised. Government, however, could engage the private sector in meaningful discussion on how to facilitate entry of marginalized communities such as SCs and STs in private sector employment, trade and commerce as a part of affirmative action strategy, based on the experience of the USA, South Africa, and some other countries as has been suggested in the Bhopal Document²⁰. This may not assure jobs in the manner of reservations but would bring the vast private sector employment in the ambit of social obligation. Appropriate mechanisms can be created to monitor the progress and success of these efforts. But even such facilitation, if it is accepted and operationalized, would have to encounter the problem of lack of relevant skills in the members of the Scheduled Castes. This, therefore, is a problem which should be dealt with straightaway in all earnestness by the Government. On the larger question however, even taking into account possible absorption of some Scheduled Castes in the private sector, through appropriate skill development and advocacy for affirmative action, the number is not going to be very large. As per Labour Ministry's estimate, total employment under Private Sector is around 87 lakh. Even if 15% reservation for SCs were to be enforced, this would take care of only around 13 lakh persons among them and another 6.5 lakh among STs. Already, there are 63 lakh educated skilled unemployed SCs and STs waiting in search of jobs. Therefore, reservation as a tool of upliftment of the community does not offer hope for a vast majority SCs seeking secure employment.

Education has been crucial in shaping life of SCs and STs and taking them out of the morass of traditional caste based occupations. But so far educated SCs and STs have been joining Government/organized sector jobs as the entry was facilitated through

¹⁹Sixth Report, op. cit., p. 194

²⁰The Bhopal Document, op. cit., pp 67-93, also p. 99

reservation and affirmative action policies. The potential for absorption in this sector of employment is going to be small in future. The existing employment trends also paint a bleak future for unskilled and less skilled labour. But there will be demand for skilled labour on account of technological development. To tap the potential in skilled positions, considerable skill development of SCs (as also STs) would have to be promoted. But here lies the major handicap as educational opportunities available to Scheduled Castes and Scheduled Tribes and qualifications they acquire through courses accessible to them provide very little assurance for absorption in skilled jobs. The current job market has no space for persons with matriculation or +2 level qualifications or even graduates and post-graduate degree in humanities. Job aspirants with Science stream may find some place. It is here that the prospects of SCs capturing that small space do not appear to be bright. The number of SCs and STs at the graduation stage in science stream are only 15.85% of the total SC and ST students [separate figures for SCs not readily available] and a mere 13.85% in commerce. The share of students receiving professional training is at the negligible level of 3.74%²¹. Precisely for this reason, the number of jobs even within the Government and the organized sector continue to remain vacant because suitable SC and ST candidates with recognized and eligible professional/technical qualifications are not available.

As per 1991 census, 62.59% Scheduled Castes and 70.4% Scheduled Tribes are illiterate and 79.88% SC and 86.72% ST school children drop out by middle level. While the situation has improved by 2001, still about half of SC and ST persons may be illiterate and as many SC and ST school children may be dropping out before completing middle level education. Even those who manage to complete their matriculation receive their education from schools of the Government, Municipalities and local bodies. The quality of instruction in these schools is, by and large, substandard as the schools are poorly equipped and teachers de-motivated. Only sons/daughters of higher level salaried Government servants/politicians and other persons occupying important positions may be getting their education in English medium schools. Thus the nature and quality of education is an important factor which would determine the future of SCs (as also STs). The current position in this regard does not provide much hope for them.

It is evident that SCs face a grave crisis. While the benefits from reservation are shrinking, SCs are not equipped to tap employment opportunities in the open market. This is likely to increase their frustration. It is important, therefore, that a comprehensive strategy for widening the employment opportunities for SCs is worked out which disengages them from traditional and degrading occupations and offers dignified livelihood. Such a strategy would have to consider each category of unemployed/underemployed SCs and suggest a package of measures to help them find jobs or income generating avenues. These categories should include educated unemployed rural and urban and among them SC youth with different levels of qualification (i.e. those qualified in technical and professional courses—degree/diploma/certificate), Degree holders in science and humanities, matriculates, school dropouts, uneducated unemployed, rural and urban

²¹The Bhopal Document, op. cit., p. 61

and among them those with skills and experience and those as unskilled manual labour. This category should also take note of those engaged in traditional occupations, farm and off farm and non-traditional vocations.

Bhopal Document has referred to the experience of other countries, such as United States of America and South Africa which also have problems of inequality, discrimination, racism and have inherited a violent past²². Those societies are also multi-ethnic, multi-lingual, and multi-cultural. The American society subscribes to affirmative action in all fields ranging from Government sector to private sector, to arts, media, etc. in sharing national prosperity. The data furnished in the Bhopal Document clearly brings out that share of minorities in enterprise businesses, composition of employees in private industry and percentage share of persons from minorities in various professional positions in topmost Fortune 500 companies and even in teaching positions has grown substantially. All these institutions also swear by diversity advocacy.

The capital market has also registered a growth rate in black/ethnic owned businesses. The USA has attempted unique methods in efforts to bring in representation of minorities not only in Government but also in private sector and, in fact, every sphere of public life and economy. It would be interesting to study ways by which this has been done and how various private sector institutions have collaborated with Government in giving effect to it. South Africa, similarly, has provided a legal/regulatory framework against discrimination under their Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 and Employment Equity Act, 1998. It was perhaps in this context that the former President, K.R. Narayanan had also urged in his Republic Day address of January, 2002 to study this model in the context of the need for widening the opportunities of development for Scheduled Castes and Scheduled Tribes²³. This exercise assumes greater significance in the context of New Economic Policy and process of Reforms which would lead to considerable reduction in Government/Semi-Government jobs [such as PSUs, Banks, Insurance Companies, etc.] As larger job opportunities would now occur in the private sector, efforts would have to concentrate on how Scheduled Castes can be equipped to compete for such jobs to get their due share in private sector.

Planning Commission should therefore study in depth the affirmative action policies and legal/administrative framework of their implementation in various countries which have adopted them. It should enter into a detailed dialogue with apex organizations of Private Sector, such as FICCI, CII, ASSOCHAM on how various models of affirmative action, policies such as those in operation in U.S.A. and other countries can be adopted to enable SCs and STs gain requisite share in industry, trade, commerce and other sectors. The policy and mechanisms evolved in these countries to operationalise the concept of affirmative action may also be discussed with representatives of SCs and those working for them with a view to determining their appropriate adaptation in our context before initiating the dialogue.

²²The Bhopal Document, *op. cit.*, pp 67-99

²³National Campaign for Dalit Human Rights, Letter addressed to the Prime Minister and Chairman of National Human Rights Commission dated May 9, 2002.

Since the Tenth Five Year Plan has been finalized, Sectoral Components of this Plan would have grappled with some of these issues based on the deliberations in the Working Groups and Steering Committee discussions. However, it is not certain whether a coherent approach for exploring employment potential for SCs in the new economy has received adequate attention since it would involve multi-sectoral linkages and inter-ministerial consultations. Planning Commission may therefore be advised to set up a special task force for this purpose exclusively so that a comprehensive and integrated strategy of employment generation for SCs (also STs) could be worked out and operationalised.

This section had sought to answer the question whether compensatory discrimination has helped in reducing atrocities against SCs and has changed their life for the better. The material provided in this Section does answer this question in affirmative though its impact has been confined to a very small percentage of SCs. However, its potential for future is declining. Therefore, the wide range of development measures which touch upon a much larger section of SCs would have to be looked at to assess the overall impact of the strategy of social empowerment on their lives.