

CASTE, RELIGION AND RESERVATIONS

■ Dr. M.N. Buch

The Government of India has announced that it had decided to provide 4.5 percent reservations for Muslims, to form part of the 27 percent reservation quota for other backward classes. Salman Kurshid, the Law Minister, has stated that this reservation would be of the order of 9 percent. The timing of these announcements coincides with the elections to be held in U.P. and this has created an absolute uproar. The BJP eyes this as a bid to appease Muslims, the Muslims are dissatisfied that the gesture is inadequate and the Election Commission has stayed the operation of the order on the grounds that such a policy decision cannot be taken once elections are announced. The Congress, on its part says that the Rajendra Sachar Committee has pointed out that Muslims are being given an unfair deal because their representation in elective posts, in government service and in public sector appointments is dismally low proportionate to their population. This is true of Muslims literacy and educational levels. Government says that it is only trying to correct the imbalance.

Let us see the constitutional position in this behalf. The Preamble mandates social, economic and political justice and equality of status and opportunity. It also mandates liberty of thought, expression, belief, faith and worship. This liberty is enshrined in the Chapter on Fundamental Rights, which forms Part III of the Constitution. Article 19 guarantees freedom of speech and expression and Articles 25 to 28 guarantee freedom of religion. Articles 29 and 30 guarantee the cultural and educational rights of the minorities. However, within Part III is built in an obvious bias which can be interpreted to be against the majority community and in the interest of the minorities. Article 25 gives freedom of conscience and free profession, practice and propagation of religion. Whereas all religious communities are guaranteed freedom of religion without State interference, Article 25 (2) (b) states that nothing will prevent the State from making any law “providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus”. Explanation 2 states, “ In sub clause (b) of clause 2 the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddha religion and the reference to Hindu religious institutions shall be construed accordingly”. In other words the Hindu religion, including Buddhism, Jainism and Sikhism, is in a need of public intervention to guarantee reforms in religious practices and observance, whereas other religions are so perfect that no such reform is called for through State intervention. Either the State should not interfere in any religious matter or it should have the right to make such reform as it deems fit in the matter of all religious institutions.

There are far reaching consequences of this Article. Article 44 enjoins the State to secure for the citizens an uniform Civil Code throughout the territory of India. Using Articles 25 and 26 of the Constitution the Muslims have steadfastly refused to accept a common Civil Code and have insisted on having personal law based on the Sharia. Jews, Christians, Parsees, Sikhs, Jains and Buddhists are quite prepared to accept an uniform Civil Code. The bias given in Article 25 automatically separates the minorities from the majority community and thus drives a rift between them. In a secular State in matters temporal it is the State which will have the final say and not the Church. Our Constitution militates against this principle which is enshrined in the Constitutions of Clarendon as enunciated by Henry II Plantagenet. India cannot be a secular State so long as a religious community insists that even in temporal matters it will not be governed by the laws of the State.

Article 30 gives the minorities the right to establish and administer education institutions of their choice. Clause 2 of the Article says that the State shall not discriminate against such institutions in granting aid on the grounds that the institution is managed by a minority. Article 29 (2) reads, “No

citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the grounds only of religion, race, caste, language or any of them. Articles 29(2) and 30(2) are in direct conflict because whereas a minority institution can reserve part or whole of the admission for a particular community and continue to get aid under Article 30 (2), no citizen can be denied admission in such an institution under Article 29 (2). This contradiction needs to be addressed and sorted out because at present many minority institutions insist on operating in a manner which goes against the very principle of universal education which is secular in nature. In fact this goes against the spirit of Article 51 A, clause (e) of which makes it the fundamental duty of every citizen, "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities: to renounce practices derogatory to the dignity of women". The unfortunate Fatwa issued by Darul-Uloom-Deoband that girls above ten should not go to normal schools is offensive of the dignity of women and government should have come down heavily on Deoband for daring to issue such a Fatwa. That is, of course, if we accept that India is a secular state.

The Preamble also provides for equality of status and opportunity. That is why Article 17 of the Constitution completely and irrevocably abolishes untouchability so that there can be no one whose status is less than that of other Indian citizens. In order to provide for equality of opportunity the Constitution has unfortunately opted for the reservation route. Article 15 (4) states that nothing shall prevent the State from making any special provisions for the advancement of any social and educational backward classes of citizens or for the scheduled castes and scheduled tribes. Article 16 goes on to state that whereas all citizens have equality of opportunity in matters of public employment, clause 4 nevertheless permits the making of reservation for appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Under Part XIV of the Constitution in Articles 330,331, 332, 333, 335 and 336 reservation of seats for scheduled castes, scheduled tribes and Anglo Indians in the House of People and in the Legislative Assemblies of States is provided for. Articles 335 and 336 extend the right of reservation in services and posts to scheduled castes, scheduled tribes and Anglo Indians. Under Article 334 reservation of seats in Parliament and the State Legislatures was originally for ten years only, which was extended to fifty years from the commencement of the Constitution, that is, upto the year 2000, but which have now been extended indefinitely. Now there are two categories of parliamentarians and legislators. The first category is those who are elected on general seats. The second category is those who are elected from reserved seats. Luckily we do not have separate electorates, thanks to Gandhiji's insistence, but probably that will be the next tragic step in this dance of reservation. Similarly, in services under government we have one category of persons who come through a competitive examination and on merit. There is a second category of SC, ST and OBC persons who come through the same examination but on seats reserved for them, which means that they do not have to compete with general category candidates. The general category candidates occupy 51 percent of the seats available, but on the basis of merit, whereas 49 percent have to run a much slower race because they are not competing against merit but only against each other within the reserved quota. Now the Muslims are also being given a place in the quota system.

The operative words in Articles 335 and 16 are (1) Schedules Castes (2) Scheduled Tribes (3) Other Backward Classes. Being a member of the Scheduled Caste is a function of religion because it is only in Hinduism that caste is recognised. A Scheduled Tribe is an ethnic concept, based on the ethnicity of a particular group of people. A tribe can follow any religion it likes without losing its tribal identity. So far as the third factor is concerned the Constitution recognises Other Backward Classes. Class is not dependent on caste, nor is it dependent on religion. By definition class is a social phenomenon. The Chambers Twenty-first Century Dictionary defines class as under:- "A category, kind

or type, members of which share common characteristics: any of the social groups into which people fall according to their job, wealth, etc: the system by which society is divided into such groups". A whole caste or sub-caste cannot be recognised as a class and a religious group is not a class. Class is a function of social or economic stratification in society. Therefore, an entire group like the Gujjars, Jats, Ahirs, Yadavs, Kurmis and Patels cannot be considered a class and cannot be defined as a backward class. For example, the Patels of Charotar, who constitute one of the richest communities in India, are given the status of OBC in Gujarat. The Patels are a sub caste of a varna in the Hindu caste structure. They cannot be recognised as a class. To give them reservation as a class is in fact extending reservation to a sub caste and this is not permitted by the Constitution. I hold this view very firmly despite any pronouncement to the contrary by politicians, courts or anyone else. Wholesale reservation as OBCs to groups which can be identified as a caste or sub caste would be totally unjustified. In any case to call the Patels backward runs in the face of the fact that they are prosperous farmers, excellent businessmen and have more millionaires than any other community in India. The way that we have created the OBCs has made a mockery of Article 16 (4) of the Constitution.

Religion as a basis for reservation is just not recognised by the Indian Constitution. Therefore, reservation for Muslims per se is totally and absolutely unconstitutional and there I agree with BJP. If we define a class on the basis of social status, income, educational levels and we define backwardness, then anyone from any religion, even from any caste, would be entitled to being considered backward as a class and then special provisions could be made for reservation for this class of people. We have just not done this exercise and have given castes and religious groups reservation mindlessly. That is why the Supreme Court had to introduce a concept of a creamy layer, or affluent members of a group which has been declared as a backward class. The creamy layer is provided for so that those whose economic situation eliminates both backwardness and a lowly social status are not entitled to reservation. Even this is not being properly enforced.

It is true that Muslim literacy and educational levels are disproportionately low. It is a fact that representation of Muslims in elective posts is much less than of others proportionate to the Muslim population. This is true of government service also. This situation has to be remedied if the Muslims are to feel themselves to be a part of the mainstream. This calls for affirmative action rather than reservation in which Muslims children are induced to enter the normal education system in much larger numbers so that the percentage of educated Muslims rises dramatically. State funding and State sponsorship in order to promote education of Muslims would be perfectly justified. Political parties must be prevailed upon to give many more tickets for elections to Muslims so that the number of Muslim candidates who are supported by the parties increases dramatically. This would be the correct political direction and would bring more Muslims into elected posts. In the matter of the services there has to be a sustained public programme for preparing Muslim children for competitive examinations so that more and more Muslims enter government service. This would correct imbalances without simultaneously giving rise to resentment against Muslim reservation.

In fact the time has come when we should revisit the reservation scenario. Quality education and extra attention to Scheduled Castes, Scheduled Tribes and those communities which do not have a tradition of sending children to school are absolutely essential if we want to make every child in India competitive because he or she is well educated. Generous financial support for higher education should be readily available to those who have promise but are unable to afford the cost of education. At the same time government should carefully watch its own employment practices and the practices followed by the private sector to ensure that there is no discrimination against the minorities and that through affirmative action the minorities are given a due place in the Indian sun. If all SC/ST children, if all Muslim children are well educated, why would we need reservations?