

Job Reservation in Indian Corporate Sector: Prospects and Challenges in Globalised Era

Om Prakash Sharma¹

I. Introduction:

Right to employment is, of course, an important human right but it is not a fundamental right provided under Part- III of the Indian Constitution. Article 19 (1) (g) of the Constitution guarantees that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. However, the right to carry on a profession, trade or business is not unqualified. It can be restricted and regulated by authority of law². The Directive Principles of state Policy contained in Part IV of the Constitution sets out the aims and objectives to be taken up by the states in the governance of the country. Article 38 (I) provides that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice- social, economic and political- shall inform all the institutions of life. Article 19 of the constitution is very important in this regard. Article 19 (a) speaks about equal right of men and women to adequate means of livelihood. Article 19 (b) speaks about the distribution of ownership and control of the material resources of the community to the common good. Article 19(c) ensures that the economic system should not result in concentration of wealth and means of production to the common detriment. Though these directives are not judicially enforceable but are important for the governance of the country. These directives have to be kept in mind while legislatures make law. On the other hand these directives and the Act passed thereto can be judicially enforceable by the courts.

The concept of reservation in India has been adopted as a means to provide social justice to those who were the victim of prolonged social discrimination prevailing among Hindu religion. After independence, when our own constitution was written, the framers of the constitution thought that the application of the principle of absolute equality is not fruitful unless all people are really equal because equality prevails among equals and our society was full of inequalities. So the Backward classes needed special push to bring them to the equal footing. Therefore, the Constitution itself

¹ LL. M, Assistant Professor, Department of Law, University of North Bengal, Darjeeling (W.B). The author has recently submitted his Ph.D thesis on "Reservation: Identification and Determination of Backward Classes in India".

² Under Clause (6) of Article 19 the state is authorized to impose Reasonable Restrictions on the right to carry on a trade, profession or business. The condition is that the restrictions must be- (a) reasonable, and (b) in the interest of general public.

contained the provision of reservation³. At present the Constitution provides reservation for three classes of citizens: Scheduled Caste, Scheduled Tribes and Other Backward Classes. Reservation is available to these classes of citizens only to the states services and this is not applicable to private jobs.

In the Public sectors, there is reservation of jobs in favour of Scheduled Castes and Scheduled Tribes and Other Backward classes according to the constitution of India to ensure their participation in different stages, from grassroots level to the policy making forum. In the public sector, the responsibility to provide social justice is partly discharged through job reservations. The technical efficiency in the case of public sector was also coupled with locative efficiency in terms of social justice⁴.

A debate is currently raging in the policy regarding reservations for scheduled castes and scheduled tribes in the private sector, similar to the one that is provided in the government and the public sector. The demand is based on the issues of social equity and also due to the possible, privatization of public entities.⁵

II. Early Initiatives- An Overview:

Subsequent to the narrowing down of an already tiny public sector due to privatization and the selective withdrawal of the State under the policy of liberalization, serious concerns have been expressed regarding the significance of the public sector reservation policy. There has been a growing demand, particularly by the Dalits for some kind of reservation policy for the Private sector, both inside and outside the Parliament of India. Responding to such demands, initiatives have been taken by the Government. The first such initiative was the Madhya Pradesh government's decision in 2002, to provide a share to the SC/STs in government contracts. Further, the Maharashtra government went a step ahead and passed an Act for reservation in private sector employment. More importantly, private sector reservation finds an approval in the Common Minimum Program (CMP) of the present United Progressive Alliance (UPA) Government. The present UPA Government has set up a Standing Committee to arrive at some workable policy for extending reservation to the private sector in India. But before any such decision is taken, the Government has called for a national dialogue to develop a common consensus on the issue. Ever since the

³ Article 16 (4) reads: "Nothing in this Article shall prevent the state from making any provision for the reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the service under the state"

⁴ Dipankar Mukherjee, M. P. Rajya Sabha. [Http://www. business-standard.com/article/opinion/should-there-be-job-reservations-in-pvt-sector-104061601005](http://www.business-standard.com/article/opinion/should-there-be-job-reservations-in-pvt-sector-104061601005), dt. 7.11.13.

⁵ [www. The hindubusinessline.in2004/08/12/stories/2004081200031000.htm](http://www.Thehindubusinessline.in2004/08/12/stories/2004081200031000.htm)

Government has expressed the need for a dialogue on reservation for the private sector, diverging views have been expressed by different sections of Indian civil society, academicians, persons from the corporate sector, media, and political leaders, which are often, in conflict with one other. A voluminous literature has also appeared in a short span of time, which indeed, reveals the inner mind of Indian civil society on one of the most important issues confronting it, namely, finding solutions to overcome the historical deprivation and continuing discrimination of the Marginalized Communities⁶.

The Common Minimum Programme of the Congress-led United Progressive Alliance government suggests that there be job reservations for scheduled castes and scheduled tribes in the private sector.⁷ The UPA government was serious enough to put in a reference regarding reservations in the private sector in the President's speech on June 7. Whenever a new government is sworn in, the President addresses a joint sitting of Parliament on the government's main policy proclamations.

The then President Dr. A.P.J. Abdul Kalam said that the government was sensitive to the issue of affirmative action including reservations in the private sector and it is committed to faster socio-economic and educational development of the scheduled castes and the scheduled tribes. May government would initiate a dialogue with political parties, industry and other bodies on how best the private sector can fulfill the aspirations of scheduled castes and scheduled tribes⁸. The logic behind job quotas in the private sector is that scheduled castes and scheduled tribes will have greater opportunity or economic and socio mobility⁹.

The issues that are posed against reservation policy for the private sector vary from complete opposition to reservation policy for the private sector on grounds that reservation interferes in the free working of markets; that employment of persons from discriminated groups presumably with lower qualifications, hampers productivity and efficiency; that the reservation policy in the public sector has achieved limited success and the extension of a similar policy for the private sector will not help the poor; and, that alternative remedies related to education, skill development and entrepreneurship development are better alternatives.

⁶Sukhadeo Thorat, Prashant Negi and Aryama, Reservations in the Private Sector – Issues, Concerns and Prospects, Indian Institute of Dalit Studies, New Delhi. Volume I, Number 01

⁷ [Http://www.rediff.com/money/2004/jun/09dt.htm](http://www.rediff.com/money/2004/jun/09dt.htm), visited on 7.11.13

⁸ Ibid.

⁹ Ibid.

In this small research paper I would try to find out the deep-rooted problem of backwardness of Indian citizen which compelled the framers of the constitution to lay down the provision of reservation under the constitution and to look out the possibilities for extending job reservation in private sector in globalised era. It would also be my attempt to see whether job reservation may be imposed upon the corporate sector as one of the corporate social responsibilities (CSR).

III. Problem of Inequalities and Backwardness:

In civil and cultural spheres, the Dalits may face discrimination and exclusion in the use of public services like public roads, temples, water bodies, and institutions delivering services like education, health, and other public services. In the political spheres, the untouchables may face discrimination in use of political rights, and in participation in decision-making processes. Due to physical (or residential) segregation, and social exclusion on account of untouchability (or touch-me-not syndrome), the Dalits may suffer from a general societal or “living mode exclusion”. Since there is a societal mechanism of social ostracism to regulate and enforce the customary norms and rules of the caste system, the Dalits, generally, may face opposition in the form of social and economic boycotts and violence – factors, which act as a general deterrent to their right to development¹⁰. Faced with intense group structured inequalities, deprivation associated with untouchability and caste-based discrimination, and the urgent need to correct these inequalities, the Indian State has made explicit use of multiple remedies against discrimination (in the form of legal measures and reservation policy) in employment, educational, political and civil spheres. Such policies, however, remain confined to a tiny government and public sector and the vast private sector comprising of agriculture, industry, and service sector (in which more than 90 percent of the SC/STs are employed) remains outside the purview of the reservation policy. On the other hand, such policies have been implemented, both for the public and the private Sector in other countries.

In India, under the customary rules of the Hindu social order, the erstwhile untouchables were denied right to property, to pursue businesses (except occupations, which were considered polluting), education, and employment (excluding manual labour). The consequences of such restrictions in the past are apparent even today in terms of lack of ownership of agricultural land, businesses or non-land capital assets, in education and ultimately, in the high incidence of poverty among the Dalits. A cursory look at the data for 2000 brings out these facts quite clearly. About three-fourths of the SCs reside in the rural areas, where the main source of income is

¹⁰ Supra Note 3

either, farming, wage labour or some kind of non-farm business. In 2000, only 16 percent of the SC households cultivated land as ownercultivators of land as against 41 percent among the Non SC/STs and only 12 percent carried on some kind of business. Taking both farm and (rural) nonfarm activities, only about 28 percent of the SC households got some access to capital assets as compared to 56 percent for the Non SC/STs. Inadequate access to agricultural land and capital assets leaves no option to the SC workers except to resort to manual wage labour; consequently, it leads to enormously high incidences of wage labour (manual) among the SCs (61 percent, as compared to only one-thirds for the Non SC/STs in the rural areas and about 64 percent in the urban areas). Further, in the urban areas about one-thirds of the SCs are casual labourers as against only 7 percent of the Non SC/STs. The unemployment rates based on current daily status (CDS) in 2000 were two times higher among the SCs (5.5 percent) as compared with the Non SC/STs. The SCs with higher incidences of wage labour and subsequently, high rates of underemployment tend to suffer from low incomes and greater levels of poverty. In 2000, about 38 percent of the SC households were below the poverty line in the rural areas as compared to less than 20 percent for the 22 Non SC/ST population. The incidence of poverty among the SCs was also as high as 50 percent among the agricultural labourers followed by about 40 percent among the non-agricultural labourers. In the urban areas also, poverty among the SCs was about 38 percent, too which was much higher as compared with about 19 percent for the Non SC/STs. The incidence of poverty too, was quite high among the casual labourers at about 60 percent. The SCs also lag behind in level of education, 37 percent as against 57 percent for the Non SC/STs in 1991.

After having delved into the deleterious impacts of historical exclusion in access to agricultural land, business, and education, we now present empirical evidence on continuing discrimination in the present in economic and social spheres with a focus on market discrimination. Though a massive array of literature on the practice of discrimination and untouchability is available, but we focus on the most recent study undertaken by Action Aid (India) conducted in 2000-2001 in about 550 villages from eleven states across India. The discussion relates to the incidences of economic discrimination in the market spheres and covers almost all markets. The study at the outset revealed that discrimination in labour markets operates through exclusion in hiring and lower wages. In about 36 percent of the villages, the SCs were denied casual employment in agriculture. In about 25 percent villages, the SCs faced discrimination in terms of wage payments. The SC wage labourers thus, received daily wages at a rate, which was lower than the market wages or wages paid to the Non SC/ST workers. Belief in the concepts of purity and pollution also come into effect in hiring of the SC labourers in house construction – in

about one-thirds of the villages, the SCs were excluded from employment in the construction of houses. In the case of other markets, the study observed discriminatory treatment towards the SC persons in access to irrigation water, public, and private services. In little more than one-thirds of the villages, the SCs were denied access to irrigation water for agriculture. In case of agricultural land, selective evidence from some states brings out the restrictions put in place by the higher castes towards the SCs for the purchase of private agriculture land, and the use of public land for agricultural usage and housing. In the case of access to the common property resources (CPRSs) like grazing lands, fishing ponds, and other resources, the SCs faced exclusion in about one-fifths (or 21 percent) of the sample villages

The continuing faith in the notions of pollution and purity by the higher castes associated with untouchability were particularly reflected in exclusionary and discriminatory behaviour of higher castes in consumer markets, i.e., in the sale and purchase of consumable goods, particularly eatables like milk, vegetables, and other goods. In 35 percent of the villages, the SCs were not allowed to sell any kind of goods in village level markets wherein, the identity of the SC persons was known. In about 47 percent of the villages (out of a total of 347 villages surveyed), the SCs were not allowed to sell milk to village cooperatives, and to private buyers. The survey data also revealed some isolated evidences on the practice of exclusion and discrimination in the sale and purchase of consumer goods such as bakery products, and vegetables etc.

At the outset, the main purpose of the reservation policy was to ensure social and economic justice; thereby realize the goal of the empowerment of the dalits and tribals. It can address certain social inequalities that pervade Indian society for so long. For, these social inequalities leave the so-called low castes deprived in everything from education to economy. Thus, the policy of job reservations intends to bring about proportional representation, as it is a mode of distributing benefits based on the proportion of population i.e. 15 percent for the Schedule Castes (SCs) and 7.5 percent for Scheduled Tribes (STs).

It was Dr. B. R. Ambedkar's instrumental role in the Constitution making: that the governments are now bound to implement the reservation policy on the basis of the principle of distributive justice and compensation for past disadvantages. But then, that was confined to only the public sector that had been shrinking over a period of time. At a time when the number of educated among these unprivileged classes is increasing in geometrical progression, their share of jobs in the public sector is dwindling on end. This

is more so since the last decade and half, all in the name of so-called globalization and till date¹¹.

IV. The Issues and Challenges:

In the Public Sectors, there is reservation of jobs in favour of Scheduled Castes and Scheduled Tribes and the Other Backward Classes according to the Constitution of India to ensure their participation in different stages, like grassroots level to the policy making body. But in the private sector, there is no such constitutional Compulsion and the land and labour are utilized to make an entrepreneur richer with no guarantee that the tribal who owns the land or the *Dalit* whose labour went into the mining process would get a share through a job in the company¹².

Now the point of extending reservation to the private sector is also being raised from the political platform. The discussion on reservation in the Indian private sector began in the 1950s but not one entrepreneur volunteered to ensure it. It is argued by protagonists of extending reservation in private sector that with globalization and the withdrawal of state from many spheres under the liberalization the little room is left for the reserved class to get job. Since public sector has not been generating enough employment, the so-called backward class must be accommodated in the private sector through quotas. If the reservation in public sector is justified why there should not be reservation in private sector? In countries like U.S., Northern Malaysia and others in Latin America, affirmative action was developed every beginning both in public and the private sector. As such the demand for reservation in private sector is being raised for the benefits of the Scheduled Castes and the Scheduled Tribes.¹³

So far private sector is concerned, it is purely a commercial concern, set up to earn profits or investible surplus to earn more profits. It is important to mention here that though the concept of reservation is contained under the chapter of fundamental rights but all the provisions under this chapter is not fundamental right. This is an enabling article which empowers state to make provision like reservation if it thinks so. Therefore, it is within the discretion of the state either to reserve certain post or not. No citizen can claim it as his right.

¹¹ Dr. K. Vidyasagar Reddy. Reservations In Private Sector: Not A Charity, But A Social Necessity [HTTP://WWW.COUNTERCURRENTS.ORG/DALIT-REDDY110805.HTM](http://www.COUNTERCURRENTS.ORG/DALIT-REDDY110805.HTM) 11 August, 2005, Visited on 7.11.13

¹² Dipankar Mukherjee, M. P. Rajya Sabha. [Htt://www. business-standard.com/article/opinion/should-there-be-job-reservations-in-pvt-sector-104061601005](http://www.business-standard.com/article/opinion/should-there-be-job-reservations-in-pvt-sector-104061601005), dt. 7.11.13.

¹³ <http://www.preservearticle.com/201103034382/dt.7.11.13>.

Indian business houses and organizations have rejected the government's suggestion of extending the job reservation policy for India's scheduled castes and scheduled tribes to the private sector, but have made a commitment to the concept of affirmative action through the implementation of various social justice schemes for these sections of the population¹⁴. Everybody knows that our private sector takes a lot of money from public sector banks and financial institutions, and there is a huge default in loan repayment and taxes. Those whose land, labour and capital are being used by the Indian entrepreneurial class can definitely seek some modicum of equality in job distribution.

Under the circumstances, to call upon only the public sector and government departments to discharge their social commitment, keeping the private sector insulated from the national goal of evolving social justice, would be contrary to one of the basic principles of governance in the country "" to provide full equality of opportunity in employment for scheduled castes, scheduled tribes and other backward castes. The Indian private sector should try to understand this basic idea behind the concept of social justice so that the partnership in entrepreneurship that it is clamouring for is matched by its action in partnering the objective of social justice, too.

The president's address showing government's sensitivity to affirmative action on reservation in the private sector "" through dialogue with political parties, industries and other bodies on how best the private sector can fulfill the aspiration of scheduled castes and scheduled tribes "" is, therefore, a step in right direction and the private sector should offer its cooperation in a positive manner.

V. Globalization, Competition and the Demand of Efficiency:

Globalization, as an ideology, connotes freedom and internationalism. It helps to realize the benefits of free trade and comparative advantage and the division of labour. It is a process by which producers and consumers come to treat the world as a single economic space. It leads to widening horizons, increased specialization and interdependence that has of course been taking place within countries for hundreds of years. What Adam Smith thought of self-generating economic growth within a single country is now being contemplated at the global level. Interaction of countries through trade not only expands the market but makes the gains interactive. It is supposed to enhance efficiency and productivity. It is therefore considered as both an opportunity and a risk. It is opportunity if only one could master the craft of doing business at increased levels of efficiency on the other hand, if the economy is plagued with inefficiencies, there is no greater risk than

¹⁴ <http://infochangeindia.org/corporate-responsibility/news/corporate-india-rejects-caste-based-job-reservations.html>

globalization. In the globalized world, a new process of internationalization and the spread of international production has emerged in which human resources are required to be knowledgeable, committed and willing to walk extra mile for the collective good of the business. To survive in global competition, business will have to adopt the best human resources policies such as performance-linked rewards and career progression to attract and retain the talent, more under the fear of being cannibalized otherwise.

Economies of scale result from the increased size of a single operating unit producing a single product reduces the unit cost of production with benefits for both producers and consumers, which can be achieved better from a market that spreads across a group of countries than in isolation. This is one of the major driving forces behind the emergence of globalization and essentially a competitive player in the domestic market alone can become the winner in global market. It is argued that technological diffusion is more prone to be rapid when increased competition from trade puts pressure on domestic firms to adopt new technologies. Such heightened competition forces businesses to innovate and adopt efficient technologies and managerial strategies that then place them in a better competitive position in the world economy. Globalization thus generates economies of scale which in turn facilitate emergence of efficient, market-responsive, economic actors which ultimately benefits both consumers and producers. The net result of the whole process is the emergence of world-class economic champions and larger markets as the creators of an "enabling" environment for growth. The resultant growth from the ongoing reforms is supposed to create jobs that pull up the poor into gainful employment by providing them more economic opportunity; it provides the revenue with which the government can build more schools and provide more health facilities for the poor; and it creates the incentives that enable the poor to access these facilities and also for the advancement of progressive social agenda.

Besides, the overall efficiency impact, the industry also points to the possible consequences of methods used in ensuring fair access to employment to the discriminated groups. It is argued that relaxations in qualifications for appointment may supposedly hamper the productivity of firms. Similar to the overall efficiency arguments, this argument too, has less support in economic theory and in empirical literature on discrimination. The fallacy of the argument becomes evident when one takes into account the fact that recruitment in public sector under reservation in India and elsewhere is based on the required qualification, and that the minimum norms of appointment and those of qualification are not relaxed. Therefore, the question of compromising productive efficiency does not arise. Though, some firms take necessary steps in the initial stages or recruitment through proper screening, orientation and then after appointment through mid-term

training of minority employees. But that apart, there are no studies, whatsoever, on the relative work efficiency of those recruited with reservation and those without reservation in India. Similarly, there is no evidence elsewhere in the world. In a comprehensive review of theoretical models of efficiency and impacts of various types of affirmative action's in the United States of America, Holzer and Neumark concluded: "Not surprisingly, the theoretical literature from labour economics generates ambiguous results on whether or not affirmative action's program results in efficiency gains or losses, much depends on whether or not discrimination exists in the absence of these programs, the presence of other market failures (such as, externalities and capital market and information imperfections) and on how they affect human capital formation and job assignments among the protected and the unprotected groups. Theoretical literature regarding affirmative action effects in university admissions and business procurement is virtually non-existent." On the empirical evidence they added: "The potential effect of affirmative action on performance, at least in the labour markets appears to depend heavily on how it is implemented".

Employers that practice affirmative action can (and often do) mitigate its potentially negative effects on performances by recruitment and screening before workers are hired, as well special training and evaluation efforts afterwards." The Malaysian experience also indicates that rapid economic growth during the 1980's had coincided with comprehensive affirmative action policy adopted since early 1970's, which involved massive redistribution of employment, capital, agricultural land, and educational opportunities in favour of the marginalized Malaya community (Nesiah: 1997). These insights from theoretical literature indicate that market discrimination brings inefficiencies in the allocation of resources and produce less than optimum economic outcomes, and therefore, argue for measures for market interventions to overcome discrimination and to improve the mobility of factors, particularly, labour and capital and to improve access of the discriminated groups to various markets.

VI. Corporate Social Responsibility (CSR)— The Meaning and its Application:

The very impact of the corporate sector in terms of finance and employment show that well-being of the corporate sector is of considerable significance to the society. In the environment of modern economic development, corporate sector no longer functions in isolation. The company must behave and function as a responsible member of the society just like any other individual. It cannot shun moral values nor can it ignore actual compulsions. The need is for some focus of accountability on the part of the management not being limited to shareholders alone. In the modern times, the objective of business has to be the proper utilization of resources for the

benefits of others. A profit is still a necessary part of the total picture but it is not the primary purpose. This implies that the claims of various interests will have to be balanced not on the narrow ground of what is the best for the shareholders alone but from the point of view of what is best for the community at large. The company must accept its obligation to be socially responsible and to work for the larger benefit of the community¹⁵.

No enlightened management can really remain aloof to the national problems such as unemployment, overpopulation, rural development, environmental protection including conservation of resources, control of population and provision for clean drinking water.

Responsible business is a form of corporate self-regulation integrated into a business model corporate social responsibility policy functions as a built-in, self regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms. In some models, a firm's implementation of corporate social responsibility goes beyond compliance and engages in actions that appear to further some social good, beyond the interests of the firm and that which is required by law.

VII. Conclusion:

A policy for the private sector reservation is necessary to provide equal opportunities to the discriminated groups, and to create an atmosphere conducive for economic growth. There are lessons to be drawn both from theory and empirical facts - from the experiences of the Indian reservation policy and similar policies in the other countries. The overview of the remedies being utilized in India and other countries presented in the preceding sections, indicate three alternative remedies being used. These include Equal Opportunity Laws as safeguards against discrimination, measures to ensure equal share and participation (assuming different names like reservation in India, affirmative action in the United States of America, positive action policy in United Kingdom, and reparation and compensation in Malaysia). Adoption of some or all of these remedies against discrimination for the SCs and similar groups in the private sector in India will be determined by the nature of economic discrimination faced by them in various markets. It needs no mention that the SCs in India suffered from societal discrimination in multiple economic and social spheres. Therefore, remedies against past and present discrimination in the private sector should necessarily cover multiple economic spheres and not just the labour markets alone. Reservation is needed for the upliftment of social and economic backward class people. Corporate social responsibility dictates that private

¹⁵ B. K. Sen Gupta *Company Law*, 1981, Eastern Book House Private Limited, 54 Ganesh Chundra Avenue Calcutta-13. at 766

sector also has a big role to play in social re-engineering. Country can be said to be developed only when all the stakeholders in the democracy are truly prosperous. As can be seen from the performance of public sector corporations like BHEL, ONGC, NTPC, IOC and so on. Even so, they were able to compete globally