

E A S Sarma

Former Secretary to Government of India

To

Smt Droupadi Murmu

President of India

Rashtrapati Bhawan

Respected Rashtrapati Ji,

In June this year, while addressing a gathering in the UK, Justice Shri D Y Chandrachud, the present Chief Justice of India (CJI), was reported to have made the following observations. *“the Constitution’s transformative dimension comes from its attempt to remedy discrimination. Flowing from it, working towards equality needs to consider pre-existing social and economic imbalances. Hence, the need for affirmative action.....The state, earlier the primary employer, is now a facilitator of private participation in economic activity. The Constitution’s provisions against discrimination in public employment exists only against the state. This, therefore, leads to the question if there’s a need for a comprehensive anti-discrimination law. The case against any form of discrimination is unexceptionable. But a discourse on constitutional protections in private employment is of relevance to only a sliver of the workforce as the structure of employment puts most of them beyond the ambit of legal safeguards”* (<https://timesofindia.indiatimes.com/blogs/toi-editorials/good-jobs-first-justice-chandrachud-argues-private-sector-needs-anti-discrimination-law-first-formalise-the-economy/?source=app&frmapp=yes>)

One could argue that Article 15 of the Constitution does not explicitly prohibit compensatory discrimination in favour of the SCs/STs/OBCs in the private sector. Considering the rapidly shrinking size of the public sector and the continuing discrimination against those sections of the society, it is desirable for the government to extend the concept of compensatory discrimination to the private sector in order to remedy the historic injustice meted out to the SCs/STs/OBCs, either by invoking authority under Article 15 or, if it is not permissible, by introducing the necessary amendments to the Constitutional provisions.

The Indian National Congress (INC) had, in their Common Minimum Programme (CMG) for the 2004 general elections, included the following assurance to the electorate

“The UPA government is very sensitive to the issue of affirmative action, including reservations in the private sector. It will immediately initiate a national dialogue with all political parties, industry and other organisations to see how best the private sector can fulfill the aspirations of Scheduled Caste and Scheduled Tribe youth” (<https://economictimes.indiatimes.com/news/economy/policy/the-common-minimum-programme-the-complete-document/articleshow/703712.cms>)

The UPA government did appoint a high level coordination Committee on Affirmative Action for Scheduled Castes/Scheduled Tribes in the Private Sector in 2006. The committee is reported to have held nine rounds of discussion till date, both during the tenure of the UPA government and, later, during the tenure of the present government, without any final decision in sight.

(<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1783930>). Apparently, the matter has not been pursued with the seriousness it deserves.

The question of extending reservations to the private sector has assumed special significance now, after the Union Finance Minister, in her Budget Speech in 2021, announced sweeping changes in the policy on disinvestment of central public sector enterprises (CPSEs). As a result, the Ministry of Finance has taken up disinvestment of many CPSEs, with the intention of completing the process within the next two years. There is also a move on the part of the Central government to ask the States to proceed likewise.

CPSEs employ 8,60,165 persons (31-3-2021), out of whom 4,31,216 (50%) belong to the SCs/STs/OBCs. 1,06,037 members belonging to the SCs/STs/OBCs are in managerial positions. Many States have their own PSUs. In addition, the Central and the State governments employ large numbers of SCs/STs/OBCs.

While reservations provide employment for those sections, in the overall socio-economic context, they have the primary effect of empowering them in the society. Disinvestment of the CPSEs would not only introduce uncertainty in the future of the existing CPSE employees, particularly those belonging to the SCs/STs/OBCs, but it will also close the doors permanently to recruitment from those sections, affecting the opportunities for both employment and social empowerment.

Privatisation will result in an overall shrinkage in the "welfare" space of the State, mandated in the Directive Principles, which implies a rapid withdrawal of the much needed social security cover for vulnerable sections of the society.

The 1991 economic reform approach has had a serious consequence for public sector employment, as many agencies of the Centre and the States have resorted to outsourcing services to the private sector, hitherto carried out in the public sector. In a way, this has provided an excuse for the Centre and the States to bypass reservations.

The share of employment in the public sector was 71% in 1991-92, in proportion to the total employment, whereas, by 2011-12, it declined to 59%. The total number of persons waiting for employment, as indicated by the Employment Exchanges, remained 1.3 times the total number employed in the public and the private sectors taken together, indicating the formidable magnitude of unemployment in the country, which continues to become more and more formidable.

(https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/14T_HB150920197CB642EE86624BCDA76DB8F8DF44F42C.PDF). While the public sector creates wide ranging opportunities for self-employment around the CPSE complexes, the private sector is likely to adopt less employment-intensive approaches.

Against this background, as rightly stated by Justice Chandrachud, a time has come to consider constitutional protection for disadvantaged classes of the society in private employment.

It is not as though the concept of affirmative action in the case of the private sector is something new. Even in an advanced country like the USA, where there is discrimination within the society, norms of affirmative action have been made applicable to private agencies.

Considering that a high level committee has been working on this subject since 2006, I appeal to you to intervene in the matter and advise the political executive to expedite a decision. If necessary, you may suggest appropriate provisions to be inserted in the Constitution in order to extend reservations to the private sector and do justice to the SCs/STs/OBCs.

Respectfully,

E A S Sarma
Visakhapatnam
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