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Bravo SC

It has done well to halt the reservations juggernaut, a modern holy cow

TOI Editorials

The Supreme Court has done well to halt the quota juggernaut with a ruling that makes eminent sense: states are not bound to provide quotas in government jobs and there is no fundamental right to claim reservation in promotion. Defending the Uttarakhand government's decision to fill posts in the state without providing reservations its legal team argued, correctly, that the exceptions in subclauses 4 and 4(a) to Article 16 of the Constitution – which guarantees equality of opportunity in matters of public employment – are enabling rather than mandatory provisions, and do not constitute fundamental rights in themselves.

In reality, the logic of reservations demands that they have a self-cancelling character. If it is contended that they institute equality of opportunity then they cannot continue in perpetuity, as the goal will have to be attained at some point. Surely it should be up to governments to determine if and when intended policy goals are achieved, and if it cannot be achieved then to shift to some other strategy. Making reservations itself a fundamental right denies governments any flexibility and amounts to a subversion of equality of opportunity.

In practice reservations have been turned upside down as ever more powerful castes muscle into this space brandishing their street power. The desperation for jobs as millions of youth enter the workforce in a slumping economy, combined with the comfort and perks of government jobs, have caused the latter to be coveted and led to intense caste wars to divide up the pie. This is not good for merit, for equality of opportunity, or for fostering a modern sense of citizenship transcending caste divides. It is high time Centre as well as state governments shifted to a different strategy for ensuring equality of opportunity: by offering high quality public education to all. And oh yes, don't forget to act on the overall economy too.

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Food for thought

Agricultural policies are leading to distortions. Turn them around to raise farm incomes

TOI Editorials

It is reasonable to surmise an economic policy is a mess when all the stakeholders are unhappy. The continuing disgruntlement over onion prices and policy is a manifestation of the larger failings of agricultural policy. Even as onion prices in wholesale markets have begun to drop, retail prices remain sticky. The distorted market signals nudge the government to continue with its ill-advised ban on exports, thereby hurting farmers. Neither farmers nor consumers are pleased and agriculture remains the slowest growing segment of the economy.

Another area where India's static agricultural policy has become counterproductive is the cereal procurement system, particularly that of wheat and rice. Government warehouses are overflowing with these cereal stocks; it was 81% in excess of the buffer norms in July last year. Food subsidy has become a drag on government finances as the PDS issue price for rice and wheat have remained unchanged since 2013 and cover less than 10% of the economic cost of procurement. Unfortunately, inefficiency in distributing cereals means that a growing food subsidy budget has been accompanied by an increase in grains locked up in warehouses. The adverse fallout spans groundwater depletion as well as aversion to diversifying cropping patterns.

Agriculture continues to be the biggest source of livelihood even if it's the slowest growing sector. This can change with a better set of policies in which states play a role. To begin with, government must reform its procurement system. It can start by following through on the suggestion of the Commission for Agricultural Costs and Prices to review open-ended procurement and end the habit of some states declaring a bonus over MSP. This combination nudges farmers to avoid crop diversification and thereby distortions continue. While the procurement policy tweaks can be done quickly, the more far reaching change will be in other areas.

About 80% of agricultural investment comes from farm households. Consequently, farmers directly bear most of the risks in a period characterised by extreme climatic events. This can be changed by encouraging private corporate investment which today contributes about 3% of the investment. The risks can then be spread among entities better equipped to mitigate them. Small and marginal farmers will be the biggest beneficiaries if they are linked through fewer intermediaries to the changing needs of the retail consumer. Two urgent changes which will catalyse transformation are digitisation of land records and smarter land leasing laws.

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Don't neglect public education

We are not laying a good foundation for the future by underinvesting in education

Narayanan Vaghul, [Former Chairman of ICICI Bank]

I became a banker over 60 years ago. In these past decades much has changed in our country. Some of it for the better and some of it for the worse.

One front on which things have improved in many ways is banking. I was an integral part of the transformation of the sector over this period. Greater autonomy to the state owned banks, increasing

competition through private banks, more transparent regulation, and widespread use of technology have played a role in the transformation of the banking sector.

Of course, this is not to say that our banking sector is now in perfect shape. While much has improved, it continues to have some deep problems, much of it arising from continuing state ownership and management of a large segment of the banking industry, and a few unethical entrepreneurs. But without doubt banking has come a long way from where it was in the 1970s.

I use the example of banking, which has been my life experience, to clearly point out that state interference and ownership can undermine certain sectors. Equally there are certain sectors where, if the state doesn't own and deliver its full responsibility, the sector becomes dysfunctional and ineffective. These are the sectors that develop and build the public good.

While one obvious example of such a sector is large scale infrastructure, even more fundamental are health and education. Health is no less important than education. I will focus, in this piece, on education.

Let me start with a startling number. The Union government's expenditure on education in 2017-18 was Rs 80,215 crore. From the 2017-18 annual financial audit of government finances conducted by the Comptroller and Auditor General (CAG), it is clear that Rs 94,036 crore of proceeds of education cess collected over the years by the government of India is lying unutilised in the Consolidated Fund of India. This is truly remarkable.

When the public education sector is struggling for funds on every aspect of education – infrastructure, teacher appointment, quality improvement, basic nutrition and more, why is the government holding on to amounts (that are more than its annual expenditure), which have been expressly collected for the purpose of education? Things have not improved in 2018-19 – though we don't know the exact numbers, since we don't yet have the CAG report.

Another direct reflection of the lack of importance to education is in the way public expenditure on education has declined from 10.9% in FY 2014 of overall public expenditure in the country to 9.7% in FY 2019; with almost all the decline coming from the Centre's part. This has meant that as a proportion of GDP the public expenditure on education has fallen from over 3% to under 3% – and that must be seen in the context of the much-accepted goal of 6% of GDP being spent on education.

The inadequacy of our public expenditure on education becomes stark when compared with countries around. Public expenditure as per cent of GDP, for a range of countries is: 7.5% for Bhutan and Sweden; 7% for Costa Rica and Finland; 6% for Kyrgyzstan, South Africa and Brazil; 5.5% for the UK, the Netherlands and Palestine; and 5% for Malaysia, Kenya, Mongolia, South Korea and the US.

It is quite clear that this list itself has small to big countries and low to high income countries. This data and its related implications are quite clear in the Government of India's own draft National Education Policy (NEP) that was released in May 2019.

Our underinvestment in education becomes even more glaring when the reality of the education of many of these other countries is considered. The OECD countries and the middle income countries have fully developed and often high quality education systems with access to all. Their expenditure on education is merely to run an existing system. Whereas, we in India need to still make substantial investment for

expansion, access and improvement in quality. Thus, our education expenditure must be inherently higher than these countries – when actually it is about half.

In fact, the only silver lining that i have seen recently on the matter of education is the NEP. It envisions a fundamental overhaul of our education – to ensure equity and quality. Many of its envisioned actions are highly laudable and urgently needed. For example, its commitment to equitable high quality early childhood education for all, its bold vision of transforming India's higher education with a foundation of liberal arts at the undergraduate level, and its clear direction on the overhaul of the teacher education sector.

Most of all its unambiguous commitment to public education is highly welcome and critical for the nations' inclusive growth and development. To ensure that this would become a reality, the draft policy also charts a course for public expenditure on education to double in ten years, from current 9.7% to 20%.

The government must focus on the most important of sectors which builds the future of our country – education – which is being starved of desperately needed funds and leadership. I hope that the Government of India uses the path laid out in the NEP to lead India decisively away from this pernicious trajectory that we are on – with the present and future both being deeply compromised – and does not dilute or compromise the draft education policy in the final policy when it is notified.

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No, court hasn't ruled against quotas

ET Editorials

It is possible to misread the Supreme Court verdict of Friday, February 7 on reservations in jobs and promotions for members of scheduled castes and tribes as a verdict against reservations. It is vital to recognise the Supreme Court ruling for what it is and what it is not. It is not a judicial pronouncement from the highest court against reservations. It is a clarification that reservations in recruitment and promotions are a matter of public policy, not of the law. The court verdict has no bearing on the desirability or otherwise of reservations. All the court says is that it is not possible for the courts to order the executive to implement quotas for scheduled castes and tribes in recruitment or promotions, as the basic law, the Constitution, enables, rather than mandates, quotas for socially and educationally backward classes, the scheduled castes and scheduled tribes.

The Supreme Court gave this verdict in a challenge by the Uttarakhand government to a high court order asking it to apply quotas to promoted posts of assistant engineers in the Public Works Department, negating a government decision of 2012 to fill all vacancies without reservations. The Supreme Court has taken the view that if the state government seeks to provide reservations, it has to assemble data to justify a proposition of inadequate representation of the classes of people for whom reservation is sought.

At the same time, finds the court, if the government does not seek to provide reservations, it is not incumbent on it to marshal evidence on the representation of different classes in its service. This might be correct in terms of legal technicality but it seems fair to expect the government to collect data on the representation of different strata of society in its employ before deciding on a course of affirmative action On the desirability of affirmative action, there can be little scope for quibble. However, that is not the case with the design of affirmative action. Quotas represent but one design, and not the best. The discourse must not shut out debate on alternative designs.

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A weak rebuke

It's unfortunate EC didn't punish hate speech in Delhi campaign

S Y Quraishi, [Quraishi is a former chief election commissioner of India and author of An Undocumented Wonder: The Making of the Great Indian Election.]

Twelve days of campaigning for elections to the Delhi Assembly have come to an end. Most Indians were, no doubt, waiting for the culmination of this campaign in which the development debate was overshadowed by hate mongering and outpouring of communal vitriol. Shaheen Bagh remained the bone of contention, a protest site that incited many of our politicians to make sinister comments like "Desh ke gaddaron ko…", there were references to "suicide bombers", and the incumbent chief minister was accused of being a terrorist. Such language should not be used in private space, let alone in public forums.

After the flurry of such hate speeches, I have been flooded with queries about the nature of the Election Commission's (EC) response. I was asked whether the Model Code of Conduct is toothless or the EC is ineffective and whether these offences are also under the purview of other laws of the land. My answer is these offences violate not only the MCC but also the Representation of People Act (1951) and Indian Penal Code, 1860.

Let's first understand the Model Code of Conduct. It is a set of behavioural guidelines for political parties and candidates for the peaceful conduct of elections, to prevent hate speech, malpractices, corruption and misuse of government machinery by the ruling party. Since it is not an Act passed by Parliament, the Code is not judicially enforceable. The action against a violator usually takes the form of an advice, warning or censure. No punitive action can be taken. No wonder, many consider the Code as toothless. That, however, is not true. Its moral authority far outweighs its legal sanctity. Political leaders worth their salt are scared of inviting a notice for a violation, as it creates negative public opinion. Besides, unlike the legal processes, its impact is instant.

The legality of the code has been judicially tested. Its first judicial acceptance came in 1997, when the Punjab and Haryana High Court gave the EC the power to enforce the code. "Such a code of conduct when it is seen that it does not violate any of the statutory provisions, can certainly be adopted by the Election Commission for the conduct of free and fair election, which should be pure as well," the Court said. The SC has repeatedly held that this must be enforced strictly.

The very first section of the MCC lays down the following:

Part I (1): " No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic." (Emphasis mine, throughout the article).

(2): "…Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided."

The Representation of the People Act (1951) categorically defines the above two as corrupt practices in Section 123 (3A) and Section 123 (4) respectively. With hate speech, the Act goes a step further and prescribes punitive measures in Section 125: "Promoting enmity between classes in connection with election — Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both."

It is important to note that Section 153A of the Indian Penal Code has a similar provision: "Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. Whoever (a) by words …or otherwise, promotes or attempts to promote, on grounds of religion, race…caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious … groups or castes or communities, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious … groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or (c) … whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,shall be punished with imprisonment which may extend to three years, or with fine, or with both."

Now that we are well-equipped with the provisions of the laws and the Model Code of Conduct, we must analyse the action taken by the Election Commission.

It must be appreciated that the EC was prompt in its action against the leaders accused of hate speech. While it instantly, suo moto, deprived the two leaders of their star campaigner status, it also punished

them with a gag order, using the ultimate weapon provided by Article 324. Moreover, the Commission categorically noted that it "strongly condemned" the statements by the two leaders.

The EC flexing its muscle outside the so-called "toothless" MCC and invoking Article 324 is indeed a refreshing change. In earlier instances, it often had to let the culprits go with a mere "warning, caution or censure". In its notice to BJP leader Anurag Thakur, the EC cited Sections 123 and 125 of the RP Act. What is baffling, however, is that if the Commission had found them guilty of offences deserving punishment, why did it stop short of filing FIRs?

Historically, the EC has always taken simultaneous action under the Model Code of Conduct and the other two provisions. While the MCC produces instant results, the penal provisions involve endless judicial processes. Not taking action under the IPC encouraged the worthies like Parvesh Sahib Singh Varma to commit a repeat offence of indulging in a vitriolic diatribe against the Delhi CM for which the EC indicted him a second time within a week. That such small-time leaders repeatedly defy the Commission should be a matter of concern. The answer also lies with the EC.