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A Letter to Justice Bela Trivedi from an ‘Untouchable’ Ex-colleague

Why Reservations should Continue

By: Rajesh Chavda

‘The facts you are aware of are based on the echo chambers in which judges who are mainly from privileged castes/communities interact with each other. They are also based on the defensive silence of untouchables like me when we move into your orbit.’

Dear Justice Belaben,

Perhaps you remember me. I worked with you from March to June 2004 on the establishment of the Gujarat National Law University in Gandhinagar. We were part of the small team that established the institution that would go on to become one of India’s top law schools. You were the acting secretary to the legal department of the Gujarat government, and I was part of the founding faculty.

I enjoyed working with you. You were not only an excellent administrator but also a caring person. You once invited me to your home in Ahmedabad for a delicious dinner. I believe you were fond of me. Perhaps that is why I received an unexpected compliment. Narendra Modi, the then chief minister of Gujarat, who was also involved in founding the Gujarat National Law University, said during the speech he delivered at its inauguration: “*Yeh jo Rajesh Chavda hai, woh dekhne me to itne chhote hai, par woh kitne mahan hai, aap nahi jante hai!*” (Rajesh Chavda looks small, but you don’t know how great he is).

You must have mentioned my work to him, I thought, and felt grateful for your goodwill towards me. Yet, despite our cordial relationship, as I was worried about a potential bias against me, there was one thing I was very careful about in our interactions: to never reveal my caste identity as an ‘untouchable’. I avoided conversations about politics, reservations and caste. My last name did not seem to give anything away.

Without any compulsion on the Supreme Court Collegium to appoint judges from any of the historically disadvantaged castes and communities, there is a gaping diversity deficit in the highest echelons of the Indian judiciary.

Today I read your judgement, delivered as a judge of the Indian Supreme Court, in the case of *Janhit Abhiyan v Union of India*. This judgement reveals the privilege of the majority bench and the bias against the untouchables, tribals and other backward classes.

In this judgement, you, along with Justice Maheshwari and Justice Pardiwala, have upheld the 103rd amendment to the Indian Constitution that gives 10% reservations in education and public employment to persons other than historically disadvantaged communities such as untouchables, tribals, and other backward classes.

You also suggested that all reservations given to untouchables, tribals and other backward classes should come to an end. You wrote in your judgement:

“ [T]he reservation system in the country... was introduced to correct the historical injustice faced by the persons belonging to the scheduled castes and scheduled tribes and other backward classes, and to provide them a level playing field to compete with the persons belonging to the forward classes. However, at the end of seventy-five years of our independence, we need to revisit the system of reservation in the larger interest of the society as a whole, as a step forward towards transformative constitutionalism.”

On what basis did you decide that the time has come to end reservations for the untouchables, tribals and other backward classes? Is there any data that supports the underlying assumption that they have such a level of representation in higher education and public employment that they no longer require the benefits of reservations?

To understand what happens to an institution that does not have reservations for untouchables, tribals and backward classes, let us look at the institution to which you belong.

How many Supreme Court judges are untouchables, tribals or members of other backward classes? Of the 256 judges appointed to the Court since its inception until November 2021, [only five have been from the untouchable groups and one from tribal communities](#).

Without any compulsion on the Supreme Court Collegium to appoint judges from any of the historically disadvantaged castes and communities, there is a gaping diversity deficit in the highest echelons of the Indian judiciary. And so, there is no one to counter the fallacy of the assumption that untouchables, tribals and other backward classes have advanced so much that they do not need reservations.

If there were no reservations for untouchables, [I would not have been admitted to the National Law School, Bangalore](#), and would not have become a lawyer. I would not be writing to you today to stand up for the millions of Rajesh Chavdas who need reservations to compete on a playing field that has an invisible reservation system for the sons and daughters of privileged castes

Your judgement concludes:

“Therefore, similar time limit if prescribed, for the special provisions in respect of the reservations and representations provided in Article 15 and Article 16 of the Constitution, it could be a way forward leading to an egalitarian, casteless and classless society.”

I wonder what this egalitarian casteless, classless society will look like.

When we worked together in 2004, one of the first things you did at the start of the Gujarat National Law University project was to organise a Hindu ritual presided over by Brahmin priests. Can you imagine a casteless society in which a new university project begins with a Hindu ritual presided over by untouchables? Will Brahmins voluntarily give up their exclusive entitlement to carry out Hindu religious ceremonies?

|| [\[E\]very untouchable who succeeds is a stumbling block for the privileged castes longing to do away with reservations.](#)

When I was looking to get married, between April 2004 and June 2006, I contacted several women on matrimonial websites, including some from the privileged castes. The names of the elite educational institutions on my resume – Columbia Law School, New York and National Law School, India – attracted many of them. But then they would ask me about my caste identity. The moment I revealed I was an untouchable, they were not interested in me anymore.

Do you think those women and their families will stop poking and probing prospective spouses about caste when you take away the reservations for untouchables? (Note: my wife is a lovely woman born to parents of privileged castes who recognised my worth beyond my caste identity.)

When there's a death in our family, we the untouchables of Gujarat have been burying the dead bodies instead of cremating them. In 2016, it rained very heavily in my ancestral village and our burial ground was flooded. During the floods, one of my neighbours passed away, and with the burial ground waterlogged, it was not possible to bury him. There are two crematoriums in the village and the relatives of my deceased neighbour pleaded with the privileged castes of my village to let them cremate him there. They refused because untouchables pollute their crematoriums.

In this casteless society you look forward to, will you stop reserving crematoriums for the privileged castes?

In September 2017, an untouchable boy of 20 years was lynched by a few privileged caste people in a village neighbouring my ancestral village. He went to watch the public garba-raas dance being performed by the privileged caste people during the Hindu festival of Navratri. The privileged castes did not like it, so they killed him. Do you think they need quotas to continue to feel entitled to the lives of untouchables?

Your brother judge Justice Pardiwala has stated that BR Ambedkar, the chairman of the drafting committee of the Indian Constitution, wanted reservations to end within 10 years of their commencement. He does not cite any source for his assertion. In fact, as my fellow untouchable brother [Anurag Bhaskar demonstrated in this note](#), this is patently false.

The initial time limit of 10 years was imposed only on political reservations (subject to a few conditions), and not on reservations in public employment and education.

Further, as shown in the below speech delivered by Ambedkar on August 25, 1949, in the Constitutional Assembly, Ambedkar was not in favour of any time limit even on political reservations:

“I personally was prepared to press for a larger time, because I do feel that so far as the Scheduled Castes are concerned, they are not treated on the same footing as the other minorities...it would have been quite proper I think, and generous on the part of this House to have given the Scheduled Castes a longer term with regard to these reservations...For the Scheduled tribes I am prepared to give far longer time. But all those who have spoken about the reservations to the Scheduled Castes or to the Scheduled tribes have been so meticulous that the thing should end by ten years. All I want to say to them in the words of Edmund Burke, is ‘Large empires and small minds go ill together.’”

Even as you and Justice Pardiwala want the reservations for the historically disadvantaged castes and communities to end, you are also not so subtly paving a way for the continuation of the quota for members of the economically weaker sections (other than untouchables, tribals and other backward classes) – the EWS quota.

In 1992, the Supreme Court ruled that the total number of reservations cannot exceed 50% of the total seats and positions in educational institutions and government jobs. But your bench held that this applies only to reservations for the untouchables, tribals and other backward classes. It does not apply to the EWS quota.

...[G]oing by the income criteria for the EWS quota, more than 90% of Indians – other than untouchables, tribals and backward classes – are eligible to claim its benefit.

According to the [Indian Census of 2011](#), the aggregate Indian population of untouchables and tribals is 25%. The [Mandal Commission](#) appointed by the government in 1979 to “identify the socially or educationally backward classes”, estimated that the aggregate Indian population of other backward classes to be 52%. Thus, the total aggregate population of untouchables, tribals and other backward classes in India is approximately 77%. However, the Supreme Court has restricted their reservations to only 50%.

Elsewhere in your judgement, you wrote:

“As well settled, it must be presumed that the legislature understands and appreciates the needs of its own people. Its laws are directed to the problems made manifest by experience, and its discriminations are based on adequate norms. Therefore, the constitutional amendment could not be struck down as discriminatory if the state of facts are reasonably conceived to justify it.”

Has it though? The facts you are aware of are based on the echo chambers in which judges who are mainly from privileged castes/communities interact with each other. They are also based on the defensive silence of untouchables like me when we move into your orbit.

Since we cannot agree on the facts, let’s return to the numbers. Based on the criteria for the EWS quota, any person (other than untouchables, tribals and other backward classes) whose family income is lower than Rs 66,666 per month is eligible to avail the benefit of these reservations. According to the [State of Inequality in India Report](#) prepared by the Institute for Competitiveness in May, Indians earning a monthly wage of more than just Rs 25,000 are in the top 10% of earners in the country. This means 90% of Indians earn less than Rs 25,000 per month.

Hence, going by the income criteria for the EWS quota, more than 90% of Indians – other than untouchables, tribals and backward classes – are eligible to claim its benefit.

In other words, the EWS quota is not for the economically weaker sections.

All those years ago in Gandhinagar, I remember one meeting when a senior official of the Gujarat National Law University and I were discussing admissions with the minister for law of Gujarat. The official asked, “What should we do about reservations? Should we include them in the admission process?” And the minister said, “Of course, it’s our constitutional duty.”

I sat there quietly, shocked that the official, who was an expert in law with an international reputé, could even ask such a question, wishing I could speak and claim my experience as a product of that reservation system.

But also knowing that it was not safe to do so. That every untouchable who succeeds is a stumbling block for the privileged castes longing to do away with reservations. For them, I am the problem.

Yours,

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