

## Quaid-e-Millat Muhammad Ismail Sahib on Reserved Constituencies

*Lakshana R\**

Scholar, NALSAR University of Law, Hyderabad, Telangana, India

### **Abstract**

*The topic of reserved constituencies has been a hotly debated issue before and after the independence of India. Several scholars from various social, economic and cultural backgrounds have diverse opinions on the topic. Those who oppose reservations in electorates argue that such systems merely serve to further deepen the schisms that the Indian society is benighted by. The minorities tend to overwhelmingly favor it since they have experienced the tyranny of the majority during several junctures in the long history of India. Apart from the lessons learnt from historical experience, the thoughts and viewpoints of prescient scholars voiced during the constitutional debates provide a keen insight into the various dimensions in the complex issue of reserved constituencies. The aim of this paper is to understand and analyze the opinions of Muhammad Ismail Sahib, popularly known as Quaid-e-Millat on the issue of reserved constituencies and draw linkages to the issues related to affirmative action in contemporary times.*

**Keywords:** Reserved Constituency, Electorate, Minority, Majority, Quaid-E-Millat, Constitutional Assembly Debate, Religion, Muslim.

\***Author for Correspondence** E-mail: lakshana@outlook.in

### **INTRODUCTION**

Muhammad Ismail Sahib, a member of the Muslim league, was elected to the Constituent Assembly from the Madras Presidency. He is fondly remembered in Tamil Nadu and Kerala as Quaid-e-Millat, meaning leader of the nation. He was a staunch Muslim and a man of commerce; the views he expressed during the Constitutional Assembly Debates accordingly advanced the interests of the business class and the religious freedom of minorities. [1] He favored the expansion of the charter of liberties under article 19 [2] and strongly opposed the Uniform Civil Code which was intended to be enshrined under art.35 as a regimented civil law. [3] He was also in favor of liquor prohibition and argued that it should at least be made part of the Directive principles. [4] Most importantly, Quaid-e-Millat vehemently argued for separate electorates for minorities including Muslims. His views with respect to reserved constituencies are particularly relevant today in light of three judicial decisions: the recent Gujarat High Court ruling against reservations

for poor people from upper caste communities, [5] the Supreme Court ruling against the inclusion of Jats in the Central List of Backward Classes [6] and the Punjab and Haryana High Court's stay on the expansion of Backward class list in the State. [7] The judicial decisions can be understood better with a background of Quaid-e-Millat's views on reserved constituencies for minorities.

### **Need for Retention of Reserved Constituencies**

The Report of the Advisory Committee on Minority Rights [8] supported the abolition of separate electorates and believed that the reservation of seats for religious communities leads to a certain degree of separatism. Statutory reservation for seats for minorities except the Scheduled Castes and the Tribal was found to be unjustified. [9] At the outset, Ismail Sahib shows his appreciation for the suggestion to continue the safeguards that exist for the benefit SC/ST and moves on to make a case for the inclusion of Muslims along with Scheduled Castes and Tribes.

Quaid-e-Millat believed that the Schedule Castes have been rightly given the safeguard of the reservation of seats for them in the legislatures since the oppressed classes are breaking free from a difficult past and entering the world of freedom. When Scheduled castes that are constituted by people of the same race, culture and religion as the majority community can be recognized as different and awarded separate electorates, the same special provision should be more justified in the case of other communities which are admittedly different from the majority community. The Muslims as well as the other communities want to contribute effectively and efficiently towards the harmony, prosperity and happiness of the country, which is their motherland and for that purpose, they want to have equal opportunities with other people. Other members said that they may express their views through the representatives elected by all the people put together. Ismail Sahib identified two problems with that.

Firstly, supposing there is a difference of opinion between the minority community and the majority community then the representative of the majority community cannot represent the different views of the minority. Secondly, since the patriotism of Muslims need no longer be questioned there is no justifiable reason to treat Muslims differently from other minority groups as far as reservations are concerned.

Ismail Sahib adds that placing faith and trust in the elected members of Government is not the best way forward for minorities. He says that the heads of Government could be certainly gentlemen with a sense of justice and generosity. He tactfully argues that the illustrious men at the top are not omnipresent and they certainly cannot control what eventually happens across the country. Goodwill and good faith are certainly required but they cannot be a substitute for constitutional protection. Goodwill has to be grounded the safeguards provided to minorities and it cannot be left hanging.

Ismail Sahib further argued that separate electorates for minorities is an indispensable

part of guaranteeing their self-expression. Previously our country was under foreign rule. It was that the system of separate electorates was a device invented by the Britishers to divide the people and perpetuate their rule over them. But at present we are an independent nation and the significance of separate electorates will be different now. It is only when people have separate electorate that the real representatives of the people, can go and represent their views before the Government or in the legislature or before the majority community. Minorities need the right of self-expression and the right of being heard. The question which they may be agitating about may be decided in any way, but what is meant by separate electorates is only the right of self-expression and allied with it, the right of association.

He dismisses the argument that separate electorates would lead to divisiveness by creating a spirit of separatism. He submits that separate electorate is not separatism at all; but a recognition of differences between one group of people and another and the manifestation of the recognition in allowing for separate representatives. Therefore, it is not a device of separating the communities but a device of bringing together people through inclusive debate and discussion.

#### **Religious basis of minorities**

Many members of the House like Ananthasayanam Ayyangar raised an issue with respect to the fact that religious beliefs being a determining factor of minority status can lead to unnecessarily conferring benefits on some at the cost of exclusion of many deserving groups like the upper caste poor and Sikhs. Quaid-e-Millat responds by taking the example of Europe where minorities are formed mainly on the basis of language and race but distinguishes it from our country where the conditions are fundamentally different. He states that religious differences manifest in various aspects of life and becomes a standard of estimation. He adds that Scheduled castes are who they are because of their religious beliefs and practices but treads cautiously by adding that religious differences don't necessary create a friction between

people. But he emphasizes that unity is still the aim, but the means is no forced physical oneness or regimented uniformity. He understands unity to signify harmony which would be possible only when all sections of people are content.

He invites attention to past electoral practice, in response to members who argued that separate electorates will lead to antagonism. He firstly states that the same has been going on for many years. If the mass of the people really resented this form of election, then there ought to have been trouble at the time of the elections more than at any other time. No trouble or rioting or disturbance has been noticed and he attributes the same to people's recognition of the rights of different communities to elect their own representatives.

He further argues that there is no necessity to do away with these inherent differences between different religious groups of people. He says that difference is in the very nature of human beings. We have to face and meet such differences in the most suitable way and the most suitable way is one based upon giving contentment and satisfaction to the people concerned within legitimate bounds and limits. It would therefore be wrong to dictate one group of people to give up certain differences in their way of life.

In arguendo, he submits that even if doing away with such differences is necessary, the same cannot be achieved by ignoring them, because doing away with separate electorate means ignoring all the differences that exist between one group of people and another. Ignoring them and trying to forget the differences is not the way to deal with them. It will create and breed a feeling of grievance, discontent and dissatisfaction amongst the people and this would be immensely problematic.

#### **Duty of Muslims unto Muslims**

Ismail Sahib talks about the duty of every Muslim in the Constituent Assembly to do right by the community they belong to. He strongly argues that those Muslim members

who advocate the abolition of reserved constituencies have 'repudiated the ticket on which they were elected and on which they have come to the Assembly' thereby demolishing their representative character. Hence, according to him, they cannot be said to be representing the views of the minorities of the Muslims. He categorically states that reserving separate electorates for Muslims is the only way to give the community the right sort of representation in the legislatures. [10]

#### **Separate electorates in other jurisdictions**

Ismail Sahib puts forth that in other countries like Poland, Yugoslavia, Bulgaria, Albania, Greece and Turkey et al special electoral arrangements have been made for minorities. Albania despite being a small country with a small population had some separate electoral arrangement for the minorities and did not fear that it will divide the country into smaller bits. In the other countries mentioned above, but the minorities had the safeguards that they were in need of under the conditions prevailing in those countries. In our country, he submitted that it is separate electorates that will give contentment to the minorities and will place them on equal footing with other sections of the people.

He urged the members of the Assembly to place their faith in the wisdom of the great leaders of the world who could not have erred when they made special arrangements for minorities in such matters as personal law, religious instruction and electoral affairs among others. In the case of the Ruthenians in Poland, local autonomy was provided despite having just emerged from the First World War.

#### **Communal harmony as opposed to communalism**

Z.H. Lahiri articulated the views of certain members and argued that if the representatives elected by Muslims represent only Muslims, it is communal electorate and therefore, the whole process would be tainted with communalism. Quaid-e-Millat responded by problematizing the understanding of communalism itself. He states that if to say that one is a Muslim or to say that one is a Christian is Communalism, then no

community can help being communal. Minorities want to live as peacefully as any other section of the people and so they insist upon this system of safeguards and the system of separate electorates and reservation of seats. They know it is only through this they can approach, make a real approach to the other people and thereby cement the harmony to which they are wedded. It is only reasonable that where differences are concerned, they should be given a means of representing their views. Then it does not mean that in other matters, they cannot join hands with the other sections of the people.

He further pointed out that every honorable Member of this House has been elected on a communal basis since people only voted representatives of their own communities. Such election has not warped their mind and it has not affected matters of general import and therefore, it is neither right nor logical to say that separate electorates really divide people. If they are given this right which they are enjoying for a long time, they are satisfied and so they will co-operate with the other people, and there will be harmony in the land. Therefore, he concluded that separate electorate instead of creating any trouble is really the device of bringing about harmony amongst the people and cementing co-operation and unity.

## CONCLUSION

The three judicial rulings mentioned at the beginning involve moot points that were unresolvable during the Assembly debates. The Gujarat High Court judgment delivered on August 3<sup>rd</sup>, 2016 can be seen in the context of the difficulties faced by the Assembly in ensuring that economic status is not conflated with historical injustice and social disadvantages. Gujarat High Court quashed the 'Gujarat Unreserved Economically Weaker Sections (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Ordinance, 2016' and said that allowing reservations for poor people of the upper castes would be against the intention of the framers of the Constitution, which itself is

unclear. The Supreme Court decision similarly overruled a notification that sought to include the Jat community as a Backward class in 2014 and the Punjab and Haryana High Court stayed the quota for some communities under the new Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Bill, 2016. Hence, at the intersectionality of caste and economic status, the have-nots among the higher castes and lesser populations of socially underdeveloped communities are being ignored and no constitutional protection has been provided to them. The Constitutional jurisprudence in this regard has to evolve and develop further.

## REFERENCES

1. Om Prakash Ralhan, *Encyclopedia of Political Parties*, vol. 33-50 at 13 (1998).
2. Constituent Assembly Debates (Proceedings), Vol. VII at 831; See also John Dayal, *A Matter of Equity: Freedom of Faith in Secular India* 359 (2007).
3. Kiran Deshta, *Uniform Civil Code: In Retrospect and Prospect* (2002).
4. Constituent Assembly Debates (Proceedings), Vol. I, 9<sup>th</sup> December 1946.
5. *Jayantbhai Manan & Ors. v. State of Gujarat* (yet to be reported); See also Mahesh Langa, *Gujarat High Court quashes ordinance on 10 % quota for economically weak among upper castes*, *The Hindu*, August 4<sup>th</sup>, 2016.
6. *Ram Singh & Ors. v. Union of India* W.P. (C) No. 274 of 2014.
7. *Murari Lal Gupta v. State of Haryana* (yet to be reported); See also TNN, *Opposition, Jat bodies blame Haryana government*, *The Times of India*, May 27<sup>th</sup>, 2016.
8. Report of the Advisory Committee on the subject of Minority Rights, Sardar Vallabhai Patel, Chairman, Advisory Committee on Minorities, 8<sup>th</sup> August 1947 (presented on August 27<sup>th</sup>, 1947); See also Dr. Rajendra Prasad: *Correspondence and Select documents*, Vol. 8 at 303 (Valmiki Choudhary ed., 1987).
9. Vidhu Verma, *Non-discrimination and Equality in India: Contesting Boundaries of Social Justice* 220 (2012).

10. India (Central Government and Legislature) (Amendment) Bill 1946, Constituent Assembly Debates (Proceedings), Vol. VIII, Wednesday, the 25th May 1949.

**Cite this Article**

Lakshana R. Quaid-e-Millat Muhammad Ismail Sahib on Reserved Constituencies. *Journal of Constitutional Law and Jurisprudence*. 2019; 2(1): 15-19p