CHAPTER 3

REVIEW OF LITERATURE ON OBCs

3.1 MUSLIM COMMUNITIES AND THEIR VARIED IDENTITIES

Muslims are the followers of Islam, which advocates for an egalitarian society. In Islamic ideology there is neither a difference of high or low, nor pure and in pure. Islam does not admit inequality on the basis of race, language and other ethnic verities. But the groups that adhere to Islam though commonly designated as ‘Muslim community’ are in practice not a homogeneous entity. There are both horizontal and vertical divisions among them on the basis of various social distinctions. One of the most important aspect of this inter group differentiation among the Muslims is continuing through ethnic and caste like divisions since historical times. In recent times status group and class like divisions are also conspicuous among the Muslims. There are many occupational groups in Muslim society, which have experienced marginalization and backwardness and their social situation is not much different from OBCs of the country.

The differentiations that emerged among the Muslims at first is between the descendants of the so-called foreign ancestors and the indigenous converts. The former segment is known as Ashraf, while the latter segment is called as Ajlaf. Those who called themselves Ashraf are the gentry and considered themselves as aristocrats. They are the land-owners, civic and religious leaders and comparatively wealthier. The Ashraf constituted the elite section of the Muslim society. They are further sub-divided on the
basis of their ethnicity and place of origin. Among them there are four major ethnic and
social categories, viz. Sayyad, Shaikh, Mughal and Pathan. The Sayyad and Shaikh are
believed to have descended from Arab ancestors. While the Mughal and Pathan are
claimed to have descended from Mughal and Afghan conquerors. Ajlaf are the toiling
masses and peasants, therefore, could not lay any such claim of noble ancestry. There are
innumerable occupational groups among the Ajlaf. There are about 170 Muslim groups in
India which are considered to be marginalized socially. Actually the social gradation
among the Ajlaf is mostly determined by their past Caste characteristics. At the bottom of
the social ladder there are those Muslims who do scavenging, sweeping and such other
unclean jobs. They are commonly referred as Arzals. Owing to the impact of the notion
of nobility among Ashraf and caste background among Ajlaf and Arzals the segments in
Muslim society are generally arranged in stratified order. Although Islam does not
recognize caste differentiation among its adherents several categories of Muslims
belonging to Ajlaf section have traditionally been treated as low caste in their
occupational and in matters of social relations (Ahmed 1973: Ansari 1960: Mandal 1980:
Sachar 2005).

In pre-British days Muslims of upper social (Ashraf) strata enjoyed politically
dominant position as well as the privileges. Many of them controlled administration,
army and land. Some were involved in trade and commerce. The Muslims of lower strata
(Ajlaf) retained the traditional occupation. Among them there were peasants, craftsman
and serving sections. They were underprivileged and downtrodden. But during British
rule the Muslim of both the elite (Ashraf) and non elite (Ajlaf) categories were seriously
affected owing to radical changes in economy polity and society of the colonial India.
The socio, economic changes taking place in colonial India rapidly by passed the Muslims for various reasons. Further the middle that emerged in Muslim society at a later phase of colonial era was seriously affected due to partition of the country. Partition created a great vacuum of middle class and that caused a serious set back in development and progress of Muslim society. Although statistically data is not available, it is widely assume that the heaviest migration of Muslims during partition was from upper and middle strata of the society. This left the remaining, Muslim population in India more disadvantaged than before (Mandal-1996).

The socio-economic condition of the Muslims has not changed much in free India. The various reports and research studies clearly show that the Muslims in India are economically, socially and educationally backward. The economic backwardness of the Muslims is cyclical and ongoing process leading to educational and social backwardness and turns to economic backwardness. More over, Muslims are not only backward, but also a minority community of the country. Along with there are many other non-Muslim communities in India, which also suffering from the stigma of backwardness. Disadvantaged sections in India including the Muslims are awakening in recent times and organizing movements for equality and social justice under forward-backward, socio-political set-up of the country (Engineer1991: Government of India 1983: Mandal 1997: GOI 2005).

It is a common knowledge that Muslims constituting 14 percent population of India are not only the largest minority community, but also highly noticeable in the entire length and breath of the country. Muslim of all part of India has contributed
tremendously in the evolution, development and transformation of society, culture and civilization of India. Their role in the freedom struggle of the country is unparallel. This significant minority community has been reduced to the lowest socio-economic stratum in post-Independent India. They have lagged behind (and are continuously lagging behind day by day) the scheduled castes in many walks of life. They are educationally most backward, economically poor and politically powerless community of the country. More often than not communal violence is organized against them in which innumerable Muslims are maimed and killed, their women are raped and their hard earned property is demolished and looted. They are forced to live in dingy lanes and slums. Constitutional guarantees are dream for those Governmental agencies appear to be indifferent and discriminatory towards them. No political party seems to be sincere for ameliorating their condition and ensuring them safety and security, indeed they have become a colonized community.

Marginalized status of Indian Muslims is not merely confirmed by individual researchers and surveys of voluntary organizations, but also government reports. The high power panel under the chairmanship of Dr. Gopal Singh set up by the Ministry of Home Affairs in the early 1980 to enquire into the conditions of religious minorities scheduled castes (SCs) and scheduled tribes (STs) found that “Muslims and Neo-Buddhists are the most educationally backward communities at the national level” (Report on Minorities, 1983: 3-4). The report also pointed out that their economic condition was worse than that of SCs and STs. They were deprived of benefits of developmental schemes which government launched for ameliorating conditions of poor and marginalized sections of the society. They were under-represented in governmental
services and decision making bodies (Rafiq Zakariya, 1995: 163-166).

No much improvement in the conditions of Muslims has taken place in the last 23 years, i.e. after submission of Dr. Gopal Singh Committee Report. This is evident from the findings of the Prime Minister’s High Level Committee under the chairmanship of Justice Rajinder Sachar, constituted to enquire into the socio-economic and educational status of Muslims on 9th March 2005.

India cannot claim to be a ‘Just society’ or a powerful nation if its largest minority remains deprived, handicapped and marginalized. Hence, there is an urgent need to take meaningful steps for upliftment of Indian Muslims who are living in abject poverty, insecure condition and are under-represented in governmental services, educational institutions and in decision-making bodies.

3.2 OTHER BACKWARD CLASSES: MEANINGS

The term “Backward Classes” has a specific connotation in our country. The Backward classes include Scheduled Caste, Scheduled Tribes, and Other Backward Classes. The main underlying assumptions in the concept are; (a) Social and economic handicap, have rooted in social, economic and religious institution, have rendered certain groups of our society severely disadvantaged. They have been systematically denied opportunities to participate in the socio-economic and religious affairs of society (b) with our commitment to the socialistic and democratic form of social, economic and political order, with emphasis on equality of opportunity, reduction of in equalities and justice for all, the problems of protection and promotion of social and economic mobility at an
accelerated pace of the backward classes deserve special attention in our efforts for socio-economic development. (c) Ameliorative measures adopted for the development of these groups should be compensatory, in that they take into account the loss incurred to these groups as a result of discriminatory practices directed against them, consequently, a number of special provisions have been made in our constitution to safeguard the interests of these groups and to promote speedily their socio-economic mobility. Considerable sums of money have been spent during the least .......... five years plans on welfare programmes for these groups.

We say at the outset that under the constitution of India the expression classes of citizens means group of people associated with their religion, race or caste. The said expression is used in Articles 15, 16, 29 (by virtue of clause 4 of Article 15), 338, 340. Articles are produced below for immediate reference.

15 (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to.

(a) Access to shops, public restaurants, hotels, and places of entertainments, or,

(b) The use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or party out of state founds or dedicated to the use of general public.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the state from
making any special provision for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes.

16 (1) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

(4) Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favor of any backward class of citizens, which in the opinion of the state, is not adequately represented in the services under the state.

29 (2) No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state founds on grounds only of religion, race, caste, language or any of them.

15 (4) Nothing...in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

340 (1) The president may by order appoint a commission consisting of such persons as he thinks fit to investigate the condition of socially and educationally backward classes within the territory of India and the difficulties under which they labor and to make recommendations as to the steps that should be taken by the union or the
state to remove such difficulties and to improve their conditions and as to the grants that should be made for the purpose by the union or any state and the conditions subject to which grants should be made, and the order appointing such commission shall define the procedure to be follow by the commission.

(2) The commission so appointed shall investigate the matters referred to them and present to the president a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of parliament.

338 (1) there shall be a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the president.

(2) It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this constitution and report to the President upon the working of those safeguards at such intervals as the president may direct, and the president shall cause all such reports to be laid before each house of parliament.

(3) In this article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the president may, on receipt of the report of a commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community.
Part xvi of the constitution, which contains article 330 to 342, intends to make special provisions relating to certain classes. It is common knowledge that India is a land of many castes, tribes, tribal communities, races and many religious communities with their respective sections. "There are some Jews there and many Christians. There are many million of Mohammadans in the land. There are Buddhists, Jains, Kabir panths, Sikhs. There are Brahmasamaj, and the Aryasamaj. There is in the hill country, worshippers of trees, rivers and spirits. In India today there are many religion and religious sects. The followers of Brahmanism still believe in the holiness of the caste. Brahmanism is the only religion in the whole world teaching the belief in the division of people into castes." The religion which best illustrates not only the general line, but also the immense diversity and complexity within that pattern, is Hinduism. Hinduism is prehistoric, and India has been called the 'Cradle of Religion'.

The constitution recognizes the factual existence castes, tribes, races, religious communities and people of peculiar descent. In part xvi each of such groups is termed as class. Census Reports, Gazetteers, anthropologists, social scientists, etc, have described each caste, tribe, racial community or group and religious community as a class. Article 338, 341 and 342 authorized the president to specify the factually existing social classes but they do not authorize him to make any new classes. It is accepted that Scheduled Caste and Scheduled Tribes are socially and educationally backward classes of citizens. Indian society consists of other classes also, and of them some are also socially and educationally backward. Scheduled caste and scheduled Tribes were discriminated against for long in social, economic, educational, and political fields, and so they deserve to be protected, and their interest in those fields promoted. They were subjected to all
forms of social injustice and exploitation. There for as one of its fundamental principles of directive policy, the state is enjoined with the duty of ameliorating the condition of Schedule Caste and Scheduled Tribes (Art.46). Indian society is not rigidly divided into Scheduled Castes, Scheduled Tribes and the rest. There are other classes who are similarly subjected to social injustice and exploitation. They also are similarly discriminated against in social, economic and educational fields. The constitution, for them too expect the political safeguards, intends for making special provisions.

The other backward classes referred to in Article 15, 16, and 29 are to be specified by the President under Article 338 (3) on the receipt of the Report of the commission appointed under Art.340. Hence, the expression backward classes should have a uniform meaning through out. Let us first take Art.29 (2). The non-discriminatory grounds in matters of admission to educational institutions of the kind mentioned therein are religion, race, caste or language. Art.15 (4) is an exception also to Art.29 (2) when an expression is to be made to Art.29 (2) in favor of the backward classes the only grounds could be all or any of the non-discriminatory grounds. That is to say, the classes to be favored should be determined on grounds of religion, race, caste or language. The ground of language is a vague and indefinite basis and individuals from such a group overlap indiscriminately. In a recent case the Calcutta High Court in interpreting the meaning of the expression classes of citizens as it occurred in section 153-A of the Indian penal code held that the term 'non-Bengali' cannot be included in the term class. Hence, what remain to be only the grounds of expression under Art.29 (2) read with Art.15 (4) are group of citizen associated with their religion, race or caste. The expression backward classes used in the constitution is, all the places associated with religion, race
or caste. And whenever the said expression is used the common grounds of non-discrimination are religion, race and caste. The backward classes (other the scheduled castes/Tribes) are to be benefited only under Art. 15, 16 and 29. Grounds common in this Articles are religion, race and caste. The expression commonly used in all these articles as an exception is backward class. Therefore, classes are group of citizens associated with their religion, race or caste. This exposition is in consensus with the fundamental rule of interpretation that if the words of the statute are in themselves precise and unambiguous no more is necessary to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.

It is very desirable, in all cases, to adhere to the words of an Act of Parliament giving to them that sense which is their natural import in the order in which they are placed.

3.3 THE EMERGENCE OF THE OBCs

The Constitution reference to the term "backward classes" finds places in Articles 15 (4) and 16 (4) where in the state is empowered f citizens. Yet unlike the categories of Scheduled Castes (SC) and Scheduled Tribes (STs) that were distinctly defined, the category "backward classes" remained ambiguous. The term had come into usage during the British period but with a verity of referents and evidently without any clearly specified parameters regarding the inclusion and exclusion of groups clubbed as backwards. In its early usage, the backward classes were an all-encompassing category that would include the underprivileged and the marginalized castes, tribes and communities. The term was used as far as 1880 to describe a set of groups, also called illiterate or indigent classes, entitled to allowances for study in elementary schools.
The imprecision in the definition of the term could be observed even at the time of the framing of the constitution. In the constituent Assembly, multiple interpretations of the term emerged in the articulations of members participating in the debate. Bradley, two distinct usages can be spell out: (1) As an inclusive group of all sections that required preferential treatment. Here the category “Backward Classes” includes the untouchables and the tribes as well. (2) As a stratum higher than the untouchables; but nonetheless depressed. In this case the distinctive term that came into usage, was “other backward classes” in both the usages, however, the point of reference was largely the Hindu social structure. The question of backward groups from among the religious minorities remained absent in the debate until delegates belonging to such groups raised the issue. Thus Mohammad Ismail sahib from Madras sought clarification whether the term extended to “the backward classes of minority communities.”

Article 340 empowers the state to appoint a commission ‘to investigate the condition of socially and educationally backward classes’. At the all India level two such commissions have so far been appointed-Kaka Kalelkar commission and B.P Mandal commissions. The first backward classes commission (Kaka Kalelkar commission) submitted its report in 1955. The commission has emphasized that the lower status in the caste hierarchy as the determining factor for backwardness along with other considerations such as educational levels, income levels and representation in public employment. This commission report was the first instance in which certain castes/communities among Muslims (and other religious minorities) were also declared backward and brought within the purview of affirmative action. The second Backward Classes Commission (B.P Mandal commission, 1980) too relied on the caste criterion,
however, the tangible indicators to ascertain a caste or any social group as ‘backward’ included lower position in the caste hierarchy, lower age at marriage within the group, higher female work participation, higher school drop out rate, inaccessibility to drinking water, lower average value of family assets, higher occurrence of Kacha houses and so on.

The usage of classes instead of caste in constitutional reference to OBCs viz. Article 15 (4) and 16 (4) and 340 (1) had led to many legal wrangles’ and disputes. However, the courts, like the two backward classes commissions accepted ‘caste’ as a basis of classification. In Venkattarama Vs state of Madras, the Supreme Court upheld the list of Hindu castes declared as backward by the Madras government. This was further confirmed in Ramakrishna Singh Vs State of Mysore in which the Mysore high court held that class included persons grouped on the basis of their caste. A series of Supreme Court cases have further refined the provision. In Balaji Vs the state of Mysore, the Supreme Court put a ceiling on the total quota for affirmative action at fifty %. It was critical of using the caste criterion, and one of the reasons cited was its inapplicability to non Hindu groups.

In Chitralekha Vs state of Mysore the court clarified that the (I) ‘caste……may is relevant….in ascertaining…. Social backwardness but (ii) it cannot be the sole or dominant test’. The ‘caste basis’ was further clarified in 1968 in P.Rajendran Vs state of Madras. The Supreme Court held that ‘A caste is also a class of citizens if the caste as a whole is socially and educationally backward’. This was reaffirmed in U.S.V.Balram Vs state of Andhra Pradesh when the Supreme Court scrapped Andhra Pradesh high court
ruling and allowed the use of caste as a determinant to define backwardness. In the celebrated India Sawhney Vs the union of India (Mandal case), the 9 judge bench rejected economic criterion as the determinant of backwardness. The court upheld the concept of caste “A caste can be and quite often is a social class in India.” On the question of backward classes among the non Hindus, the court held that they should be identified on the basis of their traditional occupations.

Thus, from an all encompassing category as during British period, backward classes as category has gradually emerged to specifically refer to those caste groups that occupy the middle position in the social hierarchy and lag behind in terms of economic, educational, and other human development indicators.

3.4 SOCIAL STRUCTURE AND THE OBCs

In anthropological and sociological literature the concept of social structure is the key to understanding a society and a nation too. The concept of social structure refers to an arrangement of parts or components of a society, i.e., groups and sub-groups related to one another in some form of unity and social formation.

Indian society is a typical example of unequal and hierarchical arrangement of several groups interdependent on each other. Innumerable communities and castes are placed one above the other and their social ranking is accompanied by privileges as well as disadvantages. Post colonial India attempted to set up a democratic social order based on egalitarian ethos. Its constitutional policies were aimed at offsetting the disabilities faced by historically disadvantaged sections of population characterized as backward
classes. In all they account for about one third of Indian population they are not a homogeneous category, but categorized in to three broad social divisions. Scheduled castes (SC) scheduled tribes (ST) and other backward classes (OBC).

The STs were defined in terms of ecological isolation of the Tribal people, the relative autonomy of their cultural and political system and antiquity of association with their habitual while SCs were defined as victims of disabilities of the Caste system and untouchability prevalent in Hindu society. The list of STs and SCs was drawn up by the Central Government. There was in addition, a commissioner for SCs and STs to look after the affairs of these communities on continuing basis. But in regard to OBCs we do not have very clear idea about its categorization. As part of nation building process various compensatory discrimination policies in India are directed to SCs, STs and OBCs. One form of these policies is the reservation, consisting of reserved seats in Educational institutions, government jobs and legislative bodies.

3.5 RELEVANCE OF RESERVATION FOR OBC

Indian society is premised on inequality because of the age old caste system between the upper caste and outcaste (the SC and ST) hundreds of other caste is condemned to educational, cultural, social and economic backwardness. Any discussion on the caste system reveals it from links with the economic life. The OBCs (other backward classes) had no right to education and could only practice occupational skills. As a result they ranked way below the upper caste in the economic ladder.
Democracy cannot become meaningful to all the citizens of our land as long as we accept, from their birth, some people as pure or high and others as backward or low. In the name of caste and by using religion, the upper caste have committed wrongs and continued to perpetuate injustice on the OBCs, Dalits and Minorities. We, therefore, need a mechanism to intervene on behalf of the discriminated and bring them equality and justice. There cannot be social democracy without proper representation. To correct the wrongs done to social groups in the name of caste and religion, the constitution of India introduce Article 15 and 16. Article 15(4) permits the State to make any special provision for advancement of any socially and educationally backward classes of citizens. While Article 16(4) permits the state to make any provision for the reservation of appointments or post in favor of any backward class of citizens which, in the opinion of the state, is not adequately represented in the service under the state (Ambrose Pinto 2008).

3.6 THE RATIONAL FOR OBC RESERVATION

There has not been much opposition to the reservation system for the SCs and STs, though the implementation is sluggish. Even 60 years after independence, the position of SCs and STs has not greatly improved. This is partly due to the caste mind set of our bureaucrats, administrators and officials. If the country had drawn a large number of bureaucrats from the weaker sections in 1947, things might have been different as far as the OBCs is concerned their situation has further deteriorated since independence. This has not been sufficiently highlighted in the public space. And yet, because of political
reasons, reservations for the OBCs arouse much more oppression than for the SCs and STs.

Any talk of reservation for the backward classes or the socially and educationally backwards rises immediate social conflict. We have seen in across the state and country for instance, very time the government of Karnataka decided to implement the report of the backward classes commissions, the state has experienced violence at national level, it was the government order to implementation of the Mandal commission that created bloodshed, burning and violence across the country in 1990. Lastly, in May 2006, protests are mounting against an OBC quota in institutions of higher learning. The opposition is mainly from upper castes. This kind of protest and violence, in spite of the preamble of the constitution that assures to all citizens social, economic and political justice, is anti-national. Given the principles of social justice and the nature of our constitution, it is the responsibility of the upper classes to part with some of their privileges and thus contribute to the emergence of an egalitarian society. We already mentioned the contents of Article-15 (4) and Article 16 (4). Articles from 38 to 46 emphasize the obligation of the state to the weaker sections of the people, to prevent their exploitation and to eliminate various forms of inequality and justice. The reality presented in Table 2 is tragic, to say the least. In class 1 services, there was a better distribution of jobs among different social groups during the colonial period in 1935 than after independence in 1989. While the 69 percent of SCs, STs and OBCs had a mere 8 percent of the jobs in 1989, the 5.20 percent of Brahmins had pocketed as much as 70.2 percent. Once get the impression that the state is more and more Brahminised. The other caste seems unable to challenge the hegemony of the priestly caste, which gaining a
greater holds on society. There is no meaning in social justice and democracy when the privileged few pocket all the resources and jobs under the pretext of merit and efficiency. This situation cannot be permitted to go on.

Table 3.1: Communities in Class 1 Government Services in 1935-1989 %

<table>
<thead>
<tr>
<th>Communities</th>
<th>1935</th>
<th>1989</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Population in %</td>
<td>sharing services</td>
</tr>
<tr>
<td>Kasyasth</td>
<td>0.85</td>
<td>40.00</td>
</tr>
<tr>
<td>Muslims</td>
<td>21.00</td>
<td>35.00</td>
</tr>
<tr>
<td>Christians</td>
<td>4.00</td>
<td>15.00</td>
</tr>
<tr>
<td>Brahmins</td>
<td>3.50</td>
<td>3.00</td>
</tr>
<tr>
<td>Rajput</td>
<td>2.50</td>
<td>2.00</td>
</tr>
<tr>
<td>Bania</td>
<td>1.20</td>
<td>1.00</td>
</tr>
<tr>
<td>Sikh</td>
<td>1.40</td>
<td>1.60</td>
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<tr>
<td>Other</td>
<td>1.60</td>
<td>0.90</td>
</tr>
<tr>
<td>SCs,STs,OBCs</td>
<td>64.00</td>
<td>1.0</td>
</tr>
</tbody>
</table>

(Sources: Varma, p.s; Dalit pechda, Vinukit jati trading pvt .Ltd.Delhi-1992. The 1935 data refer to the then United India, Pakistan and Bangladesh).

3.7 BACKWARDNESS AND EMPOWERMENT

For the sake of empowerment and equality some states have proposed or implemented reservation for Muslims as a backward community while some states implemented reservations for Muslim OBCs only. The Muslims those specified as backward are usually the occupational groups of traditional Ajlaf or Arzal category such
as weaver's oil crushers, cotton crushers, carpenters, washer man, barber and so on. The situation of such a complex and contradictory nature leads to arguments and counter arguments between political leaders and social activists of the Muslims. The issue of Muslim empowerment is debatable owing to factions within the Muslims of the country. The overlapping identities of the Muslims in the form of caste like or class like categories further make the situation more complicated.

For the sake of achieving equality and as a part of the process of nation building various compensatory policies are directed at the backward communities in India, viz. SCs STs and OBCs. Some Muslim groups also currently benefited from such affirmative actions as they are included in STs and OBCs. Muslim groups are not supposed to be included in the SCs category as it is restricted to Hindus, Sikhs and Buddhists. There is constitutional support for special policies for SCs, STs, and OBCs. Scheduled Caste can be Muslims but Muslim STs are relatively few in India, while SCs cannot be Muslims. Thus only the category of OBCs seems to be open to Muslims. Under such a socio-politico-administrative set up the question of Muslim reservation and affirmative action is a sensitive and debatable one.

Some organizations are arguing for Muslims as a whole to be declared as backwards. Thus demanding reservations for them while Muslim groups already categorized or under the process of categorization under OBCs are seriously opposing these demands (Jenkins 2000).
3.8 RECOMMENDATIONS OF VARIOUS BACKWARD CLASSES

COMMISSIONS/COMMITTEES REPORTS

At the all India level, the issue of OBCs has been attempted to be addressed by instituting two backward classes’ commissions with the mandate to evolve the criteria of backwardness, identify social groups on that basis and suggest measures to ameliorate their condition. Of the two the report of first commission (Kaka Kalelkar) was rejected by the union government from having used caste and not the economic criterion for identifying backward classes. The report of the second commission (Mandal commission) was partially implemented in 1991 more than a decade after it was submitted. Beside these two attempt at the center, various state governments instituted their own backward classes commission and have evolved distinct approach to reservation of backward classes.

Identification of caste/communities as the OBCs and their listing had a long history. After 1806, listing in the colonial period was undertaken on an extensive scale on the basis of administrative reports and assessments. This process gathered momentum through the census from 1891 to 1931. In the post Independence period, the Kalelkar Commission was first to indicate criteria for identification as also to recommend communities to be listed as the OBCs.

The government of India then advised the state governments to prepare their own OBCs lists. Various state governments set up committees/commission to identify the OBC lists and despite legitimizing mechanisms of the communities / commissions, the exercise
of listing and extent of reservation for different groups of communities remained a
countless juridical issue before the higher judiciary in India. The Government of India
then appointed a second Backward Classes Commission (Mandal Commission) for
providing identification criteria and names of the communities to be listed as the OBCs.
The report submitted in 1980, remained under processing for over a decade until the V.P.
Singh Government issued its order of 13 August, 1990, which was challenged before the
supreme Court by Indra Sawhney and others. A nine member Constitutional Bench
arbitrated 14 major questions arising there from and give its historic judgment on 16
November 1992. Among other things, this judgment also directed constitution of a
permanent mechanism for identification of the OBCs at the national level as well as in
the State/Union Territories, although it left actual scheduling in the hands of central and
state governments. These permanent mechanisms have been active since 1992 and
identification of the OBCs has been handled through these routes since then.

The term OBCs did not figure in the Indian Constitution though the debate of the
Constituent Assembly had indicated that this was a group which needed special treatment
and it was a stratum higher than the Scheduled Caste in social hierarchy. It was also
indicated that these OBCs were to be locally designated meaning that there was
realization of difficulties in prescribing universally acceptable tests of backwardness
given the diverse local social-economic and cultural conditions in different parts of the
country.

Before the Constitution came into operation, several states had not only declared
OBC lists and offered several benefits, they had also expanded such lists to include many
more communities. The Government of India too was persuaded to extend its scheme of post metric scholarships to the OBCs and while doing so, it compiled its own list.

Different approaches in fixing up the criteria for identification of OBCs by different commissions reflect the absence of uniform basis of backwardness. The two central Commissions had different outlooks while state Government Commission had other outlooks having different considerations. Wide differences between these Commissions on various issues, in some cases even irrational, have not only expressed absence of uniform policy, but also became a source of constant bitterness. Some people though better off enjoy privileges of backwardness in various states and the Central Government services. Others, who really deserve privileges, suffer because they belong to castes outside the jurisdiction of backward class. The situation calls for an analysis of different commissions constituted by various state Governments, including the existing situation and approaches towards the reservation policy for OBCs.

3.8.1 KAKA KALELKAR COMMISSION (1955)

The first backward classes commission submitted its report in 1955. The report presented a list of 2399 castes and communities considered backward, 837 of these were considered ‘most backward’ requiring special attention. Thus the category was classes further bifurcated into two categories the backward and most backwards. The list includes not only backward groups from amongst the Hindu, but also non-Hindus, including Muslims as well. The commission report was the first instance wherein the presence of ‘backward communities’ among Muslims (and other religious minorities) received recognition in official parlance. The caste basis did not find approval from the
chairperson of the commission and one of the reason cited was the assumed caste lessness of Muslims and Christians: My eyes were however open to the dangers of suggesting remedies on the caste basis when I discovered that it is going to have a most unhealthy effect on the Muslim and Christian sections of the nation”.

3.8.2 MANDAL COMMISSION (1980)

The second All India Backward classes’ commission, the Mandal commission, submitted its report in 1980. The commission evolved eleven indicators mix of caste and class features for assessing social and educational backwardness. The commission saw castes as the ‘building bricks of Hindu social structure’ that despite the constitutional commitment to establish a casteless and egalitarian society had continued to persist. It arrived at an exhaustive list of 3743 castes that were declared as backward. The commission, in principle, accepted that occurrence of caste or caste like feature was not restricted to the Hindu society, its influence was also found among non-Hindu groups, Muslims, Sikhs and Christians, as well. Based on the data provided by 1931 census and failed survey conducted at the instance of the commission, at least 82 different social groups among Muslims were declared OBCs. The commission however desisted from employing ‘caste’ as criterion of identify non Hindu OBCs as ‘these religions are (were) totally egalitarian in their outlook’. The commission however, refrained from invoking ‘poverty’ tool as the sole criterion. The ‘rough and ready’ criteria that the commission evolved had two conditions:

(a) ‘All untouchables’ converted to any non-Hindu religion. In the case of Muslims they are Arzals.
(b) Such occupational communities which are known by their name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list of Hindu OBCs. Among Muslims, this comprises the Ajlaf category.

By clubbing the Arzals and Ajlafs among Muslims in an all encompassing OBC category, the Mandal commission overlooked the disparity in the nature of deprivation that they faced. Being at the bottom of social hierarchy the Arzals are the worst off and need to be handled separately. It would be most appropriate if they were absorbed in the SC list, or at least in a separate category, most backward classes (MBCs) carved out of the OBCs.

3.8.3 SACHAR COMMITTEE REPORT (March 2005)

On 9th March, the PMO issued the notification for constitution of the High Level Committee under the Chairmanship of Justice Rajender Sachar for preparation of a report on the social, economic and educational status of the Muslim community of India. In its report, the committee mentions, while there is considerable variations in the conditions of Muslims across states, the community exhibits deficits and deprivation in practically all dimensions of development. Mechanism to ensure equity and equality of opportunity to bring about inclusion should be such that diversity is achieved and at the same time the perception of discrimination is eliminated.

National Data Bank (NDB) for generation of relevant data related to different Socio-Religious Communities (SRC) has been created. An autonomous Assessment and
Monitoring Authority (AMA) is needed to evaluate the extent of development benefits which accrue to different SRCs through various programmes. While equity in the implementation of programmes and better participation of the community in the development process would gradually eliminate the perception of discrimination, there is a need to strengthen the legal provision to eliminate such cases. It is imperative that if the minorities have certain perceptions of being aggrieved, all efforts should be made by the state to find a mechanism by which these complaints could be attended to expeditiously.

The Committee recommends that an Equal Opportunity Commission (EOC) should be constituted to look into the grievances of the deprived groups. A carefully conceived ‘nomination’ procedure should be worked out to increase inclusiveness in governance. The Committee recommends the elimination of the anomalies with respect to reserved constituencies under the delimitation schemes. The idea of providing certain incentives to a ‘diversity index’ should be explored. A wide variety of incentives can be linked to this index so as to ensure equal opportunity to all SRCs in the areas of education, government & private employment and housing. Relevant functionaries should be sensitive to the need to have diversity and the problems associated with social exclusion.

The committee recommends that a process of evaluating the content of the school text books needs to be initiated and institutionalized. The University Grants Commission (UGC) should be encouraged to evolve a system where part of the allocation to colleges and universities is linked to the diversity in the student population to facilitate admissions to the ‘most backward’ among all the SRCs in the regular universities and autonomous
colleges, alternate admission criteria need to be evolved providing hostel facilities at reasonable costs for students from minorities must be taken up on a priority basis. Teachers training should compulsorily include in its curriculum components which introduce the importance of diversity / plurality within the country and sensitize teachers towards the needs and aspirations of Muslims and other marginalized communities. Given the commitment to provide primary education in the Childs mother tongue, the state is required to run Urdu medium school. Work out mechanisms whereby Madrasas can be linked with a higher secondary school board so that students wanting to shift to a regular / mainstream education can do so after having passed from a Madrasa. Recognition of the degrees from Madrasas for eligibility in competitive examinations is desirable. The Committee recommends promoting and enhancing access to Muslims Priority Sector Advances. The real need is of policy initiatives that improve the participation and share of the Minorities, particularly Muslims in the business of regular commercial banks. It may be desirable to have experts drawn from the Community on relevant interview panels and Boards. The country is going through a high growth phase. This is the time to help the underprivileged to utilize new opportunities through skill development and education. Provide financial and other support to initiatives built around occupations where Muslims are concentrated and that have growth potential. The registration of trusts set up by the Community, such as Wakf institutions and mosque committees should be facilitated. Lack of access to crucial infrastructural facilities is another matter of concern for the Muslims. The issues relating to disparities across socio-religious communities are of utmost importance to our nation today.
3.8.4 JUSTICE RANGANATH MISHRA COMMISSION (March 2005)

The National Commission for Religious and Linguistic Minorities (NCRLM) constituted by the Government of India under the Chairmanship of Justice Ranganath Misra Commission on March 2005. The panel recommends extension of reservation to religious minorities. The commission suggests that Scheduled Caste status be delinked from religion. Para 3 of the constitution (Scheduled Caste) order 1950 which originally restricted the SC net to Hindus and later it to Sikhs and Buddhists should be wholly deleted by appropriate action. Calling for an overhaul of entire reservation policy, the commission, which submitted its report on May 10, 2007 has stressed the need to limit the benefits of reservation to the socially and economically backward. According to this Commission 15% reservation for minorities, 10 percent for Muslims and 5 percent for other minorities.

3.8.5 KERALA

Kerala reservation policy becomes the subject of an acute judicial controversy so much so that the government appointed number of committee and Commissions. The problem is still persistent in the state for inclusion and exclusion in the list of beneficiaries of the preferential treatment and determination of creamy-layer issue and it become a bone of Condensation in political arena.

3.8.6 Vishwanathan Committee, 1961

The Committee on Backward Classes was appointed in June 1961, under the chairmanship of V.K.Vishwanathan and was asked to identify the backward classes and
suggest measures for the improvement of their conditions. The committee submitted its report in October 1963. The prominent recommendations were: (a) 40 percent of the seats in technical and professional colleges should be reserved for students of the other backward classes and 10 percent of seats for students belonging to the SCs and STs; (b) The above reservation should be to posts under the State Government also; (c) Appointment of an Expert Committee to go into the question of reclassification of backward communities. Government of Kerala accepted the recommendations of the committee but restricted reservation to 25 percent seats for the backward classes.

### 3.8.7 Pillai Commission, 1965

The state government appointed a commission under the chairmanship of Shri G.Kumara Pillai in July 1964 which submitted its report in December, 1965. Its main recommendations were: (1) It classified 91 Communities as backward and stipulated that the benefits should be extended only to those members of the backward classes whose aggregate family income was below Rs.4,200 per year; and (ii) In technical and professional institutions 25 percent of the seats should be reserved for OBCs. It also indicated separate quotas for various categories of OBCs in the allocation of these seats.

The state government accepted the above recommendations with the modification that the income ceiling of Rs.4,200 was raised to 6,000 per annum. It may be noted that the High court had desired the state Government to institute an enquiry for granting educational benefits to OBCs under Article 15 (4) of the constitution only. In view of this state Government kept reservation at 40 percent level in government jobs.
3.8.8 Damodaran Commission, 1970

After two years, in 1967, the Kerala High court suggested the appoint of yet another Backward Classes Commission and the state then appointed third B.C. Commission, under the chairmanship of M.P. Damodaran, in October 1967. The Commission submitted its report in June 1970.

It found the following factors responsible for social backwardness for the purposes of Article 16(4): (a) Absence of requisite educational attainments (test of education); (b) Absence of money or wealth (economic test); (c) absence of ability to appropriate and adequate number of appointments (test of appropriation of appointments); and (d) caste disability, occupational stigma, and social taboos acting as obstacles in the field of education.

Suggestions of the Commission were that the level at which and methods by which each of the tests adopted could be applied.

a) SSLC and graduate course shall be the levels at which the test of education shall be applied.

b) The non-gazette and gazette categories of appointments in jobs under the state shall be the levels at which the test of appropriation of appointment shall be applied.

c) Rs.8, 000 and below shall be the level of total annual family income at which the economic test shall be applied.

d) The norm of yardstick with reference to which the attainment or position of
each group of citizens, in the field of each of the tests applied, is to be compared (except the test of social backwardness) with the population of that group itself. The comparison of attainment of a group of citizens shall not be made with the attainment of the most developed group citizens at each of the levels mentioned.

e) The percentage of student population belonging to each group of citizens each of citizens at each of the levels as said above, on the total numbers of such students in Kerala, shall be compared with the norm, namely, the percentage of population of that group itself.

f) The number of appointment appropriated by each group of citizens in each of the three categories of services, namely, last grade, non-gazetted and gazetted as said above, on the total number of such households in the state, shall be compared with the norm namely, percentage of population of that group itself.

g) The percentage of household whose total annual income is Rs.8000 or below in each group of citizens on the total number of this type of households the states shall be compared with the percentage of population of that group itself.

h) The test of education shall not be applied as a separate test. Similar is the case with the application of the other tests.

3.8.9 Narendran Commission Report

The Government of Kerala appointed the commission to study and report on the adequacy or otherwise of representation of the Backward Classes in the services under the state Government, Public Sector Undertakings, Autonomous Bodies and institutions
under the state Government including the Universities, by the notification dated 11th February, 2000, in exercise of the powers conferred by section 3 of the commission of inquiry Act, 1952, (Central Act 60 of 1952), the Government of Kerala here by appoint a three member commission of inquiry consisting of Justice K.K.Narendran, Retired judge of High court, Kerala as chairman and K.N.Rabindran Nair, former chief secretary to Government of Kerala, and Savankutty, former chairman, Kerala Public Service Commission as members.

The commission has drawn inferences from a detailed analysis of data's it is clear that almost all the communities of backward classes have improved their position or are improving their presence in the public services. Ezhavas, a major community among the backward classes have secured better representation in more than one category by securing posts in the merit quota over and above the reservation quota. At the same time Muslims another major community among the backward classes have not fared so well. The main reason for this in nothing but educational backwardness. Better education standards of Ezhavas as a whole provide them a good leverage in competing for Government jobs, at least in the recruitment for lower categories. If the Muslim community and its leaders take more interest in the matters of education and make a concreted effort, this community can also reach a similar level of educational advancement in the not distant future. The other communities among the backward classes can also improve their presence in the public services by paying more attention for the education of their children.

The Narendran commission shows the deficiency in matters representation of
different communities among the Backward Classes in the services. The deficiency is calculated on the basis of their reservation quota. The commission noted the fact that, in some departments / institutions and some categories, different backward communities have got representation in excess of reservation quota: but that is what they have attained by their own merit. It is pertinent to note that, among communities which have substantial deficiency, the quantum of deficiency is higher for those with higher reservation quota. Whatever may be the reason it is for the government to take appropriate action to minimize this deficiency in the years to come.

As per the data discussed by the commission, as matters stand now, without the benefit of reservation, no community among the backward classes can have adequate representation in the services under the state Government, Public Sector under takings, Autonomous Bodies and institutions under the state Government including Universities. Even with reservation, most of the communities are not getting adequate representation in all the categories of posts. Reservation for backward classes is only a means to an end and not an end in itself. It cannot be a permanent feature.

Despite the suggestions, social backwardness continued to be a matter of controversy in Kerala. Some of the populous and advanced caste like Ezhavas exerted pressure not to disturb their privileged status as a backward community. The Administrative Reforms Committee (ARC), appointed by the Government of Kerala, realizing the evils and drawbacks of caste as the grounds for backwardness, suggested the economic criterion. This resulted in a prolonged and bitter conflict between the Ezhavas and Nair’s. Further, the dominant castes, irrespective of the fact what they were actually
economically, educationally and socially backward, managed to enjoy the concessions accorded to the backward classes because of their political influence. Owing to political pressure, all the backward communities in Kerala accepted the Ezhavas as backward.

Such communities as passed four tests (education, economic, participation in government service and social backwardness for historical reasons), together with families with income below Rs.8,000 a year, were recommended for considering backwards for the purposes of Article 16 (4). It included such factors as stigmatized occupations, vestiges of caste discrimination, the custom of purdha, and hatred towards education in English, it recommended 40 percent reservation in government posts for the backward classes for eight groups of backward class such as Ezhavas, Muslims, OBCs and other as per details given below.