CHAPTER II

COMMISSIONS, LEGALITY AND CREAMY LAYER AMONG OBC
The Criteria followed to identify OBC by different commissions

Traditionally certain castes suffered from many kinds of deprivations. The deprivations they suffered within any state were, however, dependent on the nature of caste composition of the state and the political economy. As M.S.A. Rao (1992) points out:

For Instance, in Madras presidency the Pillais, Vellalars and Mudaliars were the land owners in the rural areas. Although they were economically and politically dominant there, they suffered from relative deprivations in the fields of religion, modern education, government employment, and leadership in the national movement. The Brahmins, who were the first to take advantage of modern English education, got employment in the higher levels of British Indian bureaucracy. In the religious field they had all monopoly. They also came to occupy leadership position in the national movement. These contrasts were perceived by the non-Brahmins as instance of relative deprivations, and a powerful non-Brahmin movement arose in Madras.

Specific aspects of Reservation Policy for OBC's differed in their content in various states of India. Each state has adopted a reservation policy in the light of its own special conditions, and used multiple approaches for the preparation of comprehensive list of Other Backward Classes. To realise these objectives states have constituted commissions.

"Various Backward Classes Commissions constituted from 1918 to 1991 at the All India and State levels are shown in Table 2.1."
### TABLE 2.1

**BACKWARD CLASSES COMMISSION IN DIFFERENT STATES**

<table>
<thead>
<tr>
<th>State</th>
<th>Name of the Commission</th>
<th>Duration</th>
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<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>Manohar Pershad Committee</td>
<td>1968-69</td>
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<tr>
<td></td>
<td>Ananta Raman Commission</td>
<td>1970</td>
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<td></td>
<td>Muralidhar Raw Commission</td>
<td>1982</td>
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<td>Bihar</td>
<td>Mungerialal Commission</td>
<td>1971-72</td>
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<tr>
<td>Gujarat</td>
<td>A.R.Bakshi Commission</td>
<td>1972-76</td>
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<td></td>
<td>Justice R.C.Mankad Commission</td>
<td>1987</td>
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<td>Haryana</td>
<td>Gurnam Singh Commission</td>
<td>1990</td>
</tr>
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<td></td>
<td>Justice Gajendrayadkar Commission</td>
<td>1967-68</td>
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<td></td>
<td>Justice J.N.Wazir Commission</td>
<td>1969</td>
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<td></td>
<td>Justice Adain Anand Commission</td>
<td>1974-77</td>
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<tr>
<td>Karnataka</td>
<td>Justice L.C.Miller Committee</td>
<td>1918-20 Mysore</td>
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<td></td>
<td>Naganna Goweada Commission</td>
<td>1960-61</td>
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<td></td>
<td>H.G.Havanur Commission</td>
<td>1972-75</td>
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<td></td>
<td>T.Venkataswamy Commission</td>
<td>1983-86</td>
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<td></td>
<td>Justice Chinappa Reddy Commission</td>
<td>1989-90</td>
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<tr>
<td>Kerala</td>
<td>Justice C.D.Nokes Committee</td>
<td>1935, Truvancore</td>
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<td>V.K.Vishvanathan Commission</td>
<td>1961-63</td>
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<td></td>
<td>G.Kumar Pillai Commission</td>
<td>1964-66</td>
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<td></td>
<td>M.P.Damodaran Commission</td>
<td>1967-70</td>
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<tr>
<td>Maharastra</td>
<td>O.H.B.State Committee</td>
<td>1928-30 Bombay,</td>
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<td></td>
<td>B.D.Deshmukh Committee</td>
<td>Presidency</td>
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<tr>
<td>Punjab</td>
<td>BrishBhan Committee</td>
<td>1965-66</td>
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<tr>
<td>Tamil Nadu</td>
<td>A.N.Sattanathan Commission</td>
<td>1969-70</td>
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<td>J.N.Ambasankar Commission</td>
<td>1982-86</td>
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<tr>
<td>Utter Pradesh</td>
<td>Chhedi Lal Sethi Commission</td>
<td>1975-77</td>
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<tr>
<td>All India</td>
<td>Kaka Kalelkar Commission</td>
<td>1953-55</td>
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<tr>
<td></td>
<td>B.P.Mandal Commission</td>
<td>1979-80</td>
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</tbody>
</table>

**Notes:**

i. Adapted from Pai Panandikar, 1997.

ii. When two dates are mentioned, they refer to the year of appointed and the year of submission and where only one is mentioned it refer to year of submission which is also the year of appointment in some cases.
Central Backward Classes Commissions

The central Government set up the First Backward Classes Commission on 29th January 1953 under Article 340 of the Indian Constitution. Shri Kaka Kalelkar was nominated as its chairman along with ten other members. The commission was mandated to identify groups which can fall in the category of Other Backward Classes.

The Commission used the term Classes as if it was synonymous with 'Castes' and 'Communities and prepared a list of Backward Classes on the basis of caste. It used the following four criteria to determine backwardness:

(i) Low position in the traditional caste hierarchy of Hindu Society;

(ii) Lack of general educational advancement in a caste or Community taken as a whole;

(iii) Inadequate or no representation in government service; and


The commission listed 2,399 castes as Backward Classes, It chose 837 castes as 'Most Backward Castes' for the purpose of development and upliftment. It also made the following recommendations:

"(i) The Government of India should undertake a caste wise enumeration of the population in the census of 1961;

(ii) It should seek to relate the social backwardness of a class to its low position in the traditional caste hierarchy of Hindu society."
(iii) all women should be treated as backward;

(iv) 70 percent of the seats in all technical and professional institutions should be reserved for qualified students of the Backward Classes; and

(v) a certain minimum number of Vacancies should be reserved for the Backward Classes in government service" (As reported in the Report of the Backward Classes Commission, Chairman B.P. Mandal, Part I, Part I, New Delhi, 1981 : p.1).

**Mandal Commission**

In 1978, the then Prime Minister Shri. Morarji Desai announced the decision to appoint the Second Backward Classes Commission on 20 Dec 1978 under the Chairmanship of Shri. B.P. Mandal.

The notification for setting up the Commission was issued on 1st January 1979, started functioning from March 1979 and submitted its report on 31st December 1980 to the President of India.

The terms of Reference for the Commission were:

i. to determine the criteria for defining the socially and educationally backward classes;

ii. to recommend steps to be taken to the advancement of the socially and educationally backward classes of citizens so identified;

iii. to examine the desirability or otherwise of making provision for the reservation of appointments or posts in favour of such Backward Classes of citizens which are not adequately represented in Public Services and posts in connection with the affairs of the union or of any state; and

iv. Present to the President a report setting out the facts as found by them and making such recommendations as they think proper.
The Commission undertook a countrywide socio-educational survey covering 405 out of 407 districts with the help of Bureau of Economics and Statistics of various states from February to June 1980. The data so gathered were computerised and 31 primary tables were generated from these data in respect of each state and union territory on the basis of the tables eleven indicators or criteria for social and educational backwardness were derived and they were grouped under three broad heads. 1) Social, 2) Educational, 3) Economic, (Agarwal and Aggarwal, 1991 : p.43-44).

I. SOCIAL

1. Castes/Classes considered as socially backward by others.

2. Caste/Classes which mainly depend on manual labour for their livelihood.

3. Castes/Classes where atleast 25% females and 10% males above the state average get married at an age below 17 years in rural areas and atleast 10% females and 5% males do so in urban areas.

4. Castes/classes where participation of females in work is atleast 25% above the state averages.

II. EDUCATION

5. Castes/Classes where the number of children in the age group of 5-15 years who never attended school is atleast 25% above the state average.
6. Castes/Classes where the rate of student dropout in the age group of 5-15 years is at least 25% above the state average.

7. Castes/Classes amongst whom the proportion of matriculates is at least 25% below state average.

III. ECONOMIC

8. Castes/Classes when the average value of family assets is at least 25% below the state average.

9. Castes/Classes where the number of families living in Kucha houses is at least 25% above the state average.

10. Castes/Classes where the sources of drinking water is beyond half a kilometer for more than 50% of the households.

11. Castes/Classes where the number of households having taken consumption loan is at least 25% above the state average.

As the above three groups are considered as not equally important, in accordance with their relative importance separate weightages were ascribed to indicators in each group. All the social indicators were given a weightage of 3 points each educational ‘indicators’ a weightage of two points each and economic ‘indicators’ a weightage of one point each. Thus the total score adds to 22 points. All these 11 indicators were applied to all castes covered by the survey, and all those castes which had a score of 11 points or more on this scale were listed as socially and educationally backward.
State Commissions

As far as the State Commissions are concerned there are important regional variations in terms of points of reference, criteria used etc. A brief discussion about the commissions, statewise, is presented below.

Andhra Pradesh

An Executive Order was passed by the Government of Andhra Pradesh in 1963 declaring 139 castes as backward and 25% of the seats in educational institution were reserved for them. Later in 1964, a sub-committee was constituted and it had followed the following Criteria for determining the backwardness:

(i) Poverty
(ii) low standard of education
(iii) Low standard of living
(iv) Place of habitation
(v) Inferiority of occupation
(vi) low status of caste.

On the basis of the above criteria, the sub-committee formulated a list of 112 backward communities and recommended reservation of 20 percent of the total seats and posts for them. The A.P.Government accepted the recommendation, but the Andhra Pradesh High Court Struck down the Reservation Policy in 1966 (Singh, 1996 : 100-111).
On 12th April 1968, the Andhra Pradesh Government appointed a Backward Classes Commission under the Chairmanship of Manohar Prasad. It suggested that only those castes or communities which had traditionally followed "unclean" and undignified occupations, could be called Backward Classes. Representatives of such castes demanded reservation up to 40 to 50 percent. Some of them demanded percentage of reservation in proportion to the population in accordance with the principle adopted by the Government of India in the case of the Scheduled Castes and Scheduled Tribes. The Commission in its report of 20th Jane, 1970, listed 92 communities as other Backward Classes. Further, it recommended reservation of 30 percent of the vacancies in Government services and educational institutions for candidates belonging to the Backward Classes. (Singh, 1996: 111-112).

In 1975 the State Government again recommended the appointment of a committee headed by Agiram Veerappa to formulate welfare measures for the benefits of the Backward Classes. The committee submitted its report in 1977. This Committee recommended 25 percent reservation in addition to the following measures: (1) award of scholarships from class I onwards instead of VI standard as was the practice earlier (ii) an increase in the amount of the scholarship; and (iii) a lowering of the minimum marks from 40% to 35% needed for students belonging to OBC's for admission (1996: 112).
In February 1982, the Third Backward Classes Commission was constituted under the Chairmanship of Muralidhar Rao. The Muralidhar Rao Commission estimated the OBC population in AP to be 52% and recommended 44 percent reservation of seats and posts. The Commission included 10 more castes and sub-castes in the list of OBC’s and the total went up to 102 (Singh, 1996: 111-112).

During the regime of N.T. Ramarao a new reservation policy (1986) was designed to benefit the most Backward Sections of the OBC. The 44 percent reservation was divided among the five categories of the OBC according to their backwardness and population. Again, the reservation quota was only open to those with a family income of less than Rs.12,000 a year. The dependents of a large number of government employees were not able to enjoy the benefit due to low income criterion. In contrast, the students belonging to the agriculture and trade background claimed been benefits with fake income certificates.

Karnataka

Karanataka has a long history of Reservation Policy compared to the other states. The First Backward Classes committee (1918) was appointed under the Chairmanship of Sir Leslee C.Miller. This committee submitted its report and laid down the foundation for the Reservation Policy for Backward Classes in the state of Karnataka.
The questions referred to the committee were the following

(i) Changes needed in the then rules of recruitment to the public services;

(ii) Special facilities needed to encourage higher and professional education among the members of the Backward Classes and

(iii) any other special measures needed to increase the representation if the backward communities in the public service with out materially affecting the efficiency, due regard being paid also to the general good occurring to the state by a wider diffusion of education and feeling of increased status which would there by produced in the backward communities" (as quoted in Government of Mysore, Report of the Backward Classes Commission, 1961 : 4).

Miller committee submitted its report in July 1919. The State Government accepted its recommendations that the term backward communities should be understood as to include all communities in the state other than Brahmin, Anglo - Indian and Christians. This was the position more or less till reorganization of states in November 1956.

After the integration of Karnataka state in 1956, it became necessary to go through the exercise of reservation once again. The Second Backward Classes Commission was appointed under the Chairmanship of Nagana Gowda in 1960. The Gowda commission identified the Backward Classes basically on the basis of caste, though it used educational levels and proportion of people of each caste in Government service as additional criteria. By using all the three criteria, "the Commission declared one of the dominant communities, the lingayats, as forward" (Thimmaiah, 1997 : 111). The Lingayats protested for their exclusion from the Backward Classes list. Muslims were included in the list.
The Government Order based on the report was challenged later and the Supreme Court Struck it down in the famous Balaji case in 1963 on the ground that caste has been treated as the only test for determining backwardness. The fact remains that literacy, educational standard and representation in services were conjunctively considered along with the status of caste. The court also held that the propotion of reservation to be excessive and opined that a special provision should be less then 50 percent.

Due to the persistent demand of the people that the existing occupation-cum-income test of backwardness was most unsatisfactory, in 1972 Devaraj Urs the then Chief Minister, constituted the First Backward Class Commission under the Chairmanship of L.G.Havanur (The earlier two are Committees). The commission submitted its report on November 1975, listing the Backward Classes under three categories, viz, Backward Communities, Backward Castes and Backward Tribes. This Commission recommended compartmental reservation for each of them. The categorization of Backward Classes was done on the basis of educational level.

The three categories are recognised on the basis of the following:

(i) Backward Communities are those whose student average per thousand of population was above 50 percent of the states average;

(ii) Backward castes are those whose student average per thousand of population was below 50 percent of the State average and

(iii) Backward tribes are those whose student average was below 50 percent of the State average, except. Dombars and Voddars and who were nomadic and denotified tribes (Singh 1996 : 126).
It must be noted here that the Havanur Commission did not recommend ‘carry over system of reservation and the list does not include the politically dominant Lingayats, Vokkaligas, Muslims and Christians. Finally, the case went to Supreme Court which directed the Government to review the list of Backward Classes. The judicial decision forced the Government of Karnataka to appoint the Second Backward Classes Commission in 1983 under the Chairmanship of Venkataswamy which submitted its report in 1985. This commission realised the weakness of the caste-wise population projected by the earlier Backward Classes committee. The Venkatasamy Commission used 17 indicators of which nine were negative and eight were positive indicators. The 17 indicators were expressed in terms of proportions of the following: illiteracy in each caste, students studying in each caste, households living in pucca and kutcha houses, landless households, households owning above 20 standard acres of land, households having an annual income of Rs.5,000 and below, households having an annual income of Rs.20,000 and finally, representation of each caste in class I, II and III state government jobs. If the caste or community scored nine and above points in this set of 17 indicators, it was considered as educationally backward. The caste or communities which scored less than nine points was classified as forward for the purposes of reservations under Article 15(4) (G.Thimmaish 1997 : 131). Due to some political pressure, ultimately the Karnataka Government rejected the report on 7th October 1986.
The Third Backward Classes Commission was set up in 1989 under the chairmanship of Chinnappa Reddy and the Commission submitted its report in 1990. The commission took economic and occupational factors in determining Social backwardness of castes and communities.

It recommended the inclusion of groups in the list of Socially and Educationally Backward Classes for the benefits of reservation on the following criteria:

i. Agricultural labourers not owning any land or not owning more than one hectare of rained dry land or its equivalent;

ii. handloom weavers not owning more than two looms and working for wages or on piece rate basis;

iii. construction workers;

iv. automobile drivers, conductors, and cleaners;

v. auto and cycle-rickshaw drivers;

vi. employee employed in managerial, supervisory or ministerial capacity;

vii. workers engaged in road bridge and railway track work; and

viii. irrigations project, carpenters, blacksmith, mechanics, plumbers, painters, electricians and the like employed on wages; hamlis, those engaged in medical occupation of such as sweepers, and cobblers, those engaged in the occupations of butchers, fishermen and other offensive or noxious occupations, those engaged in domestic service and all others manual workers employed on daily wages.
Kerala

In Kerala State, the Government appointed three Backward Classes commissions, namely (i) Sivanathan Commission (1961), (ii) Kumara Pillai Commission (1965) and (iii) Damodaran Commission, 1970.

Shivanathan Commission (1961)

It was appointed in June 1961 under the Chairmanship of B.K Shivanathan. The commission was asked to identify the Backward Classes and suggest measures for the improvement of their condition of socio-economic life. The commission submitted its report in October, 1963. The main criterion used by the commission was solely based on caste or community. Its main recommendations were as follows:

(i) forty percent of the seats in technical and professional colleges should be reserved for students belonging to the Backward Classes and ten percent of seats for students belonging to the scheduled castes and the Scheduled Tribes.

(ii) The above reservation should be made applicable to all fresh appointments to posts under the State Government also.

Kumara Pillai Commission (1965)

The Commission submitted its report in December, 1965. It was of the view that the prosperous sections of the Backward Communities were not suffering from social discrimination. Hence it recommended that only those who are members of families with an aggregate annual income of Rs.4,200/- and belonging to castes and communities listed by it, would
constitute socially Backward Classes. The castes and communities listed by it are Ezhava, Muslim, Latin Catholics (other than Anglo-Indian) backward Christianity, including converts to Christian by from Scheduled Castes and Other Backward Hindu Communities (Shetty, National seminar on Social Backwardness, 1993).

For the benefit of the poorer sections enjoying reservation, this commission recommended the adoption of a means-cum-caste/community Policy. (Report of the Commission for Reservation of seats in Educational Institution, Kumara Pillai, 1966). Thus the Commission has adopted a "Means-cum-caste/community" list or what it called a "blended-approach", taking both economic and caste or community factors into consideration for determining the social backwardness of the people in the state.

**Damodaran Commission (1970)**

The State Government appointed the Third Backward Classes Commission under the chairmanship of M.P. Damodaran in October 1967. This commission submitted its report in June 1970.

The main criteria to determine backwardness used by this commission are:

(a) the test of education  
(b) the test of appropriation of appointments  
(c) the test of social backwardness due to historical reasons  
(d) the test of social backwardness due to historical reasons (Caste or Community) and  
(e) the economic test (Chetty, National Seminar on "Social Backwardness" 1993).
The Communities which met all four criteria together with families with an annual income below Rs.8,000 a year, were recommended to be included in the list of Backward Classes for the purpose of Article 16 (4). It included such factors as stigmatized occupations, vestiges of caste discrimination, the custom of purdah, and aversion to education in English. It recommended 40 percent reservation in Government posts for the Backward Classes for eight groups of Backward Classes such as Ezhaves, Muslims OBC and others.

**Tamil Nadu**

**Sattanathan Commission (1969)**

The Government of Tamil Nadu appointed a Backward Classes Commission in March 1969, under the Chairmanship of A.N. Sattanathan to examine the measures required to be taken by the Government to promote the welfare of the Backward Classes and for improvement in the conditions of the Most Backward Classes in educational and other matters. The Commission was further expected to make recommendations to improve the conditions of the Backward Classes in respect of professional and technical education, government jobs, commerce, industry and housing.

The Commission submitted its report in 1970. It used educational and social backwardness and the nature of the occupation pursued traditionally by a majority of the members of a caste as the main criterion of backwardness (Sattanathan 1970 : 16).
The Commission divided Backward Classes into two categories namely (i) Backward Classes and (ii) Most Backward Classes. It recommended 17 per cent reservation for Backward Classes and 16 per cent reservation for Most Backward Classes.

Ambashanker Commission (1985)

In 1985, the Government constituted a 21 member Backward Classes Commission under the Chairmanship of J.A. Ambashanker to review the classification of Backward Classes in the state and to re-asses their reservation quota of 50 percent.

For determining social and educational backwardness, the Ambashankar commission applied the criteria of social backwardness, occupational backwardness and educational backwardness as manifested through caste/class, occupations, poverty, educational attainments and illiteracy. For testing these criteria it used the following indicators:

1. Caste/Class accepted as socially backward:
2. Caste/Class whose percentage of women engaged in manual labour is more than that of the state average by at least ten per cent;
3. Caste/Class whose percentage of households living in kutcha houses is more than that of the state average by at least ten per cent, or caste/class whose percentage of households taking subsistence loans is more than that of the state average by at least ten per cent or caste class whose percentage of the household getting loans from money lender / pawn brokers is more than that of the state by at least ten per cent.
(4) Caste/Class whose percentage of population which has passed only the tenth standard or its equivalent is less than that of the State average by at least ten per cent;

(5) Caste/Class whose percentage of population which has passed the higher secondary or equivalent and above is less than that of the state average by at least ten per cent and

(6) Caste/Class whose percentage of illiteracy is more than that of the state by at least ten per cent; or caste/class whose percentage of drop-out is more than that of the state average by at least ten per cent. (Radhakrishnan, 1989; 1266).

The Commission submitted its report in February, 1985 and recommended that the reserved quota to be slashed to 32 percent. The Commission observed that by whatever standard backwardness is determined some groups will be less backward, others more backward. So the Commission recommended Compartmental Reservation. The Commission also recommended periodical review of the list of Backward Classes for every 10 years so as to find out the communities which are advanced due to reservation facilities, and to remove them from the list of Backward Classes. Apart from this the Commission also recommended increased scholarship, enough hostel accommodation for Backward Classes students.

Southern States, with a long history of Backward Class movements, have made substantial progress in implementing programmes for the welfare of Other Backward Classes. On the other hand, the approach of
Northern States to this question has been generally different. One of the most concrete measures to help the Backward Classes is to provide for reservations for them in employment under the Government and in professional educational institutions. Such concessions were extended in the Southern states quite sometime back and the whole operation was relatively smooth and painless. But when states like Bihar and Uttar Pradesh introduced similar concessions on a much smaller scale there was a violent reaction from the upper castes.

Bihar

The first OBC list in Bihar was prepared in 1951. This list has been revised every ten years. Many communities feel that on account of their socio economic backwardness they should be included in the list. After detailed enquiries the State Government accepted or rejected the representations of several communities.

The Bihar Government appointed the First Backward Classes Commission with seven members under the chairmanship of Shri Mungeri Lal in December, 1971. The Commission discovered that "the representation of Scheduled Castes and Tribes at various levels in the Government service was highly unsatisfactory." (Sachchidananda, 1996; 166).

The Commission then prepared a list of Socially and Educationally Backward Classes on the basis of caste and economic condition. This list contained 128 backward castes including 94 castes known as "Most
Backward Classes". In Bihar, it was estimated that 38.1 per cent of the population was OBC. The commission find that OBC have a miserable representation in Government and semi government services. It favoured a concession of ten per cent marks for getting admission in educational institutions similar to the one offered to Scheduled Castes and Scheduled Tribes, maintenance of roster and carry forward policy for reserved quotas, in case of posts reserved for OBC are not filled even after fresh advertisement, it should be given to Scheduled Castes and Scheduled Tribes and not filled from the general category.

The income criterion was taken as a major factor in determining the beneficiaries for post-metric scholarships. For the Other Backward Classes, the applicants are divided into two categories;

a. those whose family income is below Rs.1,500 per year and

b. those whose family income is between Rs.1,500 and Rs.2,000. For technical course, the upper limit is Rs.2400. Priority is given to applications in the first slab. The remaining funds are turned over to the candidates in the higher slab. In case the income is the same preference is given to merit. Children of such of the backward castes who paid income tax were not entitled to reservation of post" (Sachidananda, 1996 : 169).

The Second Backward Classes Commission was appointed in 1994 under the chairmanship of U.N.Singha even on a few, OBCs of Bihar do not fall within the exclusion of advanced section as rarely OBC have annual income of Rs.10 lakhs per year or urban properly of Rs.20 lakhs. It even recommended inclusion of any well off sections or individuals getting the benefit of reservation within the recommendation of the Mandal Commission (K.Balchand, The Hindu 15 August, 1994).
Gujarat

The Government of Gujarat appointed three Backward Class Commissions for inclusion and exclusion of certain communities and then classify them as Social and Educationally Backward Classes or Other Backward Class in the state.

Bakshi Commission

The Government of Gujarat appointed the First - Backward Classes Commission in 1972 under the Chairmanship of Justice Bakshi. The purpose of this commission was to identify the social condensed to implement the reservation policy. This commission identified 82 communities as OBC. The Bakshsi Commission did not publish the data it had collected through its survey, giving rise to doubts about the validity of the classification proposed by it. (Shri Prakash, 1996: 206).

Rane Commission

The Government appointed a Second Backward Classes Commission under the chairmanship of Justice Rane in 1981. The Rane Commission submitted its report in October, 1983. In a major departure from the criteria used by the previous Commission, the Rane Commission rejected caste as a criterion of backwardness. It argued that with occupational diversification and the emergence of contractual relationships, an occupational criteria should be used to classify the OBC. It identified 63 occupations as backward, covering about 35 per cent of the population,
which was 10 per cent less than the Bakshi Commission figure of 45 per cent at that time accepted in Gujarat as denoting the size of the OBC" (Shri Prakash, 1996, 206).

The Government of Gujarat announced in 1986 a reserved quota of 28 per cent of seats and posts for OBC. It did not accept the occupational criteria but went with caste criteria.

The Mankad Commission

The Government of Gujarat appointed a Third Backward Class Commission in 1987 under R.C. Mankad. The Commission was asked to review the functioning of the OBC reservation quota in the last ten years. "The cabinet appointed two sub-committees to look into the issues of reservation and the roster system. An agreement was singed with the majority of the students on 19th July, 1987 and the dissident minority was brought around latter on. In the first accord the government agreed to postpone the implementation of the new reservation quota for the OBC for one year and to appoint a Committee to look into the question of using economic criteria to classify the OBC when the original OBC quota of 10 per cent came up for review in March 1988, (Shri Prakash, 1996; 214).

Haryana

The First Backward Classes Commission was appointed in 1971 under the chairmanship of Gurman Singh. The Commission submitted its report in 1971 itself.
The Government of Haryana had not adopted any specific criteria to classify the people of the State before 1987 as backward. However, on the basis of their economic backwardness and status of occupation, certain classes of people have been declared as backward.

These included:

a. All the residents of the State whose family income is less than Rs.11,000 per annum, irrespective of the fact as to the caste, community or class they belong to and the profession they follow;

b. Besides the above category, certain other communities were also be declared as backward by the State Government. These communities such as those socially and educationally looked down upon by the people of the state. All the members belonging to these backward communities, excluding those whose family income exceeded Rs.1,800 per annum should be entitled to privileges being enjoyed by Backward Classes and facilities and concessions provided for Backward Classes.

i. No income ceiling has been prescribed for a member of the Backward Classes forgetting the concession of reservation of posts at the time of initial appointments.

ii. There is reservation for promotion posts in class III and class IV posts". (S.N.Singh, 1996; 118).

Himachal Pradesh

The Government of Himachal Pradesh in the year 1970 has, on the basis of economic backwardness and ‘social status’ of occupation other than caste, identified the following categories of people as backward:

1. All the residents of Himachal Pradesh whose monthly income is less than Rs.6,000 per annum, irrespective of the fact as to which caste or community or class they belong to and the communities listed in the annexure attached to the report should also be considered as backward in the State.
2. Both 'economy-based' and 'Caste-based' Backward Classes in Himachal Pradesh will be entitled to the following facilities and concessions:

i. Pre-metric-stipends at primary, middle and high/higher secondary stages;

ii. reimbursement of tuition fees;

iii. interest-free loans and

iv. reservation of 2 per cent in direct recruitment and in promotions to selection posts in Class III and Class IV services of the government (Singh, 1996: 119).

JAMMU & KASHMIR

The policy of reservation in Jammu & Kashmir has been a controversial issue. Judicial intervention compelled the State Government to appoint Three Backward Class Commissions.

Gajendragadkar Committee (1967)

Gajendragadkar Committee was appointed in 1967 to make a list of Backward Classes on the basis of the following criteria.

i. Economic Backward Class (based on suitable adhoc figure of annual income);

ii. the occupation or occupations pursued;

iii. region of permanent residence;

iv. number of students per thousand of the population; and

v. Caste in the case of the Hindus.
**Wazir Committee (1969)**

The Wazir Committee had classified Backward Class into six broad categories as follows:

i. Traditional occupations  
ii. Social Castes  
iii. Cultivators  
iv. Pensioners  
v. Areas adjourning the cease fire line  
vi. Bad Pockets.

**Hanand Committee (1976)**

The Committee is of the view that the six categories, made by the Wazir Committee could be reduced to two broad Categories as under:

a. Weak and under privileged classes; and  
b. Residents of backward areas, ie (ii) bad packets and (ii) areas near the line of actual control. It drew up a list of two categories of Backward Classes; (i) Weak and underprivileged sections and (ii) residents of backward areas (ie) of (a) bad pockets and (b) areas within eight kilometers of the line of actual control.

**Madhya Pradesh**

The Government of Madhya Pradesh appointed a Backward Class Commission under the Chairmanship of Ramjee Mahajan in November 1980 for preparing a list of Backward Classes and suggest measures for their upliftment." (Govt. of Madhya Pradesh, report of the Backward Classes Commission; 1984 : 1)
Although the Commission used the Caste Criterion for identifying Backward Class, it suggested the exclusion of prosperous groups from the benefits of reservations. For this purpose, it suggested that the benefit of reservation should be extended only to the children of those who were not income tax payees or who owned less than ten acres of irrigated and non-irrigated land. Along with the benefits of reservation, it recommended the grant of scholarships and provision of hostel facilities." (Singh; 1996: 136)

Maharashtra

The State Government appointed a Backward Class Committee, under the Chairmanship of B.D. Deshmukh to report on the reservation of Backward Classes in service. This Committee, in its report of January 1964 grouped Backward Classes into four categories (1) Scheduled Castes and neo-Buddhists, (2) Scheduled Tribes, (3) Denotified and nomadic Tribes, and (4) Other Backward Communities It also recommended that reservation in Government services and educational institutions for different categories of Backward Classes should be related to the percentage of population of these communities in the State.

Punjab

In 1951 the Punjab Government appointed a Committee on Backward Classes and on the basis of its recommendation declared fourteen castes, constituting 2 per cent of the State population, as OBC. Identification of OBC was done on the basis of economic, educational and social
backwardness (As reported in the Report of the Backward Classes Commission, 1980 : 10).

**Brish Bhan Committee (1965)**

In 1965, the State Government appointed as Evaluation Committee under the Chairmanship of Shri.Brish Bhan to review the Concessions given to the Backward Classes in Punjab.

**Harcharan Singh Commission (1975)**

In 1975 - 76, the Punjab Legislative Assembly appointed a Committee on the welfare of Scheduled Caste, Scheduled Tribes and the Backward Classes under the Chairmanship of Harcharan Singh." (S.N.Singh 1996 : 138).

**Uttar Pradesh**

A ‘Most Backward Classes Commission’ under the chairmanship of Shri.Chhedi Lal Sethi was appointed in October 1975 and it gave its report in 1977. The Commission used poverty, illiteracy, housing, occupation, caste, social inequality and representation in Government service, industry and commerce as yardsticks for measuring backwardness.

The above review brings to the fore the varied criteria used by different states in defining the other Backward Classes. While there is not much of controversy regarding the application of criterion in the case of
Scheduled Caste and Scheduled Tribe, there is good lot of controversy surrounding the categorisation of OBC.

Evolving Criteria for Socio-Occupational Backwardness is indeed a difficult and complex exercise. State Governments have had their own Commissions to enquire into this matter. There have been several legal cases in this regard in the State High Courts and at the Supreme Court Level.

It is important to identify the most reliable/acceptable criteria for the identification of Socio and Educational Backwardness. The criteria should be such that they permit easy quantification of the variables and lead to reliable measurement.

The Supreme Court has suggested that the whole exercise should be objective and based on scientific and empirical studies so that there is scope for updating the list of backward classes on an annual basis.

Legal Aspects

The issue of positive discrimination raises two points which must be kept in mind in understanding the problem of the Backward Classes. On the one hand it can be viewed from a social science perspective and, on the other hand, from the legal studies perspective. The study of the problem from both the angles will possibly provide a comprehensive understanding about the issue.
Indian Constitution on Social Justice

Indian Constitution in Part III under Art. 16 (4) has stated that nothing in the Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any Backward Class of citizens which in the opinion of the state is not adequately represented in the services under the state.

Similarly, Article 15 (4) also states that 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 Class of citizens or for the Scheduled Caste and Scheduled Tribe.

The scope of Art. 15 (4) with regard to special provision for Backward Classes as added in 1951 is to bring Art. 15 and 29 in line with arts 16 (4), 46, and 340 and to make it Constitutional for the state to reserve seats for Backward Classes of citizens, Scheduled Castes, and Tribes in the public educational institutions, as well as to make other special provisions as may be necessary for this advancement. Clause (4) of Art. 15 was inserted by first (Amendment) act 1951. This was done with a view to over ride the decision of Supreme Court taken in Champakam Vs. State of Madras (1951, S.C.R.525). Under Art. 15 (1) it is stated that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Art. 15 clause (4) is an exception to clause (1) of Art. 15 but at the same time Art. 15 clause (4) cannot be so extended as to nullify the guarantee given in clause (1) (State of AP Vs. Sagar 1969, 2 S.C.7/778).
In making reservation for the Backward Classes, the state cannot ignore the fundamental rights of its citizens. The special provision which enables the state to make reservation should strike a balance between several relevant considerations enunciated under Indian Constitution (State of AP Vs. Balaram, 1971 S.C. 1375; Rajendran Vs. Union of India, 1968 SC 507). Various decisions of Supreme Court brought to fore the following points (Basu, 1996 : p.78):

1. The appeals court has struck down reservation of 68% of seats in all technical institutions and medical colleges in Mysore. As a rule, reservation in excess of 50% of the available seats would be invalid.

2. Though caste was a test for determining backwardness among hindus, it was not obligatory to apply that list and a determination of backwardness based on the relevant consideration was not void merely because it ignored caste.

Under Article 16 (4) it has been mentioned nothing in this Article shall prevent the state from making any provisions for the reservation of or posts in favour of any Backward Classes of citizens which, in the opinion of the state, is not adequately represented in the services under the state.

It was held in Indira Sawhney Vs Union of India (AIR 1993 S.C. 477) that clause (4) is not in the nature of an exception to clause (1) and (2) but an instance of classification permitted by Clause (1). It was held in the same case that the doctrine of equality of opportunity (Clause 1 of Art. 15) shall be reconciled in favour of Backward Classes (Clause 4 of Art.16) in such a way that the latter while serving the cause of Backward Classes shall not unreasonably encroach upon the field of equality. Though
Art.16 (4) does not confer any fundamental right upon any individual it enjoinsthe state to take positive action to alleviate inequality or in other words, it confers power coupled with duty (Basu, 1996: p.94).

Let us now look at, cursorily the decisions of Courts on the issue of Reservation or in other words the enforcement of articles 15 and 16. After the enforcement of Constitution two important cases reached Supreme Court: one under Art. 15 and the other under Art. 16. Both cases were decided on the same day by the same Bench. The one which came under Art.15 was Champakam Dorairajan Vs. State of Madras and the other under Art.16 was Venkatarmman Vs. State of Madras (AIR 1951/Sc 229).

Champakam Case

In the Presidency of Madras prior to Independence there was a Government Order - popularly known as "Communal G.O." - reserving seats in professional colleges on the basis of Communal compartmentalisation in the following manner: Non-brahmin (Hindus) - 6; Backward Hindus - 2; Brahmin - 2; Harijan - 2; Anglo Indians and Indian Christian - 1; and Muslim - 1. Even after the advent of the Constitution, the G.O. was in vogue. This was challenged by Smt.Champakam as violative of her fundamental rights under Art.15 (1) and 29 (2) of the Constitution of India (1951). A full Bench of Madras High Court declared the G.O. as void and unenforceable with the advent of the Constitution. The state went for an appeal in this matter to Supreme Court. A special bench of seven judges heard the case and came to the unanimous conclusion that the aforesaid
manner of allocation of seats is violative under Art.15 (4) and 29 (2) of the Indian Constitution. The state of Madras sought to sustain the G.O. with reference to Art. 46 and put down the argument that Art. 46 overrides Art. 29 (2). This argument was rejected. The court pointed out that in the case of employment under the state clause (4) of Art. 16 provides for reservation in favour of Backward Class citizens. No such provision was made in Art. 15. In order to overcome this judgment the Constitution (First Amendment) Act 1951 was introduced and Art. 15 (4) which states that 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 the Schedules Castes and Schedule Tribes was inserted.

Venkatraman Case

In the matter of appointment also in the state of Madras a "Communal G.O." was in force before Independence. During Dec. 1949 the Madras Public Service Commission invited applications for 83 posts of District Munisifs and Specified that the selection would be made according to the Communal G.O. The petitioner, a Brahmin, filed a petition under Art.32 that if the Communal G.O. were to be disregarded, he would have been selected. He challenged the communal G.O. and approached the Supreme Court. Justice S.R.Das speaking for the Bench observed that reservation of posts in favour of any Backward Class of citizens cannot be regarded as unconstitutional. The court held that the ineligibility created by the communal G.O. to the petitioner did not appear to be sanctioned by
Clause (4) of Art.16 and it is an infringement on the fundamental right guaranteed to the petitioner, as an individual under Art. 16 (1) and (2). The judge said that the communical G.O. in his opinion was repugnant to the provisions of Art.16 and 15, and as such void and illegal.

**Balaji Case**

After the introduction of First Amendment the first case which came for hearing before Supreme Court was Balaji Vs. State of Mysore (AIR, 1963 SC 64).

In the state of Karnataka (the then Mysore) reservations were in force prior to the advent of Constitution and continued even after. On July 26, 1958 the State of Mysore issued an order under Art.15 (4) of the Constitution declaring all the communities except the Brahmin Community as Socially and Educationally Backward and reserved a total of 75 percent seats in Educational Institution in favour of SEBCs and SC/STs. Every year the Govt. used to issue such an order with minor variation in the percentage of reservation. The validity of this order was challenged before the Supreme Court. The order was struck down and the Supreme Court laid down the following guidelines:

1. Clause (4) of Art.15 is a proviso or an exception to clause (1) of Art. 15 and to clause (2) of Art. 29;

2. It rejected the identification of Backwardness for the purposes of Art. 15 (4) solely on the basis of caste;
(3) Another important guideline laid down was that the reservation under clause (4) of Art. 15 should be reasonable. It should not be in such a way, as to defeat the Main rule of equality contained in clause (1) of Art. 15. The reservation should be less than 50 per cent.

(4) A provision under Art. 15 (4) need not be in the form of a legislation. It can be made by Executive Order.

(5) The further categorization of Backward Classes into Backward and more Backward is not warranted by Art. 15 (4).

On the basis of the judgement the Mysore Government tried to identify the Backward Classes on the basis of low economic conditions and low occupation (Singh 1996; 57).

**Chitarelekha Case**

In 1964 another case came up from the state of Mysore. The Mysore Government had by an order defined Backward Classes on the basis of Occupation and Income unrelated to caste. In medical and technical Institutions 30 percent of the seats were reserved them in addition to the reservation in favour of SC and ST. The argument laid before the Court was that the Identification of Backward Classes without taking into consideration caste was not permissible. The Majority thorough Justice Subba Rao held that the Identification or classification of Backward Classes on the basis of occupation cum-income, without reference to caste is not bad and does not affect Art. 15 clause 4, of Constitution (Chitrelekha Vs State of Mysore AIR 1964, SC 1823). Further the court pointed out that the juxta position on the expression ‘Backward Classes’ and ‘Schedule Caste’ in Art.15(4) leads to reasonable reference that expression ‘Classes’ is not synonymous with caste (Marc Gralantur, 1984 : 192).
Sagar Case

In the year 1968 in State of A.P. Vs. Sagar (AIR, 1968 S.C.1379), the issue was whether the list of Backward Classes based solely on caste is legal? It was held that the expression ‘Class’ means a homogenous section of the people grouped together because of certain likeness or common traits and who are identifiable by some common attributes such as status, rank, occupation residence in a particular locality, race, religion and the like. In determining whether a particular section forms a class, caste cannot be excluded all together, but in the determination of a class a test solely based upon the caste or community can not also be a accepted.

Rajendran case

The Madras and Andhra Pradesh Governments identified the Backward Classes with reference to castes. The identification of Socially and Educationally Backward Classes with reference to castes was questioned and also point was raised whether such an identification infringes Art.15. In this case the Court held that if the list of Backward Classes prepared in solely on the basis of castes alone without taking into consideration of Social and Educational backwardness of the caste in question then it is violative of Article 15 (1) which prohibits discrimination on the ground of caste only. Further the Court held that it must not be forgotten that a caste is also a class of citizens and the caste as a whole Socially and Educationally Backward reservation can be made in favour of such a caste on the ground that it is a socially and educationally Backward
Class of citizens within the meaning of Art. 15 (4). In this case the Court further held though the list of Backward Classes were prepared by the Govt. based on castes, the petition/appellants did not prove that any caste included in the list of Backward Classes was not educational and socially backward. So the court came to the conclusion that though the list was prepared caste-wise, the castes included therein were as a whole educationally and socially backward and therefore the list was not violative of Art.15 (AIR, 1968 SC 1012).

There is a clear shift in approach and emphasis of the courts perception. The court now held that a caste is a class of citizens. If a caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally Backward Class of citizens within the meaning of Art. 15 Clause (4). Moreover the burden proving that the inclusion/specification/identification that a caste in question was not socially and educationally backward was placed upon the petitioners. In case of failure to prove that a caste in question is not Socially and Educationally backward the identification made by the State was upheld.

The identification made on the basis of caste was upheld in as much as the petitioner failed to prove that any caste mentioned in the list was not socially and educationally backward. (Indira Sawhney's Case, AIR, 1993 SC 525, 526).
Triloki Nath Case


Periakaruppan Case

In this case, Periakaruppan Vs. State of Tamil Nadu (AIR 1971 SC 2303), again the identification of Socially and Educationally Backward Classes on the basis of caste alone was questioned. A bench of three judges rendered decision. Justice Hegde held "There is no gainsaying the fact that there are numerous castes in this country which are Socially and Educationally backward. To ignore their existence is to ignore the facts of life. Hence, we are unable to upheld the contentions that impugned reservation is not in accordance with Art. 15 clause 4

Thus in this case also the Court endorsed the views of the Court in Rajendran case. The three member Bench upheld the validity of the Backward Classes list drawn on the basis of caste.

Balarman Case

In this case, Andhra Pradesh Vs. Balarman (AIR, 1972 SC 1375), the identification of Backward Classes on the basis of caste by Andrapradesh Backward Classes Commission appointed by the state Government was questioned that it did not do a scientific job in identifying the SEBC. A
Division Bench adopted the same approach as in Rajendran and Peria Ramppan cases and upheld the identification made by the Andhra Pradesh Government on the basis of caste. Answering the criticism against identification of SEBC on the basis of caste by the commission the bench observed "Though prima facie the list of Backward Classes which is under attack before us may be considered to be on the basis of caste, a closer examination will clearly show that it is only a description of the group following the particular occupations or professions, exhaustively referred to by the commission. Even on the assumption that the list is based exclusively on caste, it is clear from the materials before the commission and the reasons given by it in its report that the entire caste is Socially and Educationally Backward and therefore their inclusion in the list of Backward Classes is warranted by Art. 15 (4). The groups mentioned therein have been included in the list of Backward Classes as they satisfy the various tests, which have been laid down by this court for ascertaining the social and educational backwardness of a class".

Jaysree Case

The Supreme Court in the Jaysree Vs. State of Kerala (1976) case accepted the logic of Kerala High Court that economic backwardness plays a part in Social Backwardness and Educational backwardness. So poverty and economic factors are relevant. The Supreme Court held that caste cannot be made the sole or dominant test in ascertaining Social Backwardness although it may not be irrelevant to consider it in ascertaining the same. However, it took the view that social backwardness,
in the ultimate analysis is the result of poverty to a great extent, although it may be aggravated by consideration of Caste (Singh, 1996: 58).

**Thomas Case**

In Thomas case (AIR, 1976 SC 490) a new thinking on Art.16 was seen. The Kerala Government gave exemption in passing promotional test for the members of SC and ST for a period of two years. In the year 1972, 51 vacancies arose in the category of Upper Division Clerks, out of which 34 were filled up by members of SC having only 17 for others. This was questioned by Thomas. His grievance was, but for the said concession / exemption given to members of SC/ST he would have been promoted to one of those posts in view of him having passed the relevant tests. He contended that Art. 16 (4) permits only reservation in favour of Backward Classes but not such an exemption. This argument was accepted by the Kerala High Court. The court upheld the contention that more than 50% of vacancies in the year had gone to the members of SC as a result of the said exemption. The court held that it was bad for violating the 50% rule held in Balaji case (AIR, 1963 SC 649). The Kerala State appealed to Supreme Court and the appeal was allowed by a majority of 5:2 and all the seven judges wrote a separate opinions.

In this case Chief Justice Ray held that Art.16 (1) being a facet of Art.14, permits reasonable classification. Art.16 (4) clarifies and explains that classification on the basis of backwardness. Classification of scheduled castes does not fall within the purview of Article 16 (2) since schedule caste
historically oppressed and backward are not castes. Similar view was also taken by Mathew J., and said that Art. 16 (4) is not an exception to Art. 16 (1) that Article 16 (1) permits reasonable classification and that scheduled castes are not ‘castes’ within the meaning of Article 16 (2).

**Vasanth Kumar Case**

In Vasanth Kumar Vs State of Karantaka (AIR, 1985 Suppl. (1) SCR 352, AIR 1985 SC 1495), was taken up by a five - judge bench and analysed various issues relating to reservation especially identification of Backward Classes and wrote separate opinions, each sailing in their own way. Chief Justice Chandrachud opined that the present reservation should continue for a further period of 15 years, making a total 50 years from the date of commencement of the Constitution. He added that the means test must be applied to ensure that the benefits of reservation actually reaches the deserving sections.

2) Justice Desrai was of the opinion that the only basis upon which Backward Classes should be identified is the economic one and that a time has come to discard all other bases.

3) Chinnappa Reddey said the identification of Backward Classes on the basis of caste can not be taken as exception to, for the reason that in Indian context caste is a class. He said caste is the primary index of social backwardness, so that social backwardness can be readily identified with that of a person’s caste. He only talked about the problem of creamy layer
without touching the concept explicitly. He said that if few members of a particular caste progressed enough socially, educationally and economically as that of member of any forward classes, to estimate such persons, he prescribed an upper income ceiling. He opined that Identification of SEBC in Indian context is a complex exercise, which does not admit any universal or rigid test, the learned judge was also of the view that the reservations are likely to lead to deterioration in efficiency or that they are anti-merit.

4) Justice Sen was of the opinion that the predominant and only factor for making special provisions under Article 15 (4) or 16 (4) should be poverty and that caste should be used only for the purpose of identification of groups comparable to SC/ST. The reservation should continue till such time as all the Backward Classes attain a state of enlightenment.

5) Justice Venkataramaiah agreed that identification of Backward Class can be made on the basis of caste. He cited the Constituent Assembly and Parliament debate in support of this view. He supported the imposition of means test, and also said the extent of reservation should not exceed 50%. He also expressed the view the periodical review of this list of SEBC and extension of the other facilities to them were required.

**Indira Sawhney Case**

The sudden announcement of accepting the recommendation of Mandal Commission was described as a political decision of the then Prime Minister V.P. Singh. The Government accepted the recommendations of the
of Second National Backward Class Commission, popularly known as Mandal Commission and issued office memorandum dated 13 August 1990 which said that 27 percent of the vacancies in civil posts and services under the government of India shall be reserved for Socially and Educationally Backward Classes (SEBC). For Identification of SEBC the Government relied on the lists prepared by every states which were solely based on castes/communities. This decision of the Union Government created an atmosphere surcharged with pro-and anti-Mandal agitations. The Supreme Court was approached in such a surcharged atmosphere, on Sep 21, 1990. Initially the petitions were heard by a Constitution Bench presided over by the then Chief Justice. After some time, considering the importance and sensitiveness of the matter, the Constitution Bench refereed the matter to a Special Bench of Nine-judges to settle the constitutional position relating to reservations.

The matter was heard by the Nine Judge Bench and by a 6:3 decision the constitutional validity and enforceability of the impugned OM dated 13.08.90, was upheld subject to certain conditionalities and prerequisites (Parsad 1997: 296) (AIR, 1993 SC 477).

The salient points of the Supreme Court verdict are:

1. State is empowered to make special provisions for the protection of Backward Classes of citizens and such a classification should be within the framework of Constitutional requirements. Any discrimination solely on grounds only of religion, race, caste, sex,
dissent place of birth, residence or any of them result in invidious reverse discrimination which is impermissible.

2. Only such classes of citizens who are socially and educationally backward due to prior discrimination and its ill-effects which are continuing should be identified for the purpose of reservation. The burden is on the State to show that these classes have been subjected to such discrimination in the past and that they have reduced to a state of helplessness, poverty and the consequential social and educational backwardness as in the case of SC/ST.

3. In this judgement the concept of socially advanced persons was brought in. This is otherwise called Creamy Layer. The judges observed that even among the identified Backward Classes, if as persons means exceeded a predetermined economic level he should not be, entitled to the protection of reservation however backward he may be socially and educationally. He may, however, be considered for the benefits of other affirmative action programs. But here also while doing so his comparative affluence in relation to other Backward Class candidates may be relevant consideration to exclude him. It further pointed out that once a class of citizens has identified on correct principles as backward for the purpose of reservation, the ‘means test’ must be strictly and uniformly applied to exclude all those persons in that class reaching above the predetermined economic level.
4. The number of seats or posts reserved under Art. 15 and Art. 16 must at all times remain well below 50% of the total number of seats.

5. Reservation is not applicable to promotion. It is confined to initial appointment only.

6. A periodic administrative review of all affirmative action programmes, including reservation of seats or posts must be conducted by a specially constituted permanent authority with a view to adjustment and readjustment of such programmes in proportion to the nature, degree and extent of backwardness.

7. While reservation is a remedy for historical discrimination and its continuing ill-effects, other affirmative action programmes are intended to redress discrimination of all kinds whether current or historical.

8. Reservation of seats of posts solely on the basis of economic backwardness, i.e. without regard to evidence of historical discrimination, finds no justification in the Constitution.

9. It is open to the state to adopt any valid affirmative action programme, other than reservation, for amelioration of the disabilities of all disadvantaged persons, including Backward Classes of citizens.

10. Reservation for certain specialties / Technical posts were made not available.
CREAMY LAYER AMONG OBC

The reservation for Other Backward Classes (or Socially and Educationally Backward Classes) were introduced by Central Government on 13th Aug 1990 on the basis of the recommendations of the Second Backward Class Commission popularly known as "Mandal Commission". These reservations pertain to employment under Govt of India and Public sector undertakings. In the Mandal Commission's recommendation and in the Office Memorandum issued on 13th August 1990 there is no mention about 'Creamy Layer'. The concept of "Creamy Layer" was born out of the Judicial decision in Indira Sawhney Vs. union of India (A.I.R. Apr 1993 SC.477). During the litigation in the Indira Sawhney case the petitioners who were against the implementation of reservation for OBC, made one of their pleas that the benefits of reservation would be enjoyed by certain section of people among Backward Classes who are advanced - socially and educationally, while considering the plea of the petitioners after deep deliberation the Supreme Court in its verdict in Indira Sawhney case proposed a 'means test' i.e. imposition of an income limit for the purpose of excluding persons (from the Backward Classes) whose income is above a certain fixed limit.

Thiru.A.N.Sattanathan (1983), Chairman, Tamil Nadu Backward Classes Commission in an Article "New Criteria for Backwardness" pointed out about the steadily growing upper crust of well-to-do, educated people, who do not need to be propped up by way of reservation, when most of the majority of the caste still remain backward. Thus he hinted about the a creamy layer of people.
The issue was also very much in contemplation of Mandal Commission. The Commission was aware of the fact that major benefits of reservation and other welfare measures for OBC will be cornered by more advanced sections of backward communities. But it conceded that it was a universal phenomenon. Mandal Commission was of the view that human nature being what it is a "new class" ultimately does emerge even in classless societies and, therefore, priority has to be fixed (Prasad, 1997: p. 122). Thus Mandal Commission identified the Chief goal of this exercise by arguing that:

The Chief merit of reservation is not that it will introduce equalitarianism among OBC when the rest of the Indian society is seized by all sorts of inequalities. But reservation will certainly erode the hold of higher castes on services and enable OBC in general to have a sense of participation in running the affairs of this country" (Second Backward Classes Commission 1980 Chapter XIII).

The Concept of Creamy Layer

Among the Other Backward Classes certain groups / sections of persons utilize the benefits of reservation and their children acquire higher socio-economic status. Again the members / children of the same family utilize the facilities of reservation. These steadily growing upper crust of well-to-do people among the Backward Classes forms a Forward class within Backward Classes. This upper crust is termed as "Creamy Layer". This type of upper crust is prevalent in almost all the castes included in the Other Backward Classes.
Issues raised pertaining to CREAMY LAYER IN MANDAL CASE

The following issues were raised with regard to creamy layer:

1. Was it advisable and realistic to declare the upper crust of OBC i.e. creamy layer out side the purview of reservation?

2. Whether the philosophy of creamy layersation would be limited to OBC or SC and ST too for whom reservational benefits have been given since longer time?

With regard to the first issue while delivering the Judgement, barring Justice Pandian, all the eight Hon’ble justices were of the view that reservation for OBC is to be allowed subject to immediately skimming off the creamy layer among them. Chief Justice Kania, and Venkatachaliah, Ahmadi and Jeevan Reddy thought creamy layer was necessary for more appropriate Identification of Backward Classes. Thommen accepted attainment of certain economic level for exclusion from Backward Classes. Kuldip Singh accepted means test to skim off the affluent section of the Backward Classes. Sahai found a social purpose in exclusion through proper income, property or status criteria.

Sawant based his judgement about ‘Creamy layer’ on two grounds.

i) The Natural progress reveals undeniably that when society moves, at least some Individuals and families in the Backward Classes, however small in number, gain sufficient means to develop their capacities to compete with others in every field. So irrespective of their original birthmark they cannot be called as part of Backward Classes. He further
said, to continue reservational benefit to them would violate equality as it would amount to treating equals unequally. Second, to rank them with the rest of the Backward Classes would equally violate the right to equality of the rest in those classes, since it would amount to treating unequals equally. Sawant emphasised that taking out forwards from among the Backward Classes is not only permissible but obligatory under the Constitution (Prasad 1997: 125 & Indira Sawhney vs union of India, AIR 1993).

Justice, Thommen preferred means test and pointed out that once a class of citizens is identified on the principles of backwardness as backward for the purpose of reservation, the means test must be strictly and uniformly applied to exclude all persons in that class reaching above the predetermined economic level. (Prasad, 1997; 125). Justice Kuldip singh too preferred means test. He thought that benefits of special privilege like job reservation were mostly chewed up by richer and more affluent sections of Backward Classes and therefore recommended that means-test is imperative to skim-off the affluent sections of the Backward Classes. Therefore it was said that creamy layer amongst Backward Classes of citizens must be excluded by fixation of proper Income, property and status criteria.

It should pointed out that all the above judgements are based on theoretical assumptions in the absence of any facts and figures showing that upper crusts of Backward Classes have eaten away the reservational benefits (Prasad, 1997: P126).
Justice Pandian said that the Government accepted the list submitted by the Commission. The Government did not think it prudent to exclude those individuals forming a part of creamy layer.

He raised the question "whether judicial supremacy can work in the broad area of Social Policy or in the great vortex of ideological and philosophical decision deviating the exclusion of any section of the people from accepted list of OBC on the mere ground that they are all 'Creamy Layers', which expression is to be tested with reference to various factors or make suggestions for exclusions of any section of the people who are otherwise entitled for the benefit of reservation in the decision of the Government so long as that decision does not suffer from any Constitutional infirmity".

Justice Pandian fully endorsed the observation of Justice Chinnappa Reddy in Vasant Kumar's case by giving reply to those who charge that people falling under 'creamy layer, are snatching away the benefits of reservation. And, therefore, Pandian ruled that "the entire 27% of the vacancies in civil posts and services under the Govt of India shall be reserved and extended to all the SEBC". However, Pandian too accepted the weeding out of the upper crust of OBC but not at once. He said it should be done in due course on the review of the recommendation of Mandal Commission. (Prasad, 1997; 127).

The majority of judges in Indira's case held that in their opinion, "It is not the question of permissibility or desirability of creamy layer test but one of proper and more appropriate Identification of a class of true Backward Classes. They further said that the very concept of class denotes a number of persons having certain common traits which distinguish them from others. In a Backward Class under Clause (4) of Article 16, if the
connecting link is the social backwardness, it should broadly be the same in the given class. If some of the numbers are far too advanced socially (which in the context necessarily means economically and may also mean educationally) the connecting thread between them and the remaining class snaps. After excluding them alone the class becomes a true Backward Classes. They further said that difficulty lies in drawing the line between them. It was also said that while drawing the line it should also be ensured that it does not result in taking away with one hand what is given by the other. The court observed that the basis of exclusion should not merely be economic, unless the economic advancement is so high that it necessarily means social advancement.

Hence keeping in mind of the above considerations, the Supreme Court directed the Government of India to specify the basis of exclusion. Whether on the basis of income, extent of holding or otherwise of ‘creamy layer’. It directed the Government to complete the task within four months from the date of that direction.

With regard to the second issue, the Chief justice Kania, Venkatachaliah, Ahamdi, and Jeevan Reddy, had only made running observation i.e. "This discussion is confined to Other Backward Classes only and has no relevance in the case of Schedule Castes and Schedule Tribes.

In accordance with the Judgment / direction of Supreme Court of India the union Government also decided to implement the reservation only after the exclusion of Socially and Educationally advanced members
In order to formulate socio-economic criteria for identification of "creamy layer", the Government of India constituted an Expert committee (vide Notification No.120/10/93-BCC (c) Govt of India, Ministry of welfare dated Feb 22, 1993). The following were the Members of expert committee:

1. Sri Ramanandan Prasad, Judge (Rt) Chairman Patna High Court
2. Sir M.L. Sahara Social Scientist, Ex Member Chairman UPSC
3. Sri P.S.Krishnan, Ex-Secretary, Member Ministry of welfare Govt of India
4. Sri R.J.Majithia Ex-Chairman Member-Secretary Revenue Board Govt of Rajasthan

This committee has also taken into consideration the views expressed by Justice Pandian, in his judgement about 'creamy layer formula'. It has also taken into constitutional impact of creamy layer formula, with chances of leaving the prescribed quota unfulfilled as doubted by Sahay in his Article "A moment of Truth". Since the creamy layer concept was evolved for the first time, the committee conceded the scope of its review in future. (Prasad 1997 : p.129).

**Justice Ramanandan Committee's recommendation**

The Govt accepted the following criteria for identification of creamy layer as recommended by Justice Ramanandan Committee.
CRITERIA FIXED BY THE GOVT OF INDIA FOR IDENTIFICATION OF CREAMY LAYER.

Description of Category

I Constitutional Posts

To whom rule of exclusion will apply.

Son(s) and daughter(s) of

a) President of India
b) Vice-President of India
c) Judges of the Supreme Court and of the High Courts
d) Chairman and Members of UPSC and the State Public Service Commission; Chief Election Commissioner, Controller and Auditor General of India
e) Persons holding constitutional positions of like nature.

II Service Category

Son(s) and daughter(s) of

A. Group/Class I officer of All India Central and State Services (Direct Recruits)

a) Parents, both of whom are Class I Officers
b) Parents, either of whom is a Class I officers
c) Parents, both of whom are class I officers, but one of them dies or suffers permanent incapacitation.
d) Parents, either of whom is a class I officer and such parents dies or suffers permanent incapacitation has had the benefit of employment in any international Organization like U.N.IMF, World Bank etc. for a period of not less than 5 year.
e) Parents, both of whom are class I officers die or suffer permanent in incapacitation and before such death or such in incapacitation of the both, either of them has had the benefit of employment in any International Organisation like UN, IMF, world Bank, etc, for a period of not less than 5 years. Provided that the rule of exclusion shall not apply in the flowing cases;

a) Sons and daughters of parents either of whom or both of whom are class I officer and such parent(s) dies / die or suffer permanent incapacitation.

b) A lady belonging to OBC category has got married to a class I officer and may herself like to apply for a job.

B. Group B/Class II officer of the Control and State Services (Direct Recruitment)

Son(s) and daughter(s) of
a) Parents both whom are class II officers.

b) Parents of whom only husband is a and the class II officer and he gets into class I are at the age of 40 or earlier.

c) Parents, both of whom are class II officers and one of item dies or suffers permanent in incapacitation and either one of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank, etc, for a period of not less than 5 years before such death or permanent incapacitation.
d) Parents of whom the husband is a class I officer (direct recruit or pre-forty promoted) and the wife is a class II officer and the wife dies; or suffers permanent incapacitation; and

e) Parents of whom the wife is a class I officer (Direct Recruit or preferly promoted) and the husband dies or suffers permanent incapacitation.

Provided the rule of exclusion shall not apply in the following case.

Sons and daughters of

a) Parents both of whom are class I1 officers and one of the dies or suffers permanent incapacitation.

b) Parents, both of whom are Class I1 officers and both them die or suffer permanent incapacitation, even though either of them has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc, for a period of not less than 5 years before their death or permanent in incapacitation.

C. Employee in Public Sector Undertaking etc.

The criteria enumerated in A and B above in this category will apply mutatis mutandis to officers holding equivalent Organisations Universities, etc. and also to equivalent or comparable posts and
III Armed forces including paramilitary forces (persons holding civil posts are not included)

position under private employment, pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in category VI below will apply to the officers in the institutions.

Son(s) and daughter(s) of parents either or both of whom in or are in the rank of colonel and above in the Army and to equivalent posts in the Navy and the Airforce and the Para Military Forces.

Provided that:

i. If the wife of an Armed Force Officers herself in the Armed Force (ie., the category under consideration) and rule of exclusion will apply only when she herself has reached the rank of colonel.

ii. The service rank below colonel of husband and wife shall not be clubbed together.

iii. If the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying to the rule of exclusion unless she falls in the service cataria and conditions enumerated there in will apply to her independently.
IV. Professional class and those engaged in Trade and Industry

i. Persons engaged in profession as a doctor, lawyer, chartered accountant, Income-Tax consultant, dental surgeon, engineer, architect computer specialist, film Artists, and other film professional author, play wright, sports person, sports professional, media professional on another vocations of like status.

ii. Persons engaged in Trade business and Industry criteria specified against category VI will apply:

Explanation:

i. Where the husband is in some profession and the wife is in a Class II or lower grade employment, the income/wealth test will apply only on the basis of the husband's income.

ii. If the wife is in any profession and the husband is in employment in a Class II or lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the husband's income will not be clubbed with it.

V. Property Owners

A. Agricultural holdings Son(s) and daughter(s) of persons belong to a family (father, mother and minor children) which owns.
a. Only irrigated land which is equal to or more than 85% of the statutory area, or (Prasad Committee recommended 65% area).

b. Both irrigated and unirrigated land, as follows:

i. The rule of exclusion will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this pre-condition of not less than 40% exists, then only the area of unirrigated land will be taken into account. This will be done by commuting the unirrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area some computed from unirrigated land shall be added to the actual area of irrigated land and if after such clubbing together the total area in terms of irrigated land is 80% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur.

ii. The rule of exclusion will not apply if the land holding of a family is exclusively unirrigated.
B. Plantations

i. Coffee, Tea, Rubber etc. Criteria for Income/Wealth specified in category VI below will apply.

ii. Mango, Citrus, Apple Plantations etc. Deemed as agricultural holding and hence criteria at A above under this category will apply.

C. Vacant land and/or buildings in Urban areas or urban agglomerations Criteria specified in category VI below will apply:

Explanation: Building may be used for residential, industrial or commercial purpose and the like two or more such purposes.

VI. Income / Wealth Test

Son(s) and daughter(s) of

a. Persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

b. Persons in categories I, II, III and VA who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

Explanation:

i. Income from salaries or agricultural land shall not be clubbed.
ii. The income criteria in terms of rupee will be modified retaking into account the change in its value every three years. If the situation however, so demands, the interregnum may be less.

Explanation:

Where the expression "permanent in capacitation" occur in the schedule, it shall mean incapacitation which results in putting an officer out of service".


**Ashok Kumar Thakur Case on Creamy Layer (AIR, 1996 SC 75)**

The Government of Bihar and state of U.P. formulated criteria for determining 'Creamy Layer' for the purpose of exclusion from OBC. This was challenged through a writ petition in Art.32 of the Constitution. The Division Bench of the Supreme Court consisting of Kuldip Singh and Saghir Ahmad, approved the Government Office memorandum on creamy layer based on Ramanandan Committee Report. However, the two honourable Judges declared that the creamy layer formula of both the states of Bihar and U.P. as invalid, as the criteria for identification was against the norms indicated by Hon'ble Supreme Court, in Mandal case (AIR, 1996, SC 75). The state in addition to the criteria specified in Mandal case for
identification of creamy layer put an extra condition. For instance in Ramanand report the children of I.A.S., I.P.S. officers have been excluded from the OBC list since their status is enhanced in society.

In addition to these requirements the State reduced the exclusion of such categories by stipulating additional conditions such as, apart from being a member of IAS/IPS or any other All India Service, that such persons should also draw a salary of more than Rs.10,000 per mensum, the wife/husband be graduate and one of them owning house in urban area. In case of professionals an income of Rs.10 lakhs per annum was fixed as criterion. So the criteria fixed by the states of Bihar and UP were held invalid. The objection of the Supreme Court was that the attachment of new conditions had no nexus with object sought to be achieved, so such conditions were struck down. Kuldip Singh also pointed out that "It is difficult to accept that in India where the per capita national income is Rs.6929 (1993-94), a person who is a member of the I.A.S. and a professional who is earning less than Rs.10 lakhs per annum is socially and educationally backward." (Ashok Kumar Takur Vs. Union or India AIR, 1996 pp.421-422).

While delivering the judgement Kuldip Singh arrived at the following conclusions.

1. The protective discrimination in the shape of job reservation under Art. 16(4) has to be programmed in such a manner that the most deserving section of the Backward Class is benefitted;

2. Means test by which creamy layer is excluded ensures such result;
3. Due to nature of things there may be disparity among backwards as all cannot be equally backward and therefore some of the members of the class may have individually crossed the barriers of backwardness but while identifying the class they may have come within collectively;

4. It is often seen that comparatively rich persons in the Backward Class are able to move in the society without being discriminated socially;

5. The members of the Backward Class are differentiated into superior and inferior and discriminated, which was practised by higher class in turn has been practised by the affluent members of the Backward Class on the poorer members of the same class; and

6. The benefits of social privileges like job reservations are mostly chewed up by the richer or more affluent sections of the Backward Class and the poor and the really backward sections among them keep on getting poorer and more backward (Prasad 1997: 138).

There was some criticism over the decision rendered in Ashok Kumar case:

The backwardness of a person does not rest with economic consideration alone but also with social consideration. The economic development is to be so high that it should mean social advancement. This is so because the purpose of reservation is not alleviate poverty but to give adequate share in power for Backward Class people.

It was pointed out that even after a long time SC/ST quotas are not completely filled for want of suitable of candidates. If it is so what would be the fate of quota fixed for OBC ie. 27% reservation, after skimming off the "Creamy layer".
Creamy Layer Controversy in Kerala

The Kerala State Government has not agreed to adopt the concept of creamy layer and exclude a section of OBC from reservation benefits. The Kerala State Backward Classes (Reservation of Appointments or posts in services under the state) Bill 1995 was passed to continue the existing system of reservation for Backward Classes in the state. While Introducing the bill the then Law Minister of Kerala Government said it might be true that there is a Creamy Layer among the Backward Classes in other states but in Kerala it is not true. This was challenged at the apex court.

The Apex Court expressed its displeasure over the implementation of recommendations of Mande Commission by the Kerala State Government. The Apex Court suo moto initiated contempt proceeding against the State Government for its failure to identify the creamy layer among the Backward Classes as per the directions rendered in Indira Sawhney's case.

The Apex Court directed the appointment of a Commission to study whether or not there was a creamy layer as claimed by the Government? It also directed the Chief Justice of High Court to draw terms of reference to the Commission in the light of the judgement rendered by Supreme Court in Indira Sawhney's case. In the meantime the Court kept the petition on Constitutional validity and contempt proceedings against the Government pending.
Creamy Layer Formula - a Critical Approach

There are two schools of thought in the implementation of creamy layer concept. It is true that there is no empirical study with regard to ‘Creamy Layer’ among the OBC, however there are speculations made theoretically. Surprisingly, the point was raised by the petitioners i.e. persons who were against the implementation of reservation for SEBC, in Indira Sawhaney’s case. They apprehended that the facilities extended by positive discrimination would be lapped up by certain sections of socially advanced persons among OBC. This was raised as one of the objections against the implementation of reservation for OBC. It is interesting that the respondents raised this issue. In fact few states like Tamil Nadu, Bihar and Kerala stuck to the view that once a particular caste/community has been classified as Backward it is difficult to classify again a certain section of the people on the basis of economic criteria alone as ‘creamy layer’ and exclude these from the benefits of reservation.

In several cases the Judges have suggested means test as criteria for Identification of creamy layer. Here the practical difficulty is to assess the real income level of a person. For instance, a salaried employee in Government/Public sector getting income of Rs.10,000 or above would be excluded from the benefits of reservation on the basis of means test. On the other hand a business man who earns more than Rs.20,000 per mensum would enjoy the benefits of reservation since he would always show his income as less. So the theory that exclusion of creamy layer section would make the Backward Class a true Backward Class will not practically work.
The main purpose of creating Protective Discrimination is to remove the social backwardness of the people due to the effects of past discrimination. One view expressed against creamy layer is that protective discrimination extended in one generation would not make the person socially advanced and hence withdrawing the facility during the next generation is untenable. It is further argued that the reservation facilities should be continued for two or three generations so that the person/family becomes socially advanced.

Another point raised against the enforceability of creamy layer is that there won't be adequate takers for the 27% of reservation among OBC if we exclude the creamy layer section.

Justice Chinnappa Reddy in Vasantha Kumar's case posed the question, "how can it be bad if reserved seats and posts are snatched away by the creamy layer of Backward Classes, If such snatching away of unreserved posts by the top creamy layer society itself is not bad?" (AIR, 1985 SC 1495, p.1525).