CHAPTER V

SYNTHESIS: IS THERE A CREAMY LAYER AMONG OBC
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Positive Discrimination Policies in India arose because of the historical injustices and inequalities based on caste/community. The initial construction of the term "Backward Caste" by definition - at least in the Madras Presidency - meant all sections of society other than the Brahmin Community. This "negative" definition certainly was confusing. The task of identifying the beneficiaries of the Positive Discrimination Policy for OBC has become relatively complicated, since they were not the sufferers of the social stigma of "untouchability" as in the case of Scheduled Castes or more or less clearly defined category of Scheduled Tribes.

Efforts to define OBC in terms of both legal and social parameters and thus putting some substance into the debate began only after Independence. Article 16(4) of the constitution provides reservation of appointments or post in favour of Backward Classes Citizen which is not adequately represented in the service under the State. Article 15(4) of the Constitution was inserted by the Constitution (First Amendment) Act 1951. The First two Amendments to the Constitution were directed towards enabling a Policy of Positive Discrimination and protecting it from the threat of legal action on grounds of inequality of treatment and opportunity.
Nearly fifty years have passed from the time of laying the Constitutional foundation and the notification of Reservations in education and employment for OBC as a National Policy. The Policy can be studied at two levels, namely at All-India level and at State-level. At All-India level both the Kaka Kalelkar Commission in 1955 and the Mandal Commission in 1980 depended on the findings of the last detailed community based census of 1931 to extrapolate on the population of Backward Classes.

The Kaka Kalelkar Commission used the term "Classes" as synonymous with "Castes and Communities" and prepared a list of Backward Classes on the basis of caste. 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 various other recommendations.

The Mandal Commission used a Sample Survey to identify the social attributes of backwardness. The Second Backward Classes Commission (Mandal Commission) used eleven indicators or criteria to determine social and educational backwardness. These indicators were grouped under three broad heads, namely (1) Social (2) Educational and (3) Economic.

Mandal Commission has recommended extensive and comprehensive reservations in favour a large number of castes and communities throughout the country as a necessary step towards the realization of social equality. The Commission had made good effort by collecting and compiling
a large body of data on a variety of topics. It has used these data to forestall all possible objections to the use of caste quotas in education and employment.

There is a good lot of debate about Mandal Commission Report, some swearing by it and others against. The polarisation of view points and ideological divisions were complete over the Mandal Commission Report. Not that the Report of an earlier Commission (headed by Kaka Kalelkar) was less controversial, but it was Mandal Commission Report which formed the basis for 27% reservation of jobs at Central Level. The more lasting impact of the Mandal Commission was on the electrol politics of India. It stimulated some sections, provoking them out of their political stupor and drawing them into vigorous electrol contestation.

The Supreme Court played the role of a legal-arbiter and settled the mass of issues involved in the Positive Discrimination Policy. The Supreme Court pronounced its views on the matter in several separate but, often, concurring judgements. Some aspects of the jurisprudence of reservation were significantly advanced and developed in 1992. But now the broad coalitions of the disadvantaged groups that came up in the wake of the Mandal Controversy, have now been fragmented and fractured. This is due to the fact that the State Governments put in place several issues /criteria in formulating their own systems of reservation. This had several implications. The criteria the states used in defining OBC are often divergent as a result of many Backward Classes Commissions are appointed
by various State Governments. The Commissions prepared their own list of OBC on the basis of criteria evolved by them. The basic objective of these Commissions is to stand on par with constitutional premises such as:

1. an egalitarian society is a worthy ideal; and
2. reservation is an efficient means to achieve an egalitarian society.

It is also presumed that the Policy will, in course of time, raise these classes of citizens to a reasonable level of equality on par with rest of the Indian society. The assumptions made by a number of Backward Classes Commission/Committees constituted during 1918 to 1991 certainly attest this fact.

The State Governments adopted several criteria such as wealth, income, occupation and education in several combinations with attribution of differential importance to each criterion. No matter how carefully they select these criteria and how diligently they apply these factors, various problems arose. As a result, there have been several legal cases in this regard in the state High Courts and the Supreme Court.

Judicial pronouncements on the subject show the ambiguity inherent in the policy. For a number of times, in different States, the Government's Policy of Reservation in jobs and educational institutions for OBC has been challenged. The main problem involved is with regard the criteria to determine the Backwardness and with the identification of the beneficiaries.
It is important to understand the interpretation by the highest law adjudicating agency of India i.e., Supreme Court, in the cases of Champakam Dorairajan Versus State of Madras (1951), Venkataraman Versus State of Mysore (1964) and Indra Sawhney verses Union of India (1992). It is important note in this context that a Constitutional Amendment (76th Amendment, 1994) was necessitated to circumvent the Supreme Court observation that total reservations cannot exceed 49%. This specially arose because of a long history for OBC in Tamil Nadu.

The Constitution of a Special Bench of nine-judges became necessary to finally settle the legal position relating to reservation for OBC. The Bench found reservation for OBC as constitutional, but asked for the exclusion of the creamy-layer from its benefit.

In the context of the Supreme Court’s direction regarding exclusion of socially advanced persons/sections from OBC, the Government of India constituted an Expert Committee headed by Justice R.N. Prasad and three other members comprising a social scientist and two officers to formulate criteria for exclusion of ‘creamy-layer’ from OBC.

The Prasad Committee defined creamy-layer in terms of.... when a person has been able to shed-off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade/profession of high status.... at that stage he is normally no longer in need of reservation for himself.
There are lots of criticism in the implementation of creamy layer concept among the OBC, however they are speculations made theoretically. Surprisingly, the point was raised by the petitioner i.e. persons who were against the implementation of reservation for SEBC, in Indira Sawhney'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 respondent 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 people on the basis of economic criteria alone as 'creamy layer' and exclude these from the benefits of reservation.

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 in 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.
To understand this process an attempt has been made to assess the effects of 'creamy layer' among a particular community, wherein it was statisfactorily proved that a part of a community was using the provision of reservation in education over a period of time. The focus of this study is to understand the grass-roots level details about the concept as applied to other Backward Classes.

The field study was undertaken to understand whether or not creaming effect occurs in a community (or a group of similar communities) over a period of time. From an ethnographic point of view Nadar and Shanar refer to the same community but are associated with differential occupations. Cognitively also the people identify themselves - as Nadar and Shanar - as belonging to the same caste/community.

This field study includes totally 324 households, spread over six locations in Tuticorin District. Out of the 324 households selected for study, 150 households claim Shanar Community identify and they all reside in rural areas. The rest of the 174 households are selected from Tuticorin town area. All these households claim Nadar Community identity. In order to understand the "creaming effect" at the inter-community or intra-community levels, household data with an emphasis on educational level, the type of educational institutions attended, occupation and income over a period of three generations are analysed. The field realities are interpreted and are linked to the general viewpoints.
Levels of Education

The illiteracy levels have varied from generation to generation. It is obvious that over a period of three generations, the level of illiteracy goes downwards. On the other hand at primary and higher secondary level there is steep increase from First generation to Third generation. It is seen from the statistics that the level of education has progressively changed from First generation to the Third generation. In other words it reflects the increasing awareness of this community with regard to educational facilities and progressive increase in the utilisation of such facilities.

An analysis also is made to show the differential rate of development of education among Shanar and Nadar Community. From the data it is evident that the rate of growth of education in Nadar Community is drastically more than that of Shanar especially at the post-school level onwards.

Type of Educational Institution

It is found that in all the three generations majority of the population studied in Government Schools. The Government Schools offer free facilities for education and also offer special reservation facilities for the OBC. These factors have attracted more people to study at Government Schools. Next to Government Schools, Schools run by their own community are preferred by the people. In these schools the Community Organisation supplies books and uniforms for the needy among the community. In all the generations people preferred private schools as their third preference only.
Type of Occupation

At the First and Second generation levels it is found that among the Shanar majority of them were engaged in their traditional occupation of toddy tapping/palmyrah climbing. None of the people claiming the identity of Nadar were engaged in this occupation at the First generation level itself.

Majority of the members of Nadar Community are found to be involved in business and merchant activities during the First and Second generations. But at the same time, the percentage of people involved in professional jobs had increased considerably during the Second generation, among the Nadars. The percentage of population involved in white collar jobs also increased at Second generation.

It is found that there is a slight shift in occupation among the Shanar due to the influence of Christen Missionary activity in one village. At the same time, since the occupation in seasonal and yields very low income, the Shanar community tend to change their occupation. It is also seen that low social status is attached to the occupation of toddy tapping / palmyrah climbing.

The Christian missionary is very active and their prime objective is to change the traditional occupation of Shanar Community. They also advise the Shanar population that their low status is due to their traditional occupation and over a period of time this has resulted in change of their occupation from today tapping / palmyrah climbing to other jobs.
It is found that the Levels of income had direct bearing on the levels of Education. The households with high income levels also had higher education levels. This is clearly reflected at higher educational levels, where only Nadar Community population is seen. This is quite obvious in the first generation level itself.

The Shanar community which is involved in toddy tapping/palmyrah climbing gets low income and have low education levels even at Second generation.

Obviously at the higher levels of income, only Nadar Community people are found and show gradual increase in the trend.

Cognitive Perception

The study also analysed the perceptions of people about the concepts of backwardness and creamy layer. Except the Shanar of Anthoniyarpuram all the other, especially the Nadar, claim themselves as backward.

Their perceptions of what should the creamy layer be based on are classified into (1) Economic Criteria; (2) No such Concept required; (3) Not easy to identity.

A considerable number of people expressed the view that there is a need for recognising creamy layer and that identification should be based on economic criterion. Nadar are relatively economically well-off than the
Shanar Community, but a majority of them do not want the concept of creamy layer based on economic criterion, since that would affect their utilization of the benefits.

Having presented in brief various facets of the problem of positive discrimination policy as applied in the case of OBC, the bottom line is - "Is there a Creamy layer recognizable among the OBC?"

Considering the elaborate debate on what should be the Criteria to determine the creamy layer and the legal opinion with regard to the validity of such a concept there is no need to ask that question. It is quite clear that there is a need for recognising a creamy layer within other Backward Classes. The argument that recognition of OBC by definition is a mechanism to undo and offset the historical deprivations and not the contemporary ones, and deprivations social rather than economic, is certainly a valid one. But it should also be kept in mind, as the protagonists of creamy layer argue, that if the facilities and privileges are monopolised by a few communities generation after generation, then, the very purpose of positive discrimination policy is defeated.

The inequalities which are supposed to be eradicated through this policy, will create new inequalities instead of eradication of the old ones.
The latter point of view is shown to be true with respect to employment in Government and PSU's, though there are very few ground-level studies. The present study clearly brings out into sharp focus the point that hardly 20% of the people of a community are able to utilise the special privileges that go with positive discrimination policy. This is true of the intra-caste/community as well as inter-caste/community level.

It is true that in a society basically based on inequality, there can be no islands of equality, no matter how good the specific policies and legislative mechanisms are. This point is well brought out by Justice Chinnappa Reddy while dealing with one of the cases in the context of OBC reservation, when he says that very few communities monopolize government posts and educational seats in general, no wonder that a few communities monopolize the posts/ seats meant for OBC also.

Ultimately the question is not that "Whether or not there is a Creamy Layer among OBC" but "Whether such layer should be excluded from utilising positive discrimination facilities for OBC or not?" Thus the discussion and the emphasis shifts from academic/legal to a political one. It is ultimately a political question an ideological question.

Recommendation

An academic study such as the present one is basically an analytical exercise rather than a solution-oriented report. However, certain recommendations are due here. They are addressed to no one authority in