When India awoke in the words of Jawaharlal Nehru, to ‘life and freedom’ on August 15, 1947 it embarked on a journey of social transformation which was hitherto unseen in any other democratic nation. In the course of history, some of the major countries of the world have been witness to far reaching changes, such as the USSR, China and the United States. The changes both political and social in these countries, however have often been marked by revolution, strikes, civil war and racial riots.

Steeped in an ancient culture dating back to thousands of years, frequently invaded by men of different races and religions, India and Indians stood out as a unique example of a multi-racial, multi-lingual and multi-religious society. Social inequality is perhaps a universal feature of all societies. It is sure and certain that there has not been and does not exist, any permanent social group which is ‘flat’ and in which all members are equal. The traditional caste system which places Brahmins at the top and untouchables “at the bottom of the caste pyramid is one of the most obvious institutions of inequality”. Some have called it a system of legalized inequality, a system in which one’s role and status in society are determined by non rational principles. Everything was determined at birth and by heredity one’s position in society, one’s profession, norms of behaviour, rights and duties. Anderson and Parker have defined caste as “the extreme form of social class organization in which the position of individuals in the status hierarchy is determined by descent and birth”*1

*1 Anderson and Parker, Society. P-370
For more than three millennia a system of social inequality and social stratification was foisted on a large segment of the hapless population. Within the fold of Hinduism there existed an ever increasing fragmentation of higher to lower castes and even within the lower castes, a never ending breakup of castes and sub-castes, each with their own rites and rituals. The repeated onslaught of foreign invasions and foreign domination was faced by a hardening of the hierarchical and ritualistic caste formalities.

J.H. Hutton, one jurist in his book ‘Caste in India’ stated that the subcontinent of India has been linked to a deep net into which various races and peoples of Asia have drifted and been caught. Composed of many diverse races, with many different customs, languages and religions people were able to live together with a degree of stability in a multiple society because of the caste system which Hutton says “has proved capable of absorbing any intrusions on society, and no intruders have yet succeeded in revolutionsing it, though it is not so rigid that a caste can not rise in social scale”

Each caste became an individual social unit. Each caste started observing its own rituals of eating, drinking and their life style, intermarrying and so on. Of the approximate three thousand castes in India some are derived from tribal or racial elements, others were members of common guilds or crafts, while some were religious in origin.
The origins and reasons for the caste system have been widely discussed, written about and dealt with by eminent scholars from both India and abroad and hardly need further detailed documentation at this stage. However, one could briefly recapitulate that the main features of caste were to be found in the Rig Veda, the earliest Sanskrit document available.

The division of society under the Rig Vedic people became mainly job oriented, with the emergence of four Varnas, each with a specific task allotted to them. Thus, Hindu society was initially formed as a class system based on the principle of division of labour with the following heads.

   a) Brahmins -------------- the priestly class  
   b) Kshatriya (Rajanyha) ---- the military class  
   c) Vaishya------------------ the merchant class  
   d) Sudras------------------ the artisan or menial class

Thus, these above mentioned terms Brahmins, Rajanyha or Kshatriya, Vaishya and Sudra first appears in the later part of the Rig Veda. Being hierarchically structured, the Aryans arranged themselves in the first three varnas and placed the occupational groups under Vaishyas and non-wealthy, the conquered and hostile groups under the Sudras. It is believed that the caste structure was by and large watertight.

However, historically there had been many anti-caste movements in India. Buddhism and Jainism were expressions of a rational and humanitarian social vision. The Bhakti movement of the
medieval period sought to create the illusion of a world where all devotees were spiritually equals regardless of their caste affiliations. However, such movements were unable to disturb the existing economic system and hence could not ameliorate the condition of the downtrodden classes. In the same way, during the British Rule all the socio-religious reform movements made the removal of untouchability an important part of their programme. The Brahma Samaj, the Arya Samaj, the Ramkrishna Mission and the Parthna Samaj were all motivated by the spirit of social equality.

At the turn of the last decade of 19th Century the freedom struggle enveloped the largely middle class caste Hindus and imbued them with a new sense of national unity and racial pride. There was a raising consciousness of the numerical strength of the downtrodden and the need for political and social advancement which could never be made unless these glaring disabilities were removed from society.

With consciences being picked all around and with the environmental charges during the freedom struggle movement, a new desire in the Depressed Classes to waken themselves from the stupor, bondage and inferiority of centuries. The Depressed Classes led by the Mahars of Western India set out on a mission of self help towards improving their social and economic status. The Shanaies of Madras sought to worship in temples but when they were prevented from doing
so, there were riots and violence. The Thiyas of Malabar and the Vokkaligas of Mysore met at their own conference in an efforts to improve their conditions.

The genesis of the special status accorded to the Scheduled Caste under the Constitution of India 1950, can be traced as far as the first few decades of the 20th Century when the British education and administration led to an introspection amongst many forward thinking individuals in the country like M.C. Rajah, Mrs Annie Besant, Chattar Sing Lalji, B.R. Ambedkar and Mahatma Gandhi etc.

The emergence of Gandhi on the national scene had completely changed the tenor of Indian politics. Having witnessed the indignities of apartheid in South Africa, Gandhiji sought to breakdown the artificial and cruel restrictions of casteism and bring the Depressed Classes within the accepted fold of society. Moreover, he wanted that the religious interest of every community be respected. Thus, the secular credentials of the Indian state rested on Gandhi’s belief that ‘religion’ is the personal matter and should have no place in ‘politics’ and there should be no state religion “even if the whole community had one religion”. However, the ideas of Gandhiji did not find acceptance from all quarters immediately and many were unable to understand the connection between ‘Swaraj’ or struggle for independence and the removal of untouchanility as an essential pre-requisite. Moreover, the political atmosphere was such that along with the Congress, other political affiliations also attracted great importance to the emancipation
of the Depressed Classes with the championing of their rights of access to schools, temples and public wells.

The Depressed Classes Mission Society of India, at an All India Conference in 1925, declared that the representation of Depressed Classes by nomination was both unsatisfactory and often mischievous. They demanded their own elected representatives in all local and cultural bodies, whose number should be in accordance with the proportion of their population in their respective jurisdictions. It also required that government should periodically declare the percentage of post reserved for them.

2.1. Role of the British in the march of identification of Backwardness:

A. From Disability to Untouchability:

During the nineteenth Century, the British had been able to roughly identify the ‘depressed classes’ for administrative purposes. They did not seem to have been specifically concerned with identifying victims of untouchability in this context. But as the issue of untouchability came to be politicized, British administrators grew to be increasingly aware of the need to take note of the ‘untouchability’ factor in the process of their identification of the depressed classes.

It seems that initially the definition of untouchability did not pose any problems. Conceptually, untouchability appeared to be stark enough to be identified in terms of a practice of ritual and social
exclusion. In fact, political bargaining on behalf of the untouchables had proceeded on the assumption that untouchables throughout India were set off by some uniform and identifiable usages. Thus, the Government of India's Fifth Despatch in constitutional reform (1919) mentions that "though they are defined in varying terms, they are broadly speaking all the same kind of people. Except for the differences in the rigidity of their exclusion they are all more or less in the position of the Madras Panchamas, definitely outside that part of the Hindu Community which is allowed access to their temples." But as enumerations were made, sharp differences were evident in the North and the South. In fact, it was apparent that untouchability, as practiced in the South, for instance in the Bombay and Madras regions, did not exist in U.P. Yet Hindus in U.P. were divided into high and low castes and the consequent marginalization, deprivation and oppression were as acute as they were due to the practice of untouchability in the provinces of Bombay and Madras.

Early, upon the arrival of the British in India, Christian Missionaries identified low caste Hindus, particularly the untouchables, and the tribals as an oppressed people to whom the Christian doctrine of the brotherhood of man and of a loving and a compassionate God, would hold special relevance and appeal. Accordingly they paid special attention to these 'depressed classes' in their welfare. By the second half of the 19th Century, Hindu reformers inspired and perhaps embarrassed by the initiative taken by the missionaries, were also actively engaged in the cause of the 'backward classes'.
During the second half to the Nineteenth Century the British Government took a decision to take special measures for the welfare of the ‘depressed classes’. Inspired by British benevolence some native rulers, such as the Princes of Baroda, Kolhapur and Travancore were also stimulated to act on behalf of the depressed classes. Towards the end of the century, the issue derived an added meaning as reports about discriminations suffered by Indians in South Africa began to trickle in. The parallels were too sharp to disregard and consciences that had hitherto remained insensitive on the issue were awakened.

By the 1880s, special schools, scholarships and other assistance for the depressed classes had been established, both by the British Government and by the native rulers. Activity on their behalf was particularly marked in Madras, Baroda, Kolhapur and Travancore, but all over the country reformers had awakened to a new sense of responsibility towards these hitherto neglected sections of the society.

Thus, with the growth of nationalist pressures and Gandhiji's influence the British evinced keen interest in the Depressed Classes. Realizing from the experience of the 1857 Mutiny that Hindus and Muslims could combine against a common foe, they sought to find other divisions within Indian society which could be used as a counterpoise against the growing Hindu-Muslim amity. The old British philosophy of 'Divide and Rule' was once again evolved. But in due course the British realized that while the question of Hindus and Muslims, Brahmin and non-Brahmin and the special position of Indian
States could be surmounted by suitable constitutional provisions, the adjustment with the Depressed Classes was not so easy. The British officers in India therefore, were strongly motivated to work for the social upliftment of the Depressed Classes.

A significant outcome to these ameliorative measures on the part of the British was that the depressed classes were grateful and dependent on Englishmen in their quest for equality. In 1924, for example, leaders of the depressed classes in their written statements to the Reform Enquiry Committee protested against further Indianization of services and urged the presence of a predominantly European element, so that the voices of the dumb millions would be heard in the Councils of the Empire.

Similarly the untouchables conference of 1926 thanked the Government for recognizing their 'political entity as a class' and in thanking them for giving them a position usurped by Hindus, wanted a complete separation in everything from the Hindus, Muslims and Christians who were either their oppressors or their competitors and from whom they could expect nothing in terms of political, social or economic justice.

It is indeed a slur on the rigid dogma of Hinduism that a section of its population felt so strongly that it sought refuge under the British umbrella so openly.
Again here it is important to note that the Varna system had within its fold priest, kings and warriors, traders and merchants, peasants and servants or Brahmins, Kshatriyas, Vaishyas and Sudras. The Antyajas Avarnas were those who did not belong to any fold. The socio-economic condition of the Antyajas or Avarnas made them backward and depressed in every respect, hence they were term as the depressed classes by the beginning of the 20th century. Montague Chelmsford as well as the Stuart Committee used the term Depressed Class in 1910. In 1922 and 1927 Governments records this term which was also used in the Communal Award of 1933 to convey the meaning of socio-economic and cultural backwardness of the people. Mahatma Gandhi called them Panchamas (fifth class) as they were not included in the four Varnas of Brahmin, Kshatriyas, Vaishyas and Sudras.

The British attitude towards the Depressed Classes combines a “paradoxic admixture of progression and retrogression” whereas they barred any discrimination in Government supported schools yet no action was taken against caste Hindus who terrorized and punished those untouchables who tried to send their children to schools. While there was no legal disability so far as public institutions and public services were concerned, yet untouchables were not recruited into the army and police. While British Law formally discarded caste as the criterion for judgment in criminal, civil and commercial law yet equal access of the untouchables to law did not make the British interfere in the tradition of untouchability. The British allowed economic and employment opportunities to the untouchables, yet upheld the exclusion
of the Depressed Classes from the temples, because they thought that such would be offensive to the religious sentiments of the people.

It is also important that many amongst the Depressed Classes saw through the British policy of publicizing their unfortunate situation not with a view to improving their lot, but more with the motive of slowing down the political progress of India. The Depressed Class struggle was a movement within the freedom struggle, because while India as a whole was struggling to achieve equality with other nations, the Depressed Classes were striving for equal rights and social acceptance within the country. The Depressed Classes were more committed to their own freedom struggle, which often made them pawns in the British policy of divide and rule.

2.2 Rays of Hope for Depressed Classes under the British Administration in India.

A. Simon Commission:

The Simon Commission landed in India in February, 1928 to re-examine the Indian problem regarding the working of the Government and the development of representative institutions in British India and reporting as to whether and to what extent it was desirable to establish the principle of responsible government. However there were wide spread protest against the Commission due to all British membership of the team with Sir Jhon Simon as its Chairman. Whereas most eminent Indian political leaders boycotted the proceedings of the Commission, but the Depressed Classes decided otherwise.
Lord Birkenhead, Secretary of State for India justified the exclusion of Indians of the grounds that the interest of the Depressed Classes had to be protected.\textsuperscript{2}

In inquiring into the extent of changes in the position of the Depressed Classes, the Simon Commission praised the efforts of the Depressed Classes, the Mission Society and the Salvation Army as well as the work of individual High Caste Hindus in the attempt to ameliorate the position of these backward and victimized members of society in all aspects. The Commission ultimately stated that there should be some reservation of seats for the Depressed Classes and the members of these seats should be three quarters of the proportion of the Depressed Classes population to the total population of the electoral area of the province. The Commission emphasized that some means would have to be devised to ensure that the candidates for the reserved seats were genuine representatives of their community and not mere nominees of influential members of the higher castes.

As early as 1929, thus one can see the demand for reservation, special status and recruitment to the civil services as a means of gaining social acceptance and prestige. The reaction to the recommendations of the Simon Commission were mixed. There was an overall demand for ‘statutory safeguards’ for admission of the Depressed Classes in the army, police and civil services in British India as well as the Indian states.

\textsuperscript{2} "Reservation policy – Mandal Commission and After P- 10- C. Rupa- 1992
Although the demands of the Depressed Classes were not fully taken into account by the Simon Commission, with their plea for employment in the military and civil administration being disregarded, yet it may be concluded that the Commission was an attempt by the British Government to grasp the problem of the Depressed Classes, giving them some political representation.

B. The Poona Pact:

The Poona Pact was a fall out of the report of the Franchise Committee which was set up to decide the means of enfranchising the Depressed Classes. August 17, 1932 was a day of triumph for the Depressed Classes, for on that day James Ramsay Mac Donald, the then Prime Minister, had announced his decision on the communal tangle granting separate electorates to minorities (Muslims, Sikhs, Europeans and Christians) including the Depressed Classes. It is commonly known as the ‘Communal Award’

The ‘Award’ stated that all Depressed Class voters who were otherwise qualified could vote with caste Hindus in general constituencies. In addition they would be entitled to an extra vote for the next 20 years in the special seventy one Depressed Class constituencies (which were provided everywhere except in Shind, N.W. Frontier and Punjab). So, the Depressed Classes could vote both in the general constituencies as well as in the special constituencies meant for them. The idea behind this scheme was to give proper representation to the
Depressed classes in the legislature as otherwise it would be impossible for them to get elected in the general constituencies.

But this Award was not accepted by most of the Indian leaders like Rabindra Nath Tagore, Mahatma Gandhi etc. Bapuji was afraid that if the British Govt. accepted the scheme of separate electorates, the caste Hindu relationship with untouchables would come to an end and the Hindu society would be permanently divided. In that event, the untouchables would form a new community or merge in some other community. In that case he saw the destruction of Hinduism. He felt that there was no other way than to fast unto death to prevent such a catastrophe. Gandhiji’s fast unto death gave rise to a flurry of activity in which many measures were taken to immediately effect a merger between caste and non-caste Hindus in steps which had hitherto been considered impossible and thus the fast created commotion throughout the length and breadth of the country.

It is significant to note that while announcing the Communal Award, the Prime Minister made it clear that he would not annul or alter on his own, but he was ready to substitute for it a formula that might be agreed between the caste Hindus and untouchables. Being the acclaimed leader of the untouchables, all the eyes were set on Babasaheb Ambedkar for the solution. At that hour it seemed that it was within the power of Babasaheb to grant lease of life to Bapuji or otherwise. On one side he had the interest of his community and on the other the life of Bapuji. In order to save Gandhiji’s life the Communal
Award had to be altered and the main question mark was whether Ambedkar would be willing to modify the privileges he had wrested for the Depressed Classes. In such an event, he was looking for an agreement that would not cost the interest of his community dearly but at the same time save the life of Bapuji. At long last, he quite generously and graciously agreed to an amicable agreement. The agreement is popularly known as ‘Poona Pact’.

This famous Poona Pact was an agreement between the representatives of the Caste Hindus and the representatives of the Depressed Classes. It was a ‘sacred pact’ meant to be honoured with the spirit of good will and brotherhood. The signing took place on September 24, 1932.

The sum and substance of the ‘Poona Pact’ is that the separate electorates granted by the ‘Communal Award’ were withdrawn and the method of joint electorates was introduced with the principle of reservation of certain seats exclusively to the members of the Depressed Classes. The principle of reservation was made applicable to both Central Legislature as well as Provincial Assemblies. Although no fixed percentage of reservation was stipulated in respect of election to the local bodies and employment in public services, it was agreed that a fair representation of the Depressed Classes shall be secured in local bodies and public services. Thus, after the successful conclusion of the settlement and subsequent ratification of the Poona Pact by the British Government, Bapuji broke the Epic fast on September 26, 1932.
The significance of the Poona Pact was that for the first time there was a tripartite agreement between the British Cabinet, the leaders of the Depressed Classes and the leaders of the caste Hindus, in which the most far reaching outcome was that caste Hindus formally agreed to withdraw the social discrimination placed on the Depressed Classes, Gandhiji had staked his life to prevent further fragmentation and alienation within the Hindu Community and had made a positive bid for retaining the Depressed Classes within its fold. Also significant was his emphasis on the time frame for the period of reservation. It must be stated that despite the euphoria witnessed during and after the signing of the Poona Pact and the collective awakening of social conscience, the Depressed Classes always had a latent feeling of being cheated and used as pawn in a political game and thus the social justice in deed was in stake.

Mahatma Gandhi and B.R. Ambedkar both were the champions of the Depressed Classes. It became important for the Depressed Classes to have their own leader and an attitude of self help in order to ameliorate their condition. The onus of this fell in educated members of the community and it was in this context that B.R. Ambedkar rose to the position of supreme leader and spokesman of the community.*3 It was in fact, due to Ambedkar that the Depressed Classes secured between 1927 and 1937, a vast machinery of ‘Protective Discrimination’ resulting in reserved seats in Legislative bodies,

*3 Vimal Shah and Binod C. Agarwal, ‘Reservation policy, Programmes and Issues’. PP.- 47-57
reservation in Government jobs and assistance to students from these sections.

Despite Gandhiji's and Ambedkar's clashes, their roles were complementary in the task of untouchability. Gandhiji's greatest achievements were to integrate the removal of untouchability with the struggle for freedom and to convince the caste Hindus that untouchability was not the creation of God but of man and hence had to be eradicated just as any other social maladjustments. However, the concept of 'reservation' and giving special status to the Depressed Classes are directly attributable to Ambedkar who had a crucial role in formulating the Constitution of India and the strive for providing equality and social justice to all was one of the main goal of the framing fathers.

At the time of independence in 1947 there was widespread inequality whether between the British rulers and their Indian subjects, between the caste Hindus and the untouchables, between men and women or between the princes and the impoverished masses throughout the country. The idea of equality and inequality, the theory that no two people can be equal and the notion that equality of opportunity could combat the drawbacks which many faced due to their social position have occupied the minds of eminent philosophers such as Locke, Rousseau, Huxley and many others. As Andre Beteille points out the distinction between “natural inequality and social equality” is inherently ambiguous. *4

* 4 Andre Beteille- 'Caste Inequality and Affirmative Action', P-5
However, there was nothing ambiguous about the arbitrarily hierarchical and socially and economically exploitative caste system that had guided Indian society hitherto. At the bottom of this pyramidal structure lay the masses of economically deprived, politically disabled and socially discriminated Depressed Classes of India. For centuries they had been victims of humiliation and oppression and at the dawn of independence, when the avowed goal of the government was “to wipe out every tear from every eye” the time had come to begin an extra ordinary phase of the upliftment of the masses of humanity from the morass of subhuman social existence, abject poverty and inhuman economic exploitation.

2.3 The Government of India Act 1935 and the Birth of the Schedule for Scheduled Castes and Scheduled Tribes:

With the principle of separate representation thus firmly established, the administrative task of listing the relevant castes had to be accomplished. Accordingly, they were listed (i.e. scheduled) in 1936 in order to give effect to the provisions for special electoral representation as per the Government of India Act 1935. But the listing presented several problems.

From 1908 onwards there were several estimates of the size of the depressed classes in the country. In 1908 Risely counted 50.6 million. In 1911 Holderness placed the figure at 50 or 60 million. So, did several others, including the Census of 1911. However, Baines in 1912 placed it at a low 34.8 million. In 1917 Sir Henry Sharp, who was
Educational Commissioner placed it even lower at 31.5 million. The Franchise Committee appointed to implement the 1919 reforms found 42.2 million in British India. A quarter or a third as many were estimated in the princely states. The Census of 1921 and the Mudaliar committee of 1924 conformed to the rough figure of 50 million. The Hartog committee of 1929 set the figure at 29.76 million. But at the same time the Nair Committee placed the figure at 44.5 million, whereas the Simon Commission itself placed the figure at 43.6 million. In 1931 Hutton as Census Commissioner estimated the figure as 31.2 million, excluding Bengal, but while doing so, he had encountered serious problems. This is significant. It indicated that the task of defining who was to be given separate representation was already difficult. However, in order to resolve this problem, Hutton as census Commissioner in 1931 developed a series of criteria to gauge the incidence of disabilities. These were as follows: *5

1) Whether the caste or class in question can be served by Brahmans or not.

2) Whether the caste or class in question can be served by the barbers, water carriers, tailors etc. who serve caste Hindus.

3) Whether the caste in question pollutes high caste Hindu by contact or proximity

4) Whether the caste or class in question is one from whose hands a caste Hindu can take water.

5) Whether the caste or class in question is debarred from using public conveniences such as roads, ferries, wells, or schools.

6) Whether the caste or class in question is debarred from the use of Hindu temples.

7) Whether in ordinary social intercourse a well-educated member of the caste or class in question will be treated as an equal by the high-caste men of the same educational qualifications.

8) Whether the caste or class in question is merely depressed on account of its own ignorance, illiteracy, or poverty and but for that would be subject to no social disability; and

9) Whether it is depressed on account of the occupation followed and whether but for that occupation it would be subject to no social disability.

Meanwhile, the existence of multiple criteria left census superintendents ample scope to use their own discretion in the compilation of provisional lists. Thus, there is considerable variation in the basis on which people have been classified as untouchables in the different provinces. Moreover, even the application of a criterion could not guarantee uniformity for the simple reason that the exact form that the debarment or exclusion took, could vary substantially from province to province. For instance, in some cases debarment from a temple meant that the particular caste was forbidden to approach the temple. In other cases it merely meant exclusion from the inner sanctuary. In some
cases debarment from water entailed the requirement that they use a separate water supply. But in others it meant denial to any decent water supply, or dependence on the upper caste to serve water to the lower castes. One of the most serious consequences of these two factors is that castes that were included in the schedule in one province were omitted in another. Problems also arose out of the fact that census superintendents and Commissioner did not adhere strictly to Huttons criteria, often they excluded castes that were ritually untouchable, but had advanced educationally or economically. Correspondingly, they included castes that were not untouchables but were visibly at the bottom of the social strata.

Thus, as may be expected, these anomalies left the Franchise Committee with serious doubts. However, testifying before the Franchise Committee in defence of the listing as it stood, Dr. Ambedkar, the spokesman for the untouchables emphasized that “it is a fatal mistake to suppose that differences in tests of untouchability indicate differences in the conditions of the untouchables”. The crucial element be emphasized was ‘the odium of avoidance’ by the upper castes. Once this element is present, he claimed “the whole of the class of untouchables so ascertained must be taken into accounts for the purpose of representation, without any further distinction between rich and poor, advanced and backward, educated and uneducated…” The majority of the committee felt that denial of access to temples and causing pollution
by touch should be expected as tests of untouchability and that those who are only economically poor and in other ways backward should not be included in the Schedule.

The Committee finally decided with considerable hesitation; the list of untouchables in the North and the East. But on the whole commentators agree that the castes included in the list were socially the lowest Hindu castes in their particular provinces and they were listed on that basis.

A. The Presidential Schedule:

When the President of newly independent India promulgated the Scheduled Castes Order in 1950, he basically conformed to the list of 1936 with two major additions- some Sikh Castes, and Castes from areas that had not till then been included in the Schedule.

The Scheduled Castes and Scheduled Tribes have often been collectively referred to as the 'Depressed Classes' and 'Backward Classes'.

First in 1935, the terms Scheduled Castes and Scheduled Tribes have evolved through a variety of philanthropic, administrative and political compromises and considerations. They cover a cluster of separate deprivations such as poverty, illiteracy, poor access to education, health care, employment and other opportunities. In addition,
the term 'Scheduled Caste' connotes a low position in the caste hierarchy, generally implying subjection to the social stigma of untouchability and all the other oppressions that go with low caste status in Indian society. And the term ‘Scheduled Tribes’ denotes an aborigine population that practices animistic religion and is physically and culturally isolated from the mainstream. It was in the wake of Communal Award, they were clearly identified as aboriginals who practiced animistic religions. These two sets of characteristic have historically been considered to be significant enough to mark the Scheduled Castes and the Scheduled Tribes as distinctively different and more disadvantaged than the mass of the rural and the urban poor.

The Government of India Act, 1935 provided for separate representation for the ‘Backward Tribes’ just as it did for untouchable Castes. Accordingly, a list of backward tribes was promulgated for the purpose. In 1950 when the President promulgated the list of Scheduled Castes and Scheduled Tribes, he only made some additions to the 1935 list of Backward Tribes. Further, there were some transfers from the earlier Scheduled Caste list to the ‘Tribes’ list and Vice-Versa. The Scheduled Tribes were defined partly by habitat and geographic isolation but mainly on the basis of their social, religious, linguistic and cultural distinctiveness and ‘their tribal characteristics’.

2.4 The Constituent Assembly and the Constitutional Provisions:

The perspective in term of which the issue of reservations for the Scheduled Caste/Tribes/Other Backward Classes was to be
viewed, was to change with the dawn of freedom. The British administration had at best produced a series of ad hoc responses and estimates of population of the Depressed Classes, with a view to gaining their political support to oppose the Congress by granting a few concessions. Neither the objective nor the criteria of an implicit preferential policy were ever stated clearly. They could not be, because in the minds of the British rulers most of these concessions were a short-term political device to try and split the nationalist movement. The debates in the Constituent Assembly on the other hand, and the measures of principles this distinguished gathering embodied in the Indian Constitution, set out the approach towards a reservations policy in terms of the goals of promoting national integration and providing social justice to the deprived sections of the population. The exact meaning of the ideas and formulations of the Constituent Assembly need to be restated today, when opposite arguments are being put forward either for entirely doing away with a policy of reservations or for indiscriminately extending it on a grand scale.

The first feature to note in relation to the principles of preferential treatment in the Indian Constitution for SC/ST/OBCs is that the word caste is used only in relation to the Scheduled Castes. Both in Article 15 (4) (which is a part of the broader article prohibiting discrimination on grounds of religion, race, caste, sex or place of birth) and in Article 16 (4) which is included within Article 16 promising equality of opportunity in matters of public employment, the reference to those deserving special treatment is to "any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled
Tribes" and to "any backward class of citizens which in the opinion of the state is not adequately represented in the services under the state." It is well known that both Articles 15(4) and 16(4) were introduced by Pandit Jawaharlal Nehru after two judgments by the Supreme Court questioning the validity of the system of 'communal' reservations of Government jobs for the non-Brahmins in the Madras presidency. In a significant intervention during the debate, Jawaharlal Nehru explained why the word "economically" had not been used separately in phrasing Article 15(4). According to him this was because those who drafted Article 15(4) thought of backwardness as cumulative. The word 'Socially' in the Article, he said, covered many things and certainly included 'economically'.*6

The many things that cumulatively would constitute backwardness were not spelt out by the Constituent Assembly nor listed in the Constitution as such. It was assumed that this task would be performed by the Commission which may, according to Article 340, be appointed by the President "to investigate the conditions of the socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition." One fact however stood out. There were only very few persons either from South India or Bihar who thought caste in itself to be a primary indicator of backwardness. The

* 6 Parliamentary Debates, Vol XII-XIII (Part II), col.9830
view expressed by Sri Chandrika Ram from Bihar was: “Our society is divided into three sections- the highest consisting of that section known as Schedule Castes and the lowest as Hajirans, while the third occupying a middle position between these two and consisting of a larger portion of our people is what may be termed as the Backward Class.” Such an opinion was far less common than that expressed by Dr. Dharam Prakash who said: “In fact there is no community which does not have a section of people which is backward, whether economically or educationally or socially.”*7

It is not only that the Constituent Assembly sought to de-emphasize caste as a denotation of backwardness. Over time, it sought to reduce and finally to abolish caste as an indicator of backwardness. This aim is to be seen not only in the legal abolition of untouchability. It is also to be seen in the Directive Principles of State Policy, such as under Article 38 and 46 respectively (has been discussed in detail in the subsequent chapters) As opposed to the interpretation proposed by Marc Galanter that no specific goal was set to be achieved through the policy of reservation, the goal was clearly stated to be increased welfare of the weaker sections through a reduction of inequalities in income, education and other status facilities. The clear import of reading together the constitutional provisions relating directly or indirectly to reservations is that as a device they were expected to be used for a long period of time, or as long as the majority view was that goals like reduction in inequalities and status had not been fully achieved.

*7 Constituent Assembly Debates: 30/11/1949, PP 680-86
At the same time, reservations were seen by the Constitution makers as a policy which also had some negative aspects and therefore needed to be worked carefully within well-defined limits so as to carry the support of those who would not be able to benefit from it. In the case of reservations of seats in the legislature this consensus was sought to be achieved by limiting such reservations only to Scheduled Caste/Tribes and then restricting the period of such reservations initially to ten years. (Article 334). The really educative part of the proceedings of the Constituent Assembly was that the leaders of the Scheduled castes sought actively to build a consensus on the issue of reservations by accepting and even proposing restrictions on the concessions being granted. It is remarkable that the clause restricting the reservation of seats for the SC/STs in the legislature to ten years only was introduced by Dr. B.R. Ambedkar. When some of the scheduled caste members spoke against the time limit Dr. Ambedkar reminded them that "they have really no cause for complaint because the decision to limit the thing to ten years was really a decision which has been arrived at with their consent. It at the end of the ten years, the Scheduled Castes find that their position has not improved or that they want further extension of this period it will not be beyond their capacity to invent new ways of getting the same protection which they are promised here."*8

The 10 year time limit was not the only compromise accepted by the Scheduled Caste leaders in order to promote a political

*8 Constituent Assembly Debates : 29/8/1949, PP-696-697
consensus. In Article 335, which specifically promised that in the making of appointments to service and posts in the Union or a state the claims of the members of the Scheduled Caste and Tribes would be taken into consideration, a tough qualification was introduced which said that this would be done "consistently with the maintenance of efficiency of administration." This part of Article 335 clearly states that unless the criterion of merit is combined with reservation of posts, efficiency would be the likely casualty. In purely formal terms, no such qualification was introduced in Article 15 (4) and 16 (4) mentioned above, which refer to reservation of jobs for the backward classes although in practice a minimum level of competence, as seen in a specific percentage of marks, is required of any candidate who is entitled to avails of a reserved quota. This defect needs to be removed since there is no reason why the qualification about efficiency should not apply to both SC/ST and the OBCs. Further, Dr. Ambedkar fully expected that in order not to contravene the more fundamental rule about all citizens having an equality of opportunity, the number of jobs or college seats reserved for SC/ST/OBCs should be confined to a minority of seats. In fact, in his final summing up of the debate on Articles 15 (4) and 16 (4) he specifically said that the word 'backward' had been brought in to limit the numbers of reservations to a minority of the available seats. In answer to a question T.T. Krishnamachari whether his observations about reservations applying to only a minority of seats was justiciable Dr. Ambedkar said "if the local government included in this category of reservations such a large number of seats, one could
very well go to the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed."

Apart from the Scheduled Castes and Scheduled Tribes, another term Backward Class created more confusion among the social thinkers, law makers and the draftsmen of the Constituent Assembly. It is therefore, necessary that reference to the Debate of Constituent Assembly be made to ascertain the intention of the Constitution makers. When the term 'Backward Class' was used in the Constituent Assembly it was familiar in many parts of our country with such classes of people as were deserving special treatment for their upliftment. In southern part of our country this term had a special meaning, but in northern part of our country it did not have any specific meaning and that is why many speakers of north India spoke about the vagueness of this word and they were of the view that this word was synonymous for the Scheduled Castes.\footnote{9} Dr Brahm Prakash was of the view that the word Depressed Class or Scheduled Caste should be used in place of Backward Classes, as the former terms had a definite meaning.\footnote{10} However, representatives from Southern India were of the view that the term Backward Classes had a technical meaning. In fact, the example of Mysore (now Karnataka) was given where Backward Classes included all the classes except Brahmins,\footnote{12} of Madras where it referred to non touchable Hindu Caste and of Bombay where it included not only

\footnote{9}{C.A.D. Vol. 7, P-686}  
\footnote{10}{Ibid. P-687}  
\footnote{11}{Ibid pp-689-90}  
\footnote{12}{Ibid pp-692-97}
Scheduled Castes and Scheduled Tribes, but others who were economically, educationally and socially backward.\textsuperscript{13} Mohd. Ismail tried to see a communal bias in this term. He was of the view that the word 'Backward' bore a 'definite and technical meaning' according to which more than a hundred and fifty communities, all belonging to the majority community, came under this label and, with the addition of the Scheduled Castes, decidedly constituted the majority of the whole population of the province. If that was the meaning of the ward 'Backward' then according to Mohd. Ismail, the backward classes in the minority communities such as the Christians and Muslims would be totally excluded from the purview of the clause.\textsuperscript{14} However, the other members, who were belonging to the Backward Classes, welcomed the introduction of the clause, while the members of the Scheduled Castes and Scheduled Tribes, expressed their apprehension regarding the scope of the word 'Backward' and pressed for a clarification so that the word might apply only to them. They also wanted that the words 'Backward Classes' be substituted by the 'Scheduled Castes' or 'Depressed Classes' or the words 'Scheduled Castes' added after the words 'Backward Classes'.

A perusal of the Constituent Assembly Debates tells us that our Constitution makers had in their view the social, educational and economic backwardness when they were using the term 'Backward'. On the whole, they were not able to provide abject definition of any of the three terms viz. Scheduled Castes, Scheduled Tribes and Backward

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* 13 CAD, Vol-7, P-696
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Classes. For example, with regard to the equality of opportunity envisaged in clause (4) of Article 16 of the Constitution, there were three distinct views:

1. A large number of members of the Constituent Assembly were of the view that every individual who was qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualification tested so as to determine whether he was fit for the post or not and there should be no hindrance in the operation of the principle of equality of opportunity.

2. There ought to be no reservation of any sort for any class or community at all and all citizens should be placed on the same footing of equality so far as the public services are concerned.

3. Theoretically it is a good principle that there should be equality of opportunity in the matter of public employment, yet there must be a provision for the entry of certain communities, which have not so far had 'a proper look' into the administration. That is to say that they have been so far outside the administration.

The Drafting committee had to reconcile these three points of view and in order to make a reconciliation clause 3 of Art 10 (now clause 4 of corresponding Art 16) was inserted in the Draft Constitution.
The Constitution makers wanted that clause 1 of Article 10 (clause 1 of corresponding Article 16) must not be overlooked and the reservation, if it is to be made, must be consistent with clause 1 of that part i.e. Article 10. It is the theory of reconciliation adopted by the Constitution makers that brought into existence the phrase ‘Backward’ which included those in whose favour reservation was to be made. That is why they introduced the word ‘Backward’ which had not found place in the original draft.

Thus, the objective behind the clause 4 of Article 16 of the Constitution was to allow the communities, who were till then kept out of apparatus of power, to share the state power. Since it was not practicable in the normal course the qualifying phrase Backward Classes’ was used to ensure that these communities would also have a say in the governance of the community and the nation.

Therefore, the Constitution makers wanted to make it very clear that Backward Classes of people are those people who are socially and educationally backward and whose representation in the services is very inadequate. They did not mean that benefits of being socially and educationally backward classes must go to the backward Castes:

“If they had desire that the benefits had to go to backward castes surely they would have said so plainly. Sociologically speaking ‘Class’ and ‘Caste’ are distinct if not opposed terms. How then did ‘Backward Classes’ come to be interpreted as ‘Backward Castes’.”* 15

*15 Prof. Srinivas M.N, The Mandal Formula- Backwardness : Caste Vs Individuals; Reservation crisis in India, Indian Bar Review. PP-404 & 407
Hence, it is clear that our Constitution makers did not want to strengthen the institution of Caste which is a terribly divisive institution. They simply were of the view that lack of access to shelter, clothing, food, hygiene, sanitation and other realities of life make a large number of people backward. They believed in political statesmanship and not in political gimmickry.16 Thus, the intention of the founding fathers of the Constitution may be summarized with regard to the meaning of the Backward Classes in the following two points

(i) a class of citizens may be termed as backward if it is socially and educationally backward and it is suffering from the culture of poverty; and

(ii) this class is not adequately represented in the service under the state, thus, backwardness in linked with under representation in the service.

Thus, as mentioned earlier, the lists of Castes was first issued in the Schedule appended to the Government of India Act, 1935 and was later incorporated in the Constitution of India (SC and ST) Order 1950. The Constitution names the Scheduled Castes, Scheduled Tribes and ‘other’ (socially and economically) ‘Backward classes’ as weaker sections of society eligible for special protection and care. It does not define the terms Scheduled Caste, Scheduled Tribes or other backward classes. Nor does it provide detailed criteria by which these

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*16 Prof. Srinivas M.N, The Mandal Formula- Backwardness : Caste vs Individuals; Reservation crisis in India, Indian Bar Review. P-408
groups may be identified. It only prescribes that in the first instance these groups shall be designated for each state by a Presidential Order, in consultation with the Governor of each state with subsequent modification by an Act of Parliament.*17

Thus at the end of this chapter the remarkable events of the history of reservation up to the framing of the Constitution may be summarized at a glance as follows:

1882 - Hunter Commission appointed Mahatma Jyotirao Phule made a demand of free and compulsory education for all along with proportionate reservation and representation in government jobs.

1891 - The demand for reservation of government jobs was made as early as 1891 with an agitation in Princely States of Travancore against the recruitment of non natives into public services overlooking qualified native people.

1901- Reservations were introduced in Maharashtra, in the princely state of Kolhapur by Shahu Maharaj. Reservations in the princely states of Baroda and Mysore were already in force.

*17. Art. 366 (Cl. 24) Scheduled Caste means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Art 341 to be scheduled caste for the purpose of this Constitution.
Art 366 (Cl.25) Scheduled Tribes means such tribes or tribal communities as are deemed under Art 342 to be Scheduled Tribes for the purpose of this Constitution.
1908 - Reservations were introduced in favour of a number of castes and communities that had little share in the administration by the British.

1909- Provisions for reservations were made in the Government of India Act 1909.

1919- Montague Chelmsford Reforms introduced the reservation policy.

1919- Provisions were made in the Government of India Act 1919.

1921- Madras Presidency introduced communal Government Order in which reservation of 44% for the Non-Brahmins, 16% for Brahmins, 16% for Muslims, 16% for Anglo Indians, Christians and 8% for Scheduled Castes.

1932- Indian National Congress passes resolution called Poona Pact to allocate separate electoral constituencies for depressed classes.


1942 B.R. Ambedkar established the All India Depressed Classes Federation to support the advancement of the Scheduled Caste or so called depressed classes. He also demanded reservation for the Scheduled Castes in Government service and education too
1946- Cabinet Mission to India proposes proportionate representation with several other recommendations.

1947-1950

India obtained Independence Dr. Ambedkar was appointed Chairman of the Drafting Committee for Indian Constitution. It prohibits discriminations on the ground only of religion, race, caste, sex and place of birth while providing equality of opportunity for all citizens, the Constitution contains special clauses “for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Separate Constituencies allotted to Scheduled Castes and Scheduled Tribes to ensure their political representation for 10 years.

But it is to be noted here that this reservation has been extended through various amendments of the Constitution of India till date.

Therefore, the political structure and system under the Indian Constitution envisages a federal democratic form of government based on the values of equality, social justice and republicanism. It provides a framework for the attainment of its social and economic goals. It envisages a state-centric welfare govt. Fundamental Rights and Directive Principles of state policy are the conscience of the Constitution. From the point of view of inclusion of some affirmative
measures for a certain section of people specially, the SCs, STs and Other Backward Classes, the framer showed an uncompromising respect for human dignity, and unquestioning commitment to secularism, equality and non-discrimination and an abiding concern for the poor and the weak. And the philosophy perhaps, behind such provision was that the people as a whole must sink and swim together for harmony, progress, prosperity and nation building.