Chapter III

Evolution of Reservation Policy of Jammu and Kashmir
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EVOLUTION OF RESERVATION POLICY OF JAMMU AND KASHMIR

Jammu and Kashmir is a pluri-cultural, pluri-lingual and pluri-religious state of India. In a sense, it represents sub-continental diversity. The state of Jammu and Kashmir owes its growth to many historical and political factors. The diverse social groups are dispersed in diverse regions of the state. To a larger extent, Kashmir region represents a heterogeneous, ethno-culture, religious and linguistic identity, although there are some distinct linguistic and cultural groups also dispersed in different parts of Kashmir. These groups being located in definite territorial locations have a genuine claim to be treated as sub-regions of Kashmir.

Historically, Kashmir was divided in two regions, viz. Maraj (locally called Marz) and Kamraj (locally called Kamraz). The Maraj part fell in the western part of Kashmir. Akbar had divided the Kashmir into four regions, viz. Maraj, Kamraj, central Kashmir and external Kashmir. The external Kashmir comprises outer mountainous region including Banihal, Kashtwar, Rajauri and Poonch. This region also included Gilgit, Askerdoo and Laddakh, etc. The Dogra ruler had divided Kashmir for administrative purposes, first in six and later reduced to four regions called Wazarats. These were Wazarat-i-Shahar-i-Kahas, Wazarat-i-Anatnag, Wazarat-i-Kamraj and Wazarat-i-Muzaffarabad.¹

The society of Jammu and Kashmir is heterogeneous in terms of its ethnic composition and religious orientation. The heterogeneity of the state is multifaceted and can be seen at racial, linguistic, cultural and religious levels. Dogras, Chibalis, Paharis, Mongolian, Kashmiris, Ladakhis, Gujjars are the various racial groups inhibiting the State. In Laddakh region Champa, Ladakhi, Balti and Dard races inhibit. The first three categories belong to the Tibetan stock. Champa and Ladakhis are Buddhist in religion while the Baltis and Dards are Muslims. According to F. Drew²:

The Dogra and Chibalis were originally one, but they have now become separated in many characteristics, from the later have become Mohammedans, while the Dogra remained Hindu.
The Kashmir is a Muslim majority region. Besides, there had been a small community of Hindus commonly known as Kashmiri Pundits. The Kashmiri Pundits are divided into one hundred thirty three exogamous gotras and form a distinct class of their own. In addition Herdsmen, Shepherds, Galawans, Dums, Boatmen, Minstrels, Watalis, Gujjars etc. are important tribes of Kashmir. Gujjars, Bakkarwals and Gaddis are the main tribal communities recognized by the government. The Paharis constituted linguistic group living at the hilly tracks both in Jammu and Kashmir. They have their own dialect, tradition and life style. While in Kashmir region their distinctiveness is defined by their difference from the Kashmiri and Gujjar population, in Jammu they are differentiated from the Dogras, Punjabis and Gujjar population. Though predominantly Muslims, Paharis also include a large number of Hindus. Gujjars and Bakkarwals form the third largest ethnic groups in terms of their population in the state. Their main areas of concentration are Rajouri, Poonch districts in Jammu and Kangan, Kupwara, Uri, Sopian, Daksum and Kandi areas of Kashmir Valley.

Table 3.1. Population composition in Jammu and Kashmir

<table>
<thead>
<tr>
<th>Religious Groups</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muslims</td>
<td>67%</td>
</tr>
<tr>
<td>Hindus</td>
<td>9.6%</td>
</tr>
<tr>
<td>Sikhs</td>
<td>2%</td>
</tr>
<tr>
<td>Buddhists</td>
<td>1.1%</td>
</tr>
<tr>
<td>Christians</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

Source: Census of India, 2001

The religious heterogeneity of the state is of two types: inter-religious and intra-religious. The state is a home to the major religions viz. Islam, Hinduism, Buddhism, Sikhism and Christianity. Though Islam is the religion of the overall majority of people in the state, yet there is Hindu majority in Jammu region and Buddhists constitute majority in district Leh and 50 percent of the total Ladakhi population. However diversity of religions extends beyond the next regional division. Kashmir is the only region with almost homogeneous religious population. The other two regions have a mixed religious composition. Of the six districts of Jammu, three districts, with lesser population are Muslim majority districts. Similarly, of the two
district of Laddakh region, Leh is Buddhist majority and Kargil is Muslim majority. Leh has sizeable Muslim population and Kargil has only one tehsil of Zanskar where Buddhist are in majority. Though a majority of Sikhs are concentrated in the Jammu region, a small number also lives in the Kashmir Valley.⁵

The Jammu and Kashmir state comprises of three different sub-cultures. The hilly tract of Jammu which reaches down to the plain land of Punjab from the south of Kashmir Valley is inhabited by an ethnic group called Dogra of Indo-Aryan stock and professing both Hinduism and Islam.⁶ According to legends Jammu was founded about 3000 years ago by Jambulochan who establish his rule over the areas on the left bank of river Tawi. According to historians Jammu came into existence around 900 AD. The earlier reference of Dogger Desh is found in two copper plates inscription of the 11th century. The term Dugger and Dogra have been derived from it.⁷

The primitive Indian society was divided into tribes, each of which had its selected chieftain who controlled the tribal affairs of all kinds, while the head of each family group, i.e. Kulapa, acted as captain and priest within the tribe.⁸ When these tribes became settled and gave up their nomadic way of life, many took to agriculture, some engaged in trade and handicrafts. Some of them practiced wielding of weapons and acted as warriors. The persons they captured out of the savage tribes or imprisoned in battle were made slaves. Thus people adopted various activities necessary for an organized, corporate society, out of their free will, choice and ability but after some time people with exceptional intellectual capacity began to constitute themselves as religious teachers and political guides of the people and formed a group called Brahmins or Divines.⁹ They ensured their superior position in society. They framed stringent social rules and monopolized the spiritual authority. They also divided society into four professional groups and declared this division by the divine power and propounded the theory of the transmigration to the higher castes by following the caste karmas or duties with multiplication of social functions and activities and interaction of various castes which they named Varnas, the castes and sub-castes multiply through vast centuries.

The social order in ancient India was based on the principle of binary opposites like purity and pollution, inferior and superior, included and excluded, upper and lower castes etc. It represented sheer exploitation against lower castes. It was one sided social order favorable to the upper caste but discriminatory against
those who were on the opposite side. The traditional Hindu society was constituted of numerous castes and sub-castes functioning within the wider format of the Varna based caste system.

One of the prominent Indian experts of the ancient society and culture of India G.S. Ghurye describes the caste system by drawing attention to its six main features: i) segmental division of society ii) hierarchy of groups iii) restriction on feeding and social intercourse iv) civil and religious disabilities and privileges of different sections v) lack of unrestricted choice of occupation and vi) restriction on marriage.\textsuperscript{10}

It was in this manner that the present vast and inter-caste system of caste came into existence. To take up the Hindu community first which is known for the hierarchical social order, we find it was divided into four large groups in the State of Jammu and Kashmir as elsewhere. The society in Jammu like that of the other parts of the country seemed to have been homogeneous before the advent of the Turk or Muslim rule in India, although it was formed and stratified on the principles of castes and sub castes.\textsuperscript{11} With the establishment of the Muslim rule in India a new religious element entered in Indian society and as an action and reaction of different ideas, new sub-castes, sects and groups came into being. Consequently, society in this country became heterogeneous in formation. Commenting on the social profile of the Jammu, the Census Commissioner of Jammu and Kashmir in his report on the Census 1911 has remarked that\textsuperscript{12}

"The caste system in its true sense existed only in the Dugger illaqa. Here the influences of Brahmanism have always been the strongest and complete hierarchy of castes and sub-castes is met with its perfection."

The most respectable among were Brahmans among the Hindu population of Jammu province. They constituted 28.4 percent of the total population. Their proportion was highest in the Poonch district 80.03 percent. Their proportion in other district was 33.37 percent in Reasi, 29.69 percent in Kutchwa, 26.91 percent in Jammu, 22.94 percent in Mirpur and 22.08 percent in Udhampur. However the total Brahman population in Jammu province was 173175 in 1921, 191205 in 1931 and 198004 in 1941.\textsuperscript{13}

Rajputs also occupied an important position in the hierarchy of castes. Though numerically smaller than the Brahmans in the Jammu province, the Rajputs enjoyed a
high social status because of the fact that they were the members of the ruling class and held important posts, especially in the army. In Jammu region, the Rajputs including the Thakkars, numbered 1,39,461 in 1921, 1,56,623 in 1931 and 1,68,582 in 1941. In 1941, the Hindu Rajputs were found in large number in Udhampur district with over 61000, followed by Kathua and Jammu with over 36000 and 35700 respectively. Reasi came next with nearly 21000 and Mirpur with over 8000. In Poonch, their number was not very substantial. Most of the Rajputs in the plain tract had preferred service and agriculture as their main occupations. But ‘Mian’ Rajput considered it derogatory to be called agriculturists. The Dogra Rajputs have always maintained their separate identity because of their collective pride, political power, high social status and velour.\textsuperscript{14}

Besides some Muslim families in Kashmir, the trade and finance were monopolized mainly by the Mahajans, Khatris and Aroras in the state. Among them the Mahajans constitute the largest trading group. The total population of Mahajans in the state in 1921 was 19,761, in 1931 was 20,848 and more than 23000 in 1941.\textsuperscript{15} They were mainly concentrated in the districts of Jammu, Kathua and Mirpur. The Khatris are migrants to the state. Most of their ancestors had migrated to this state from Punjab during the reign of Maharaja Gulab Singh and Maharaja Ranbir Singh. Though scattered all over the state, their main concentration was at business centers of Jammu and Mirpur districts. The reason was quite obvious; both the towns were the principal commercial towns of Jammu province. Like the Khatris, Aroras too had migrated to this state. The Aroras are found both among the Hindus and the Sikhs. Their main habitat was Jammu district, though they were found in smaller number in other district too. They numbered only 1,624 in 1921 and 1,625 in 1931.\textsuperscript{16}

During the Sikh rule, the state of Jammu and Kashmir was a part of Ranjeet Singh’s kingdom. It was since then that the Sikhs of Punjab came and settled in this state. Therefore, the Sikhs were found mostly in the border district of Jammu, Mirpur and Poonch in Jammu region and in Kashmir Valley and Muzaffarabad. In 1941, there population in the whole state was 65,903 i.e. 1.64 percent of its population.\textsuperscript{17} Besides the Jats, the Sikhs in the state were mostly Brahmans, Khatris, Aroras and Lobhanas.

The other castes like Jains locally called “Bhabras” are mainly confined to Jammu city. They are mostly engaged in trade and commerce. The people of this
community are immigrants from other parts of northern India and have settled here since the reign of Maharaja Gulab Singh and Maharaja Ranbir Singh. They belonged both to the “Swetamber” and “Digamber” sects. Of the total 597 Jains in 1931 in the whole state, the Swetamber sect claimed 353, while the Digamber numbered 128 and the rest 116 did not claim to belong to either sect.\(^18\)

Kashmiri pundits form a distinct class of their own. They all are Brahmans but do not follow the rules and restrictions normally observed by other Brahmans in northern India. They are broadly divided into two groups ‘Malmasi’ and ‘Banmashi’. Basically, Kashmiri Pundits constitute a small highly advanced community with more than 90 percent of them being literate. Their chief occupation is government service. In 1941, the total population of Kashmiri Pundits was 2,00,000.\(^19\)

The social profile of the society of Jammu and Kashmir apparently reflects the Hindu hierarchical social order based on the Varna system prevailing in the society. Theoretically, we cannot find any such hierarchical system in Islam, since Islam completely rejects any form of social inequality, especially caste stratification among its followers. In reality, it stands for an egalitarian social system in which nobody is discriminated on the basis of birth, origin, race, culture. In principle, it emphasis on negation of all signs and basis of social differentiation in Muslim–Ummah-Society. The most sacred and most authoritative sources of Islam- the Holy Quran and the Prophet’s sayings- are glaringly clear in this regard. Quran says:

“O mankind, we have created you from a single (pair) of a male and a female and made you into nations and tribes that you may know each other (not that you may despise each other). Verily the most honored of you in the sight of God is (he who is) the most righteous of you. And God has full knowledge and is well acquainted (with all things)”

\textit{(al-hujrat, 13)}

The Prophet of Islam (PBUH) has in clear words said that every human being in Islam is equal. There can be no inequality established on the basis of race, colour and region. No Arab is superior to non-Arab nor can there be any preference for white over black. In other statement, Prophet conveyed to His daughter, Fatima, that her deeds rather than her association (to the Prophet) will be rewarded in the hereafter by Allah.\(^20\)
The actual situation related to caste among Muslims in India reveals a paradox and contradiction. It follows that while Islam stands for complete egalitarian social system and rejects all types of social inequality, Muslims in India do practise caste in practice, wholly or partly though they criticize/oppose it at ideological/theoretical level. They maintain and regulate it in their actual life. However, comparatively speaking, the emphasis of relevant Islamic ideal such as opposition to segregation and purity, pollution dilutes its application and implication in the actual situation. The sociological studies of social stratification in the Indian Muslim society reveal the following types:

<table>
<thead>
<tr>
<th>Sayyids</th>
<th>Ashrafs</th>
<th>Muslims of foreign origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Khans</td>
<td>Ajlafs</td>
<td>Muslims of local origin</td>
</tr>
</tbody>
</table>

The Muslims practise the practices of endogamy, occupational specialization, hereditary status and segregation (partly) but abhor the practices of purity-pollution, dharma karma and ideological justification. In totality, it has been observed that Muslims in India practice some caste traits but not as a system and not on the Hindu pattern. Caste exists as a social phenomenon and stands functional in Kashmiri Muslim society. The caste system prevails among Muslims in Kashmir despite the fact that Islam rejects it in all its forms and manifestations. The social structure, social organization, social order of Kashmiri Muslim society reflects the caste system clearly and conspicuously. This can be explained in terms of its recent pre-Islamic Hindu origin and tradition- some Hindu caste traits such as caste names, cast endogamy, occupational specialization and segregation are apartly glaring in the Kashmiri society. However, the caste system in its structural functional dimension among Muslims is different from that is being practiced among the Hindus.

The Kashmiri Muslim society is composed of the following castes; first, the Sayyid as they claim the ancestry of the family of the Prophet of Islam (PBUH), have converted locals to Islam and considered themselves as custodian of religion. The Sayyids claim the higher status among the others. The Khans composed of the nobility and their descendants feel themselves as superior for their foreign origin and, they claim higher status among the other caste other than Sayyids. The third is the occupational castes composed of different occupational communities or groups.
dealing with trade and commerce which were converted to Islam six centuries back. They claimed the higher status among the service castes. The last is the service castes who stand at the lowest stratum of the society composed of groups providing basic or essential services and menial jobs to the society. They also include Hanji and Gujjars. The Hanji community composed of the component part of the lower service castes in the caste structure of the Kashmiri Muslim society. The main difference of the community lies in its members living in the houseboats on water but they have started constructing their houses on the main land in the recent past. Gujjars living in the hilly areas also represent lower castes in the caste structure of Kashmiri Muslim society. They speak Gujjar language and trace their origin to land out of Kashmir.

The population of Muslims in Jammu region is much larger as compared to those of Hindus. And among Muslims, the Muslims who are converts from Rajput constitute the largest group. Non-Rajput Muslims had migrated to Jammu from other parts of India and from the adjoining countries. Thus in the formation of Muslim society in Jammu, the order stood as follows:

1. Original Muslims (immigrants) were:
   Sayyids, Quraisi, Mughal, Pathan and Awans

2. Converts:-
   (a) Converts from Rajputs were:
       Chib, Foral, Bha, Ghakka, Durwah, Manhas, Bhatia, Chauhan, Charak, Salaria, Katal, Khokhar, and Thakkar, Katoch, Thakial, Khasha, Janjuha, Tegial, Domal, Bains, Budhan, Sudhan, Bohdla.

   (b) Converted Vaishyas were Khojas from Aroras, Kakezai from Kalals, Gujjar, Kamboh, Seni and Arain.

   Among the Kashmiri Muslims the significant sub-castes are Bhat, Dar, Ganaie, Khan, Lone, Malik, Mir, Parrey, Rather, Shah, Wani, Geelani, Jeelani, Wattal, Tantray, Beigh, Jan, Lankar, Zarger, Pandit, Raina, Bakshi, Sheikh and others. They inhabit mainly the Kashmir province, Doda and Udhampur district and are found in small numbers in Muzaffarabad and Poonch also. Unlike other Muslims they are very good in certain crafts, like the world famous shawls, carpets, wood carving and other beautiful products of wood, paper machie etc. They are good at business and also engage in tourism industry. They are proud of their Hindu ancestry and often
retain their original family names and Hindu social practices; around 15 percent of them are Shias.\textsuperscript{23}

The Muslims of Skardu tehsil in Ladakh district were all Baltis. The most important town of this region is Skardu. They were of the Mangolian origin and had the distinct culture, dress and dialect to differentiate them from others. The total population of Baltis was 2,00,000 in 1911. Almost the whole of Gilgit was inhabited by the Dards. The majority of them in Gilgit and Nagar are ordinary Shias, while those of Hunza belonged to the Ismaeli sect.\textsuperscript{24}

In the society of Jammu region, there was predominant number of Rajputs who converted to Islam due to various reasons but mainly because of political nature. By the end of 19\textsuperscript{th} century the number of Muslim Rajputs was even more than double of Hindu Rajputs in Jammu province. The majority of Muslim population of Jammu province consisted of converted Hindus. A number of Hindu castes like Jats and Rajputs were found in Muslim community. For example the Rajput sub-castes like Awans, Bains, Bambas, Gekhars, Janjuans, Khaahas, Khokkars, Manials, Mangrals, Narmas, Salarias, Jhakars, and San are also found among the Muslims. Whereas, many among the Chibs, Jerals, Salarias, Bhattis and Manhas have accepted Islam, a considerable number of Bhans, Chouhans, Bhatias, are also found in the Muslim community.

Muslim Rajputs have their strong holds in the Mirpur and Poonch district, though some of them are found in Reasi also. In the rest of the State their number is rather insignificant. Though converted to Islam, most of the Rajputs still practice many of the customs and traditions of their Hindu brethren. Apart from retaining Hindu family names they wear jewelry and dresses like them. In rituals relating to marriages and death, they have some similarities with Hindu Rajputs. Worshipping the local deities of the Hindus and plastering the floors of their houses with cow dung are quite common among them. The total population of Muslim Rajputs in Jammu region in 1921 was 1,41,420, which rose to over 2,26,000 in 1941.\textsuperscript{25}

Muslim Jats too lived mostly in western Jammu province. According to the census report of 1941 their number was over 1,21,000 and majority of them were found in Mirpur district. Their traditional occupation was agriculture as elsewhere in the country. Besides, many served in defence services. Sudhans were virtually
descendants of Suchan Brahmins who inhabited Sudnuti tehsil of Poonch. Later on they embraced Islam and sought employment in the rank and file of British army and proved themselves as fine soldiers during World War II. The Sayeds and Mughals were mainly confined to Poonch, Muzaffarabad and Mirpur districts though a small portion of their population was found in every district of the state. According to Census of 1941, the number of Sayeds was 52000 and Mughals was 42000 in the state. Syed claimed their descent from the Prophet Mohammad, whereas Mughals were descendants of foreign invaders who mingled with the local Muslim population.

The Gujjars of the state are Sunni Muslims and mainly graziers by occupation. They are believed to have entered state territories through the Punjab and North Western Frontier province. They are said to be dwelling in this region even before the advent of Mughals. The first mentioned reference to Gujjars in Jammu and Kashmir is found in Chamba copper plates which refer to their presence as early as 10th century. They were Muslims, probably they had converted to Islam before they immigrated to this part of the country. The Gujjars had always maintained their distinct identity by speaking Gojri (parimu) a dialect of Rajasthani and by wearing Gojri dress. Some Gujjars living in Bhimber, Rajouri, Mirpur and Reasi claimed that their ancestors had come from the Gujrat district of Punjab.

The Gujjars have several sub-castes. There are as many as fifty-four sub-castes among them. Some of the sub-castes allowed inter-caste marriages, though not frequently. But others like the Awans, Bigyals, Chuchans, Khans, Lones, Manhas, Mirs, Moti, Mooner, Plaser, Pathan, Qureshi, Rather, Saiyed, Sheikh and Thakiyal sub-castes allowed marriage within their own fold. In customs, manners, dress, food and habits they have nothing in common with other Muslims. Marriage outside their own tribe was resented. In recent years Gujjar families have started taking education and to improve their ways of life. Many of them, however, continue to be nomads. In 1921 the total population of Gujjars was 2,43,292 and in 1931 it was 2,80, 610 whereas in 1941 the population of Gujjars in the whole state was 2,72,431.

Bakerwals being nomadic graziers of goat and sheep usually keep more goats and sheep than cows and buffaloes. Thus they acquired a distinct name Bakerwal. By a notification issued in 1920, the government prohibited the entry of foreign Bakerwals in the state territories. This was done so as to prevent the damage being caused to the forests from goats. However, the government renewed its earlier stand
in 1931 and amended the 1928 notification which provided them more facilities. This again promoted the Bakewals to enter Jammu region causing a sharp rise in their number from 3798 in 1931 to 14,511 in 1941. The sheep grazer called as Gaddis resided in the valleys of the main Chenab basin and form a separate group with their own culture, folk song and customs.

In Jammu region, the next important community was depressed classes called Harijans. They constituted nearly one fourth of Hindu population of Jammu province, but stood at the base of the Hindu social hierarchy. Like Brahmins and Rajput, this community was too divided into number of castes and sub-castes. The lower depressed castes of the state include Lohar, Tarkhans, Kumar, Nai, Jhewars etc. and other depressed castes who fall below the service castes. The main sub-section of the Harijans are Megh, Doom, Chamar, Chura, Batwal, Ratal, Saryana, Koli, Barwal, Basith, Dhyarand and Muchi etc. The vocation followed by each sub-caste was the criterion to judge the extent of its population and its status. Churas, Dooms and Batwals stood lowest in the social scale and the Meghs were the highest. Meghs would shun a Chamar and Chamar would not take food or water touched by a Doom or Chuhra on account of their association with unclean jobs. However, by 1947 many of the objectionable restrictions on them had been removed by law and they had been granted access to public schools, wells, tanks and temples etc. besides being provided with new job opportunities.

The strength of the depressed classes treated as untouchables was recorded by the Census Report of 1931 as 1, 70,927 persons i.e. 23.3 percent of the entire Hindu population of the state. The Barwals were most numerous in Jammu district and were found in Jammu province only. The Basiths were predominant in Reasi and Mirpur district. The Chamaras on the one hand were distributed all over the region, the highest concentration being in Jammu region. The Churas were largely found in Poonch. The Dhyar caste was found in all the district of Jammu province, with highest percentage in Jammu district. The Jalohas were confined to Reasi district. The Meghs were most numerous in Jammu, Udampur and Reasi district. The Wattals which signify another term for Chuhra were found in Srinagar district of Kashmir province only. Megh constituted the largest segment of the Harijan castes, their population in Jammu province in 1931 was 70,010. Chamar/Ramdasi is second largest among
Harjjan castes. Their population was 41,150 as per the Census of 1931. They were mostly leather workers usually called Mochis in the plains of Jammu region.

Other prominent depressed castes in Jammu are Doom and Barwala. Dooms presently identify themselves as Mahasha or by colloquial form of Sanskrit word Mahashay that was given to the caste by Arya Samaj. As per 1931 census they were 34,329 in number. They work as agricultural and construction labours, bamboo and cane craftsmen. Barwals traditionally have worked as load carriers on their load carrying animals. In the census report of 1941, their total population exclusively in Jammu province was recorded as 1,13,422. The Barwala were most numerous in Jammu district and were found in Jammu province only. The Basiths predominated in Reasi and Mirpur districts. The Chamars were mainly concentrated in Jammu district, the Churas in Poonch district, the Dhyars in all district of Jammu province, the Jolahas in Reasi district, the Ratals in Udhampur and Reasi and Watal in Srinagar district.

The heavy concentration of depressed classes in Jammu province is attributed to the fact of the presence of sizable number of land owing Rajputs who were ruling elites in the regime of the Maharaja Gulab Singh but absence of any sizable number of Sudra or peasantry castes who were generally engaged in cultivation as tenants of the land owing castes in the mainland India. The depressed castes people earned their livelihood as peasants, agricultural labourers and through other traditional menial occupations. They were not allowed to participate in social intercourse and had to and still suffer discrimination and untouchability. Before 1930s the condition of the Scheduled Castes in the state was miserable. Narratives from the Scheduled Castes respondents revealed the following facts. They were not allowed to cover the upper part of their body. They could not wear Turban or new clothes (especially white). During their marriage or any other occasions they were not allowed to sit on horseback and they could neither hire musicians nor could go for any public procession. Those who broke these social rules had to face atrocities. They had to face discrimination in different walks of life.

However, Maharaja Hari Singh granted them access to temples and other public places and admissions in government schools in 1931-32. This removal of legal restrictions on the Harijans on the entry to public places was probably the first of its kind in this princely state of India. The grant of this right without any strong
struggle by Harijans or absence of any public reaction against this grant by the upper classes shows the non-rigidity of untouchability and discrimination against the Harijan in the state. The removal of restriction by the Maharaja resulted into gradual end of denial and discrimination and improvement of their social situation.

Reform Movements

By the beginning of twentieth century important social and religious groups had begun to form their own organizations for reformation, particularly in Jammu province. Their efforts yielded some influence in reforming the lives of the depressed classes. Prominent organizations directly and indirectly working for the welfare of the Harijans were:

The Dogra Sadar Sabha

In order to discuss various problems of the people of this state, a meeting of about 700 notable persons belonging to different castes and religions was convened at Jammu in 1904. In this meeting, it was unanimously agreed by those present to form a body known as Dogra Sadar Sabha to promote caste identity of the people and to realize their cherished desires and aspirations. This was the first public platform in the state to deliberate, articulate and represent the aspirations and feelings of the people to the Maharaja. Out of the various objective of the Sadar Sabha, one was the need of imparting education to lower castes and of granting liberal scholarships to students. The resolution of the Sadar Sabha carried much weight with the Maharaja’s Government since the members of the Sabha were mostly influential persons directly or indirectly associated with the government. Inclusion of the issue of education of the lower castes i.e. Harijans as one of the objectives of the first public organization formed by the ruling elites of Jammu clearly exhibits that the denial and discrimination against the Harijans was not institutionalized.

All Jammu and Kashmir Harijan Mandal:

The first organization of the Harijans in the state was All Jammu and Kashmir Harijan Mandal that was organized in 1920s. The leaders of the organization derived their aspirations from All India Depressed Caste Movements i.e. Adi-Andhra, and Adharmi. Prominent leaders of the Mandal were Mahasha Nahar Singh, Choudhary Rangila Ram, Bhagat Chajju Ram, Mahasha Lal Chand, Mangat Ram Bhagat, Mahasha Tuli Ram and others. The main purpose of the organization was to regain
their lost social status in Hindu society particularly in Dogra Desh. In 1932 the Mandal organized a rally in which one lakh people participated. It was a non-political organization and was social in character. Main achievement of the appeals and the representations of this organization was that for the first time in the history of Jammu and Kashmir the Harijans got entries into temples, schools and other public places. Gradually, this organization disintegrated. It barely remained noticeable by 1952 and later on became redundant.

Harijan Mandal

In 1951, another organization of the depressed castes of the state, Harijan Mandal was established. This was formed on the pattern of Central Harijan Mandal and Milkhi Ram was its president. It was primarily a political party. It participated in the first election organized in the state on the principle of adult franchise in the year of its formation i.e. 1951 to constitute the State’s Constituent Assembly. It contested the 1951 election from 19 general seats because there was no political reservation for the depressed castes at that time. None of them were elected. In 1957 assembly elections one of its candidates was elected to the State Legislative Assembly. The last assembly elections in which it participated was 1967. None of its candidates won in the election. As a result of not making any significant achievement in three successive elections the party started disintegrating and vanished by 1970.

From 1952-57 this organization mainly played the role of an opposition. It articulated the interests of this community and presented their demand to the government. The main demand of the party was the adoption of political, educational and job reservations in the state as it was in the rest of India. The party began an agitation on the issue of job reservation in 1952 that included organization of public meetings, dharnas and hunger strike by its leaders. As a result of this agitation the State Government provided 8 percent reservation to the depressed castes in government jobs.

Depressed Class League

All India Congress Party organized its Dalit front christend as Depressed Class League, to bring the Scheduled Castes closer to the party. A branch of the league was started in Jammu and Kashmir in 1962. Prominent leaders of the league in Jammu and Kashmir were Amar Nath Bhagat, Bhagat Chajju Ram, Parmanand and the others.
This organization demanded the provision of complete facilities to the students from
the community pursuing higher studies. They further demanded housing subsidy, land
to landless tenants, reservation as per Scheduled Castes population etc.

Scheduled Castes Employees Federation

The Scheduled Caste State Government Employees founded this organization
in 1972. Their aim was mainly to protect and promote the interest of the Scheduled
Caste employees. Being an association of the government employees it had not
launched any movement or struggle. Its strategy was moderate one, limited only to
appeal and petition not agitation.

Dalit Sudhar Federation

This organization was formed in 1979 with Seva Ram as its president to unite
the Scheduled Castes and the Other Backward Classes to pursue their common
objective of securing affirmative action programmes in their favour from government.
Its leader along with some other backward class leaders formed Jammu and Kashmir
Backward classes Federation. They demanded reservation of seats for backward
classes in Legislative Assembly, admission to technical institution and reservation in
government services.

Backward and Minority Community Employee Federation

This organization was formed on the initiative of Seva Ram under his
presidency in 1979 with an objective to fight for the education of the depressed
classes. This organization aspired to include practically all Hindu castes of Jammu
and Kashmir without any distinction of their social and educational status.

Other New Organizations

There has been a mushrooming of Scheduled Caste organizations in the state.
Many of them are one-man caste specific organizations without any distinction of
their social and educational structure. Few prominent among them are: Jammu and
Dalit Sena, All India Jammu and Kashmir Ravi Das Sabha, Jammu and Kashmir
Mahasha Sabha, Guru Ravi Das Sabha, Udhampur, Bhartiya Dalit Sahitya Academy,
Peoples Republican Party of India.33
Although the problem of backwardness is not new from the historical point of view, broadly speaking its origin can be traced back at least when the awakening amongst the people was not sufficient because of inherent suffering. Backwardness and extreme poverty as well as illiteracy in particular, led to the miserable conditions of these people. It was in the year 1920 that the downtrodden people of the State started struggle claiming right of existence but more oppressive methods were adopted by the rulers, the more strength the movement of the people gained. At some stages it seemed that it had become uncontrollable for the said rulers. It was with this background that the government of the time had to take steps by way of constituting commissions and committees from time to time.

The Glancy Commission

In the late twenties and early thirties there were complaints that the Muslims were not adequately represented in the state services as that was also true of certain other minority communities of the state. So, it was in November 1931 that a Commission popularly known as Glancy Commission headed by an European member Bertand, J. Glancy of the Indian civil service was constituted under the command dated 12th November 1931 of His Highness Maharaja Hari Singh Bahadur. The Commission was required to go into various matters including complaints and disabilities, problems relating to education and employment in public services of the state as well as inequitable representation of the classes of the people in the services. The area of granting the scholarship and other educational loan also came within the scope of the said Commission.

The Glancy Commission conducted an exercise and came to a tentative conclusion that generally the Muslims and other minority communities were inadequately represented in the services of the state. It accordingly made wide-ranging recommendations, with a view for achieving a more equitable method of recruitment to the services and affording every community a fair chance of representation. Its main recommendations on the subject are summarized below:

1) While there need not be different standards for different communities, the standard should not be more exacting than efficiency demanded and those who possessed qualifications in excess of that standard should not be held to deserve appointment as a matter of right.
2) There was no need to change the age limit which was then thirty years.

3) Appointments and scholarships should be properly advertised and given as wide publicity as possible.

4) Due regard should be paid to the legitimate interests of every community in the matter of recruitment to government services and the grant of scholarships for training provided that suitable candidates were forthcoming.

These recommendations were accepted by His Highness the Maharaja Bahadur but despite that the people of the state were not so content because they were still not getting what was due to them.

**Recruitment Rules Committee**

The recommendations of the Glancy Commission did not bring about a final solution to the problem. When the people of the state continued their struggle for a rightful existence a committee known as the Recruitment Rules Committee was constituted in the year 1938 in consultation with the British Government of India. The committee made detailed proposals regarding the classification of each service. The main recommendations of the committee are:

1) For direct recruitment, the age limit should be reduced to 28 years except for gazette appointments in departments such as the justice, education and medical departments where higher educational qualifications were required. In the Justice and Education departments, the age limit of 30 years was recommended and in case of the medical department, a still higher age limit of 32 years was proposed.

2) For gazetted officers, the normal method of recruitment should be by a competitive examination. Direct recruitment by nomination was provided for in most of the services but the committee did not consider it desirable to fix a ratio between nomination and recruitment by competition as it thought that recruitment by nomination should be resorted to only in exceptional cases and should not be regarded as a normal method. The committee recommended a portion between direct appointments and promotions, including transfers, varying from 50 to 75 percent according to the circumstances of each department. One consideration on which a larger proportion was recommended
for direct recruitment was that it would give a better chance for regulating communal representation.

3) For non-gazetted services, the committee recommended five methods of recruitment, namely, selection, nomination, competitive examination, promotion from a lower category or grade and transfer from another class. Recruitment partly by one method and partly by another was also recommended. For technical departments, recruitment by competitive examinations was considered necessary and nomination or selection was considered sufficient.

The report of the committee indicates that though no definite orders existed at the time on the subject of communal representation, 50 percent representation for the Muslim community was supposed to be the aim. As the government followed the old procedure and methods with regard to the reservations, apart from the fact that quite negligible number of appointments in higher ranks were made by political cadres. It was in October 1953 that the state government, while reviewing the recommendations of the Glancy Commission and Recruitment Rules Committee, decided to constitute another committee known as “Jammu and Kashmir Public Service Re-organization Committee. This Committee could not finalize its report due to certain differences amongst its members and ultimately, the government at its own appointed a Recruitment Board on 31.12.1954 known as ‘Jammu and Kashmir Public Service Recruitment Board’ for the matters relating to recruitments to non-gazetted and other superior services of the state. This Board too could not function for about four months in the absence of its scope of reference etc. It was only on 2\textsuperscript{nd} of May 1955 that powers, functions and duties of the Service Recruitment Board were defined. Again, this board could not accomplish its task due to various administrative difficulties and differences amongst its members and the State administration. Resultantly it was abolished on 2\textsuperscript{nd} September 1957.\textsuperscript{36} Obviously there had been no effective solution to the problems of the common man. This is how the chequered history of ‘reservation’ travelled from different stages and phases during the last several decades.

The Constitution of India contains in part III ‘Fundamental Rights’ as well as other provisions of the Constitution of India have been made applicable to the state of Jammu and Kashmir. The Directive Principle of State Policy laid down under part IV of the Constitution of Jammu and Kashmir and Particularly section 23 provide equitable representation to the various communities of the state in the services.\textsuperscript{37}
Prior to the coming into force of the Constitution of India, reservations in the services of the legislature etc. in the country were made on the basis of religion. The recommendations of the Glancy Commission also seem to have followed the same pattern. Article 370 of the Constitution of India which came into force on 26 January 1950 makes a special provision with respect to the state of Jammu and Kashmir. The President issued an order on 14th May 1954 that Article 370 extends the application of the provisions of Constitution of India to the state of Jammu and Kashmir and indicates the exceptions and modifications subject to which they should apply. This order made Article 15 of the Constitution, prohibiting discrimination on ground of religion, race, caste, sex or place of birth and Article 16 guaranteeing equality of opportunity in matters of public employment, applicable to the state of Jammu and Kashmir, subject to following modifications:38

I) The reference to Scheduled Tribes in clause (ii) of Article 15 is to be omitted, and

II) The reference to state in clause (iii) of Article 16 is to be considered as not including a reference to the state of Jammu and Kashmir.

Article 29 dealing with protection of minorities became applicable without any modification. Section 10 of the Constitution of Jammu and Kashmir which came into force on 17 November 1956, guaranteed to permanent residents of the State all the rights guaranteed to them under the Constitution of India including the provisions of Article 15, 16 and 29. Under section 23 of the Constitution of Jammu and Kashmir it is laid down that the State shall guarantee to the socially and educationally backward section of the people special care in the promotion of their educational matters and cultural interests and protection against social injustice.39

In the beginning none of the tribes of Jammu and Kashmir was treated as Scheduled Tribe in the Constitution. No special constitutional safeguards had been made for such tribes. For Scheduled Castes, only the Article 355 in the Constitution of India deals with the claims of Scheduled Castes to services and posts has been rendered applicable to services and posts in connection with the affairs of Jammu and Kashmir state by virtue of sub para II of para 2 of the Constitution (application to Jammu and Kashmir) Order 1954.40
Chapter III

Evolution of Reservation Policy of Jammu and Kashmir

The Government of Jammu and Kashmir does not appear to have followed any clear cut policy either in classification of backward class or in the matter of special benefits to be given to them. In February 1956, the Government of Jammu and Kashmir issued a notification in which certain classes were recognized as backward classes; the list has been amended from time to time.

Jammu and Kashmir Civil Services (classification and appeal) Rules, 1956

In June 1956, the state government issued the Jammu and Kashmir Civil Services (classification and appeal) Rules in which a clause was included to enable the state government to make reservation in government services in favour of any backward class which in the opinion of the government was not adequately represented in the services.\textsuperscript{41} In the same year in a writ petition submitted by two teachers to the Supreme Court of India, the state government filed an affidavit that 50 percent of the posts are to be filled by Muslims from the entire state of Jammu and Kashmir and 40 percent of them are to be filled by Jammu Hindus. The state government sought to justify this working rule in the Supreme Court on the ground that Muslims as a community in the whole of the state of Jammu and Kashmir formed backward class of citizens and they were not adequately represented in the services of the state and that similarly Hindus from the province of Jammu formed a backward community and were not adequately represented in the service of the state. Accordingly representation in the matter of appointments to posts and promotions in the services of the state was made in respect of both these classes. The Supreme Court examined the position in the case of Triloki Nath and others \textit{vs} State of Jammu and Kashmir and others\textsuperscript{42} and observed:

"The state of Jammu and Kashmir had, it is admitted from time to time, framed lists of backward communities but it is not claimed that in making promotions to the gazetted cadre in the educational service the authorities acted in pursuance of the lists as already observed the normal rule contemplated by the constitutional provision is equality between aspirants to public employment, but in view of backwardness of certain classes it would open to the state to make provision for reservation of appointments or posts in their favour. When the state proceeds not to make reservations in favour of any backward class but to distribute the total number of posts or appointments on the basis of community or place of residence, no reservation permitted by clause (4) of Article 16 can be said to be made. In effect the
state policy which Malik Gulam Nabi spoke to was a policy not of reservation of
some appointments or posts, it was a scheme of distribution of all the posts
community-wise. Distribution of appointments, posts or promotions made in
implementation of the state policy is contrary to the constitutional guarantee under
Article 16(1) and (2) and it is not saved by clause (4).”

The Muslims of the entire state together with the Jammu province form 94.2
percent of the total population of the state. The task of determining as to which class
constitutes the backward class is not simple. In its report submitted to the Union
government in March 1955, the Backward Class Commission has attempted to lay
down certain criteria for general guidance in the matter. The test recommended by the
commission, however, appeared to the government to be vague. The Supreme Court
in the *Balaji case*\(^43\) held that the recommendation of Backward Class Commission is
not a condition precedent for the state to make special provision for the backward
class under Article 15(4). The state is competent to classify the classes of persons as
backward by executive and legislative action.

**Gajendragadkar Commission**

While the government was staking high for formulation of concrete policies,
the common masses widened their activities and struggled for their rightful existence
which had gained momentum in the 1966-67. So a Commission of Enquiry headed by
Dr P.B. Gajendragadkar was constituted in the year 1967. Amongst other areas, the
Commission was required to examine:

1) the recruitment policies of the government and to recommend measures for
giving equitable shares in the government employment to various regions and
communities, having special regard to the claims of the Scheduled Castes and
other economically, educationally and socially backward communities, classes
and groups among the citizens of the state consistent with the maintenance of
efficiency of administration.

2) the policies of the state government about admission to institutions of higher
education and scheme of assistance by way of scholarships and loans with a
view to ensuring an equitable distribution of the available facilities to the
various regions and communities and having special regard to the claims of
Scheduled Castes and other economically, educationally and socially backward communities, classes and groups among the citizens of the state.\textsuperscript{44}

After examining the various reports of the commissions and committees, rules made by state government from time to time, orders and judgments of the Supreme Court, the commission thoroughly examined the reservation policy of the state and in view of making this policy more efficient and more workable the commission had given the following recommendations in its report submitted to state government in the year of 1967\textsuperscript{45}:

1. The following multiple criteria should be adopted for determining which classes should be treated as backward:-
   
   (i) The economic backwardness of the class
   (ii) The occupation/occupations pursued by that class of citizens
   (iii) Their place of habitation
   (iv) The average of student population per thousand in that class
   (v) Caste, in relation to Hindus

2. The existing list of backward classes should be revised and a fresh list drawn up by a high powered committee after applying the multiple criteria mentioned above relating to social, educational and economic backwardness.

3. Article 335 of the Constitution of India should be made applicable to the Jammu and Kashmir state and the reservation for the Scheduled Castes be made in the services in proportion to the population

4. Reservation in the services should also be made for the backward classes, as freshly determined, in proportion to their population, subject however to the condition that the total reservation for the backward classes and the Scheduled Castes should not ordinarily exceed 50 percent. The balance of the posts should be filled strictly and solely on the basis of merit. In filling the post reserved for the backward classes and Scheduled Castes, persons belonging to each of these categories should be selected on the basis of merit

5. Reservation of places in educational and professional institutions should be made for the backward classes and Scheduled Castes in proportion to their respective population, subject to the condition that the total reservation does not ordinarily exceed 50 percent. The balance of the place in such institutions
should be filled strictly and solely on the basis of merit. In filling the places reserved for the backward classes and those reserved for the Scheduled Castes, merit should be the criteria for selecting the persons in each of these categories.

6. A certain proportion of the provision available for the grant of scholarships and study loans should be set apart for the backward classes and the Scheduled Castes. The provision should be separate for each of them and should not be less than the proportion that either of them bears to the population of the state.

The Gajendragadkar Commission submitted its report to the government in November 1968, which was latter examined and considered by the state government. Amongst other things the commission had also recommended that the state government should constitute a high powered committee for the purpose of determining and identification of the classes constituting backward on the basis of multiple criteria. An emphasis was laid that the high-powered committee should comprise men of caliber having expert knowledge and experience in this behalf and command general respect amongst the public. Besides, the commission was expected to lay down foundation for more effectively identifying the deserving classes of people for purposes of benefit of ‘reservation’ such like Scheduled Castes, backward classes, etc thereby catering to the aspirations of the people and also for ensuring promotion in the field of higher and technical education, particularly for the down trodden classes of people in terms of commitment under article 35 of the Constitution of India [entry 25 of list II, schedule VII. In order to achieve the goal, it needed a rational, board-based and result-oriented policy for promotion in the field of higher and technical education.

Janki Nath Wazir Committee

It was with this background that the state government constituted a high powered Committee vide Government Order No. (252-GD of 1969) under the chairmanship of Justice J N Wazir. This Committee was required to consider the observation and recommendation of the Gajendragadkar Commission relating to identification and classification of classes of people as backward, weak and under-privileged. It formed a detailed questionnaire and gave it maximum publicity so as to enable the people from each corner of the state to come forward with their view point
and suggestions. Even the prominent and knowledgeable persons were also called upon to assist the said committee in its task.

The committee undertook extensive tour throughout the length and breadth of the state covering quite far off, remotest and inaccessible areas and gave patient hearing to the people belonging to different sections. Finally, this committee submitted its report to the state government on November 29, 1969. In the said report, the committee had specifically identified and classified in clear and explicit term: 46

i) Weak and under-privileged section

ii) Residents of backward areas such as:

a) Bad Pockets

b) Areas falling within eight kilometers of the Actual Line of Control.

Besides, the said committee had specifically laid emphasis upon the government to take further steps in the matter of statutory enactment, an executive order or directions in such a manner as would ensure that the benefit underlined the scheme would reach the really deserving people and not the imposter.

The Jammu and Kashmir Scheduled Caste and Backward Classes (Reservation) Rules 1970 and,

The Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation of Appointment by Promotion) Rules 1970:

As per the suggestions given by the Wazir Committee the state government framed two sets of rules. First, the Jammu and Kashmir Scheduled Caste and Backward Classes (Reservation) Rules 1970 47 and second, the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation of Appointment by Promotion) Rules 1970. 48

Under the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation) Rules 1970, the reservation for socially and educationally backward classes which were specified as traditional occupations, social castes, cultivators, pensioners, persons belonging to areas adjoining cease fire line and bad pockets was provided. The reservation scheme under the rule is given below: 49

(a) Scheduled Castes: 8 percent
(b) Backward classes 42 percent, inclusive of 2 percent of seats reserved for the permanent residents of Ladakh district

Under the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation of Appointment by Promotion) Rules 1970, reservation for Scheduled Castes and backward classes in promotion was provided. The scheme of reservation under this rule is given below: 50

(a) Where the direct recruitment quota specified under the rules or orders regulating such service, class, category or grade is at 25 percent or less, the reservation in the promotion quota will be:

(1) For Scheduled Castes: 8 percent

(11) For Backward Classes referred to in rule 18 (part iii) of the principal rules 42 percent

(b) Where the direct recruitment quota specified under the rules and orders regulating such service, class, category or grade is more than 25 percent, the reservation shall be:

(i) For Scheduled Castes: 4 percent

(ii) For Backward Classes referred to in Rule 18(part iii) of principal Rules 21 percent

As a consequence of the enforcement of the said Scheduled Castes and Backward Classes (Reservation/ Reservation of Appointment) Rules 1970, various state government departments made appointments and promotions particularly in the education department. Such actions of the government were challenged before the Supreme Court of India through the writ petition No's 173, 359 and 360 of 1971 entitled Janki Prasad Parimoo and Ors. Vs State of Jammu and Kashmir and Others. 51 The Supreme Court of India while pointing out certain defects therein directed the state government that till the defects were cured, the rules were not capable of being given effect to, so far as these rules pertain to reservation for Scheduled Castes and Backward Classes. Accordingly, the state government issued the Government order 52 to the effect that

(i) No authority shall issue any certificate to any person claiming to be backward by virtue of the rules referred to above: and

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(ii) No selecting or appointing authority shall take into consideration, any certificate issued under the said rules in favour of any person claiming to be backward and percentage of reservation specified in the said Rules for backward classes shall not be given effect to.

Justice A. S. Anand Committee

It had been established to form a concrete and long term and result oriented reservation policy in accordance with the requirements of the society. The state cabinet reviewed the total gamut of things on 14-7-1976 and decided to constitute a committee of persons of eminence, having legal, social and political background and expertise knowledge on the subject. Therefore, on the basis of the said cabinet decision an order dated 24th August 1976\(^5\) was issued, constituting a committee under the chairmanship of Justice A.S. Anand.

Initially, the scope and terms of reference of the said committee was quite limited to the extent of examining the defects in the two sets of Rules of 1970. But when the committee, at the outset, glanced over the problem and examined the chain of events which took place during the past periods, it felt that unless and until the government widened the scope of reference, the legal infirmities, shortcomings etc., as pointed by the Supreme Court of India, could not be cured effectively and properly. Therefore, at the instance of the said committee, the government reviewed the matter and after appreciating the view point of the committee, issued another order\(^5\) dated 22, September 1976. Vide this order, the committee was required to:

(1) Examine the criteria relating to social, educational and economic backwardness to be adopted for determining as to which class and/or section thereof should be treated as backward;

(2) To identify such classes and sections thereof and prepare list after applying the criteria as are adopted for the purpose;

(3) To categorize backward classes and examine the safeguards that should be provided to ensure balanced and orderly development of all sections and classes of the state;

(4) To examine the question of providing reservation for recruitment to various posts under the government and/or promotion/selections to various posts
consistent with the needs of ensuring efficiency in administration and minimum standards for job requirements.

The committee was of the view that the six categories made by the Wazir Committee could be cut down to two broad categories as under:

(a) 22 weak and underprivileged class

(b) Residents of Backward areas, i.e

I) Bad pockets and

II) Areas near the line of actual control

Having undergone a detailed discussion with the cross-section of people at various levels and various areas, the committee found that 22 groups of people should be classified as backward. The committee regarded them weak and underprivileged classes.

The committee noted the desire of the government to remove the backwardness of certain classes of people of the state so as to enable all groups of the population to live as equals and have equality of opportunity in all spheres of life. The committee supported preferential representation for the backward class in government services with due regard being paid to administrative efficiency. The committee prepared the list of backward classes:

(a) Weak and underprivileged sections and

(b) Residents of backwards areas, that is of;

I) Bad pockets and

II) Regions within 8 kilometers of the line of actual control.

Justice Anand Committee submitted its report to the government in September 1977 and on the recommendations of the Justice A.S. Anand Committee, a notification, dated 3-7-1982 was issued by the government to provide following reservations:

(1) Scheduled Castes:- 8 percent
(2) Socially and educationally backward classes:
(a) Weak and underprivileged classes.
   (1) Gujjar and Bakerwal:- 4 percent
(2) Other social castes:- 2 percent
(b) Residents of backward areas:
(i) District Leh:- 2 percent
(ii) District Kargil:- 2 percent
(iii) Other backward areas excluding Leh and Kargil districts:- 20 percent
(iv) Areas near the Actual Line of Control: 3 percent
(3) Children of Freedom Fighters:- 2 percent
(4) Children of permanent residents of Defence Personals:- 3 percent
(5) Candidates possessing outstanding proficiency in Sports:- 3 percent

S.M. Sikri Committee

Meanwhile in the year of 1977-78, the District Recruitment Board of district Poonch made some appointment of school teachers with which the substantial elements of the population of Poonch Town was dissatisfied and they started an agitation in 1978 which gained strength in course of time. With this background, the state government constituted a Commission of Inquiry under the chairmanship of Justice S.M. Sikri to review the policies underlying developmental programmes and allocation of financial resources and examine the recruitment policy of the government and recommend measures for equitable sharing in government employment to various regions, examine the policy of the government to admissions in professional institutions and to recommend measures to ensure equitable distribution and consider any other grievance.

The committee submitted its report on August 25, 1980. Regarding recruitment policy the committee recommended: 38

(1) The reservation in services for Scheduled Castes should not be made by district, it should be made on the basis of the population for the state as a whole.

(2) Government and recruitment agencies may make efforts to accelerate the entry of Scheduled Caste candidates in government services in order to reach reservation levels.

The notification of 1982 issued by state government notified certain areas constituting socially and educationally backward, weak and underprivileged classes and also the areas falling near the line of actual control. The state government after
receiving some representations from the people demanding declaration of some more areas as backward, the government referred all such demands and representations to the Territorial Deputy Commissioner for examining them and making appropriate recommendations in the light of broad based criteria laid down by Justice A. S. Anand Committee. On the basis of the recommendations made by the Territorial Deputy Commissioner, the government issued a notification on 22 August 1988 identifying and notifying some more areas which fall within the definition of socially and educationally backward for the purpose of Article 15(4) and 16(4) of the Constitution of India.

Mandal Commission Recommendations with regard to Jammu and Kashmir

At national level with a view to determine and investigating the conditions of socially and educationally backward classes in India as per Article 340 of the Constitution, on 1st January 1979, under a Presidential order, Second Backward Class Commission known as Mandal Commission was appointed under the chairmanship of B. P. Mandal to verify the conditions of socially and educationally backward classes. The aforesaid commission commenced its functioning on 21.3.1979 and completed its works on 12th December, 1980 and identified 63 castes/communities as socially and educationally backward classes in Jammu and Kashmir state and recommended 27 percent Reservation for these castes in Jammu and Kashmir state on the basis of social and educational backwardness. The Mandal Commission had not recommended any reservation for “Residents of Backward Area or area adjoining the Actual Line of Control” in Jammu and Kashmir state or in any other part of India.

The recommendations of Shri B. P. Mandal Commission were challenged before the Hon’ble Supreme Court of India in a case titled “Indira Sawhney etc. vs. Union of India and others” in which Hon’ble Supreme Court of India vide its Judgment dated 16.11.1992 issued following directions to the Government of India, to the State Governments and to the Administrations of the Union Territories:

“123 (A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.
(B) Within four months from today the Government of India shall specify the basis applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (creamy layer) from “Other Backward Classes”. The implementation of the impugned office memorandum, dated 13th September 1990 shall be subject to exclusion of such socially advancing persons (Creamy layer).”

Constitution (Jammu and Kashmir) Scheduled Tribes Order 1989

In 1989, the President of India through Presidential order namely the Constitution (Jammu and Kashmir) Scheduled Tribes Order, 1989 declared certain tribes or tribal communities as Scheduled Tribes in relation to the state of Jammu and Kashmir. In pursuance of this order the state government framed the rules called Scheduled Tribes (Reservation in Services) Rules 1990 which provided 2 percent and 1 percent reservation for them for direct recruitment and departmental promotions. Later vide notification SRO 205 of 2nd July 1991, the reservation quota was increased to 10 percent and 5 percent respectively.

Identification of the Weak and Underprivileged Classes

With a view to implement the judgment and order of the Supreme Court dated November 16, 1992, the Government of Jammu and Kashmir reconsidered its earlier policy of reservation based on the recommendations of various commission/committees such as, Gajendragadkar Commission, Wazir Committee and Anand Commission and noticed that on the basis of their recommendations the state had already identified and notified the following classes of people as weak and underprivileged61

1. Gujjar and Backwards including Gaddis.
2. Bahach Hanjies and Shikara wallas not attached with House Boats or owned by House Boat owners.
3. Fishermen including Gada Hanz.
4. Markabans whose livelihood depends on markabani.
5. Village potters (kumhars)
6. Shaksaz
7. Shoe repairers (working without the aid of machines).
8. Bangles khakrobas (sweepers)
9. Barbers (rural only)
10. Village washerman.
11. Bhands
12. Mirasis
13. Madari/ Bazigars
14. Kufaqr
15. Damball Faqir
16. Dooms
17. Shupri wattal.
18. Sansis.
20. Jheweers
21. Grati
22. Teeli (Rural)

Identification of Backward Areas

The state government has also amended the list of backward areas through the notifications issued on 3rd July 1982 and on 22nd August 1988\(^2\). The total number of villages identified as backward areas as under

Kashmir and Jammu Divisions

<table>
<thead>
<tr>
<th>District</th>
<th>Number of Villages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Srinagar</td>
<td>49 villages + Pattis</td>
</tr>
<tr>
<td>Budgam</td>
<td>273 villages</td>
</tr>
<tr>
<td>Pulwama</td>
<td>138 villages</td>
</tr>
<tr>
<td>Kupwara</td>
<td>202 villages + 6 pattis</td>
</tr>
<tr>
<td>Baramulla</td>
<td>318 villages + 2 pattis</td>
</tr>
<tr>
<td>Ananthnag</td>
<td>214 villages + 10 pattis</td>
</tr>
<tr>
<td>Leh</td>
<td>Entire District</td>
</tr>
<tr>
<td>Kargil</td>
<td></td>
</tr>
</tbody>
</table>
Chapter III

Evolution of Reservation Policy of Jammu and Kashmir

Jammu Division

<table>
<thead>
<tr>
<th>District</th>
<th>No. of Villages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jammu</td>
<td>128</td>
</tr>
<tr>
<td>Udhampur</td>
<td>303</td>
</tr>
<tr>
<td>Poonch</td>
<td>152 + 1 Mohra</td>
</tr>
<tr>
<td>Rajouri</td>
<td>204 + 6 Mohras</td>
</tr>
<tr>
<td>Kathua</td>
<td>101 + 2 Mohras</td>
</tr>
<tr>
<td>Doda</td>
<td>556 + 3 Mohras</td>
</tr>
</tbody>
</table>

Revised Reservation Policy

The state government reviewed its earlier policy of reservation, keeping in view the socio-economic and other conditions of backwardness of the of Jammu and Kashmir state and approved the following percentage of reservation vide decision No. 37 of 1st April 1993 taken by the State Administrative Council headed by Governor, K.V. Krishna Rao:

1. Scheduled Castes

2. Socially and Educationally Backward Classes

(a) Scheduled Tribes / Weak and Underprivileged classes:
   (i) Gujjar and Bakkarwal
   (ii) Residents of Leh
   (iii) Residents of Kargil

(b) Other Social Castes

(c) Residents of Backward Areas
   (Excluding Leh-Kargil)

   (Reduced to 20% later)

3. Area near the Line of Actual Control

4. Children of Permanent Residents Defense

5. Personnel candidates possessing proficiency in Sports

In addition to the above percentage of reservation, the state government provided 1% quota for police and other Para-military forces and the total reservation comes to 49 percent which is in accordance with the dicta of the apex court.
K. K. Gupta Commission

With a view to implementing the judgment of the Supreme Court dated 16 November 1992 in *Indira Sawhney’s case*, the state government vide its order, dated 27-4-1993 issued by General Administration Department set up a commission headed by Justice K. K. Gupta, to make the recommendations to the government in regard to the criteria for identifying such classes of persons as falling within the ambit of ‘Creamy Layer’ for purposes of disentitlement from reservation for appointment to public offices and posts.

After taking into consideration various factors and other conditions prevailing in the state, the commission made various recommendations in its report submitted to the state government on 10th September 1993 which was approved by the state Administrative Council headed by the Governor, General K.V. Krishna Rao, and accordingly, a notification dated 28-6-1994 was issued by the General Administration Department, framing new rules called The Jammu and Kashmir Reservation Rules 1994.

The Jammu and Kashmir Reservation Rules, 1994

According to the above mentioned rules, several constitutional, executive, political and other posts have been classified / identified which fall within the ambit and scope of creamy layer to which the rule of exclusion from the reservation for appointment against the public offices and posts in connection with the affairs of the state, would apply.

The above rules also modified the earlier reservation policy of the state and included some new categories in the list of the castes which are entitled for the reservation. The modified reservation policy under this rule is as follows:

a) Scheduled Castes 8%
b) Scheduled Tribes 10%
c) Socially and Educationally Backward Classes-
   i) Residents of Area Adjoining Line of Actual Control 3%
   ii) Weak and Under Privileged Classes (Social Castes) 2%
   iii) Resident of Backward Areas 20%
d) Handicapped person 2%
e) Ex. Servicemen and Children of Defense Personnel 5%

In order to include and exclude the areas and categories from the list of reserved categories, the state government passed the Jammu and Kashmir State Commission for Backward Classes Act 1997. In order to implement the provisions of the Act the state government appointed the State Commission for Backward Classes. Section 9 of the Act made a provision about the inclusion of any class of citizen in the list. Under this section, the commission shall examine requests for inclusion of any class of citizens as a backward class in the list and hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the government as it deems appropriate. The advice of the Commission shall ordinarily be binding upon the government. Section 11 of this Act is also significant as it made mandatory provision for the state government for the periodic revision of the list. The government may at any time, and shall at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the list with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes. The government shall, while undertaking any such revisions consults the commission.


The state government passed the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1998 for making special provisions for the protection of rights of disabled persons of the state. Section 21 of this Act provides for identification of posts which can be reserved for persons with disabilities. Under this section, the government shall: (a) identify posts in the establishments which can be reserved for the persons with disabilities; (b) at periodical intervals, not exceeding three years, review the list of posts identified and up-date the list taking into consideration the development in technology. Section 22 makes provisions for reservation of posts. Under this section
the government shall appoint in every establishment such percentage of vacancies not less than three percent, for class of persons with disabilities of which one percent, each shall be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment; (iii) locomotors disability or cerebral palsy, in the posts identified for each disabilities, provided that the government may, having regard to the type of work carried on in any department or establishment by notification, subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

**The Jammu and Kashmir Reservation Act, 2004**

Further, in 2004, the state government passed The Jammu and Kashmir Reservation Act, 2004\(^1\) with an objective to provide reservation in appointment and admission in professional institutions for the members of Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes and for matters connected therewith or incidental thereto. Chapter II of this Act makes provision for reservation in appointment by direct recruitment. Section 3 of the Act provides for reservation in appointment. Under this section the vacancies notified by the government from time to time shall be reserved for appointment by direct recruitment from amongst the person belonging to:

(a) Scheduled Castes and the Scheduled Tribes which shall not exceed the ratio and proportion as the population of each such category bears to the total population of the state as per the latest available census; and

(b) Socially and educationally backward classes:

Provided that the total percentage of reservation shall in no case exceed 50 percent;

Provided further that the government shall exclude the services and posts, which, on account of their nature and duties are such as call for highest level of intelligence, skill and excellence, from operation of the Act.

Chapter III of the Act provides for reservation in government service by promotion. In this regard section 6 provides that the available vacancies notified by the government from time to time shall be reserved in any service, class, category or grade carrying a pay scale the maximum of which does not exceed the pay scale of the post of Deputy Secretary to government, for promotion from amongst the persons
belonging to the Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes:

Provided that total percentage of reservation shall not exceed [31%]^{72} of the available vacancies;

Provided further that the government shall exclude the services and posts, which on account of their nature and skill are such as call for highest level of intelligence, skill and excellence, from the operation of the Act.

Further, chapter IV of the above Act provides for reservation in professional institutions. Section 9 says:

(1) The government shall reserve seats in the professional institutions for candidates belonging to reserved categories and such other classes and categories as may be notified from time to time:

Provided that the total percentage of reservation shall in no case exceed 50%.

(2) The government shall prescribe the percentage for each category in admission in the professional institutions:

Provided that different percentage may be prescribed for different courses;

Provided further that 50 percent of the seats in each category including open category for admission to MBBS and BDS, shall be selected from amongst female candidates belonging to such category;

Provided also that the seats in any reserved category, which cannot be filled for want of candidates belonging to that category, shall be filled from amongst the candidates belonging to open merit category.

Jammu and Kashmir Reservation Rules, 2005

Consequently, in exercise of the powers conferred by section 23 of the Jammu and Kashmir Reservation Act, 2004, section 22 of J and K Persons with Disabilities Act, 1998 and all other relevant provisions of the law in this behalf, the state government framed the Jammu and Kashmir Reservation Rules, 2005^{73}. Rule 4 provides for reservation in direct recruitment. It says that the available vacancies shall be reserved for direct recruitment in each service, class, category and grade in favour of permanent residents of the state belonging to any of the below mentioned
categories which shall, as nearly as possible, constitute the percentage of available
vacancies shown against each:

a) Scheduled Castes  
   b) Scheduled Tribes  
   c) Socially and Educationally Backward Classes (other than Scheduled Castes
      and Scheduled Tribes)
      i) Weak and under privileged Classes (social caste)  
      ii) Residents of areas adjoining Line of Actual Control  
      iii) Residents of backward areas
   d) Ex-Servicemen
   e) Physically Challenged Persons

Rule 9 provides for reservation in promotion. Under this rule the available
vacancies shall be reserved in any service, class, category or grade carrying a pay
scale the maximum of which does not exceed the pay scale of the post of Deputy
Secretary to government, for promotion from amongst the persons belonging to the
Scheduled Castes, Scheduled Tribes and other socially and educationally backward
classes:

a) Where the direct recruitment to a particular post is at 25% or less, the
   reservation shall be;
      i) Scheduled Castes:  
      ii) Scheduled Tribes  
      iii) Socially and Educationally Backward Classes
          a) Weak and under privileged Classes (social caste)  
          b) Residents of areas adjoining Line of Actual Control  
          c) Residents of backward areas

b) Where the direct recruitment is more than 25% the reservation shall be:
      i) Scheduled Castes:  
      ii) Scheduled Tribes  
      iii) Socially and Educationally Backward Classes
          a) Weak and under privileged Classes (social caste)  
          b) Residents of areas adjoining Line of Actual Control  
          c) Residents of backward areas
Rule 13 provides for reservation in professional institutions. It says, seats shall be reserved for Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes in each course of professional institutions which shall, as nearly as possible, constitute such a percentage of the available seats in that course as shown against each category or group hereinafter:

i) Scheduled Castes

ii) Scheduled Tribes
   a) Gujjars and Bakkarwals
   b) Residents of district Leh
   c) Residents of district Kargil
   d) Other than (a), (b) and (c) above

iii) Socially and Educationally Backward Classes (other than Scheduled Castes and Scheduled Tribes)
   a) Weak and Underprivileged Classes (Social Caste)
   b) Residents of area adjoining Actual Line of Control
   c) Residents of Backward areas

Rule 14 provides for other reservation. It provides that in addition to the reservations specified in rule 13, the following reservation is also made in favour of the following categories of the permanent residents of the state to the extent shown against each:

a) Children of Defence Personnel

b) Children of Para-Military Forces

c) Candidates possessing outstanding proficiency in Sports

In this context it is significant to note that the report of Commission for Backward Classes submitted in the year 2005-06 recommended for enhancement of reservation quota of social castes from 2 percent to 27 percent as per the judgment of the Supreme Court on Mandal Report.

**Jammu Kashmir Civil Services Decentralization and Recruitment Act, 2010**

On 9 April 2010, the Jammu and Kashmir State Assembly passed a controversial Bill which bans inter-district recruitment and provides a quota for Scheduled Castes in government jobs in all districts. With the passage of the Inter-
District Recruitment Bill, a person can now apply for government jobs only in his own district. A person belonging to the Scheduled Castes community can apply in any of the 22 districts in the state, including the Kashmir Valley. The relevant provision regarding the reservation of Scheduled Castes under the above bill which now became Jammu Kashmir Civil Services Decentralization and Recruitment Act, 2010\textsuperscript{74} in section 13, says:

(1) Person shall be deemed to be resident of a particular district or division if he/she has resided in such district or division, as the case may be, for a period of not less than 15 years before the date of applying for a particular post and is actually residing in the said area.

(2) Notwithstanding anything contained in sub-section (I), a person shall not be disentitled from claiming the residence in a particular district or the division only on the ground that his/her father/mother or the person on whom he/she is dependent is living in a place outside the said district or the division, as the case may be, on account of his/her employment, business, profession, vocational reasons or temporary dislocations from his/her original place of residence due to security reasons.

(3) Notwithstanding anything contained in sub-section (I), the candidates applying under Scheduled Caste category for any post in the Divisional or District cadre shall, irrespective of their place of residence in the State, be eligible for selection against the posts reserved for the said category at such selection.

Conclusion

To conclude we can say the reservation policy of the state passed through different stages, it was way back in 1932 that Maharaja, Hari Singh first time allowed the depressed classes to visit temples for Darshan. Gradually, these disadvantaged groups raised their voice through different reformatory movements to take cognizance of their grievances which provided the way for the genesis of the reservation policy of the state. Since then different commissions and committees have been appointed at national and state level to make the reservation policy more reasonable and judicious, but unfortunately malicious designs have been followed by political class to represent their vested interests so the reservation policy too has been the victim of politics in the state.
References


4. Muhammad Tajuddin, Baljit S. Mann, op.cit, p. 78

5. Ibid, p. 79


8. C.H. Buck, Faiths, Fairs and Festivals of India, Reprint Asian Publication Service, New Delhi, 1997, p.28

9. Dr. S.S. Charak, Dr. A.K. Billawaria, History and Culture of Himalayan States, Jay Kay Book House, Jammu, 1997, p. 185

10. G.S. Ghurye, Caste and Class in India, Popular Prakashan, Bombay, 1950, p. 2-17

11. Dr. S.S. Charak, Dr. A.K. Billawaria, op.cit, p. 184


15. Ibid, p. 18


22. Dr. S.S. Charak, Dr. A.K. Billawaria, *op.cit*, p. 50
23. Dr. S.P. Vaid, *op.cit*, p. 22-23
24. *Ibid*, p. 23
27. Dr. S.S. Charak, Dr. A.K. Billawaria, *op.cit*, p.60.
29. *Ibid*, p. 26
32. Muhammad Tajuddin, Baljit S. Mann, *op.cit*, p. 170
33. *Ibid*, p. 170-173
40. *Ibid*.
42. 1 1969 SCR (1) 103
43. AIR 1963 SC 649
44. Dr. P.B. Gajendragadkar, *op.cit*. p 1
45. *Ibid*, p. 95-96

47. Notification No. 37-GR of 1970

48. Government Order No.60-GR of 1970


51. AIR 1973 SC 930


53. Government order no. 54-GR of 1976, dated 24th August 1976

54. Government order No. 62-GR of 1976


56. Ibid

57. Government notification vide SRO No. 272


59. Government notification SRO No. 271

60. AIR 1993 SC 477

61. R.C. Gupta, *op. cit*, p. 85


63. Government decision No. 37 of 1st April 1993

64. R.C. Gupta, *op. cit*, p. 89

65. AIR 1992 SC


67. Government notification SRO 126 dated 28-6-1994


69. Act No. XII of 1997

70. Act No. VI of 1998
71. Act No. XIV of 2004
72. Inserted by the amendment of 2009
73. Notification vide SRO 294 in October 2005
74. Act No. XVI of 2010