CHAPTER V

INCLUSION OF MINORITIES UNDER CATEGORY OF BACKWARD CLASSES

During the freedom movement the question of minority rights was one of the most important subjects on the agenda of several committees and conferences at the national and provincial levels. Through the Freedom Movement the minorities pursued very seriously their demand for separate electorates, representation in the cabinet and safeguards in educational and cultural matters. The British policy of appeasing the minorities gave a fillip to such demands. The minorities time were at loggerheads with their brethren of the majority community. They regarded the members of the majority community as tyrants and oppressions. This kind of change was repeated time and again. Towards the close of Freedom Movement however the accusation was leveled with still greater force. It was on the basis of this false accusation that a separate state of Pakistan was pursued and obtained.

1.1. **International Conventions on Minorities**

Apart from what was happening at the national level, at the international level also series of committees and conferences deliberated on the issues of the minorities of the need for protection to the interests of minorities was reflected in international instruments like the universal declaration of Human Rights, 1948, the International Covenant on civil and political rights, 1966 and the International Convent on economic, social and cultural rights, 1966 and also declares that ‘all human beings are equal in
dignity and rights’ and prohibit all kinds of declaration – racial, religion etc. the U.N. Declaration on the rights of minorities, 1992 enjoys the state to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity, ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedom with full equality and without any discrimination, create favorable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs, plan to implement national policy and programmes with due regard to the legitimate interests of minorities etc.¹ Certain new agencies have been when show the concern of the International Community has towards the welfare of the minorities, and that the problem of minorities not one pertaining to national governments alone, but a matter of international significance.

1.2. Indian Constitutions and Welfare Concept

The constitution framed after the independence of the country is known for its liberalism and welfare concept. The safeguards provided to various categories of people bear an eloquent testimony to the principle of liberty, equality and fraternity. The minorities are one of the sections on whom the constitution has endowed special safeguards so that they could preserve their religion language, script and culture, and this has been done by carving out an

exception to the principle of equality and secularism. The magnanimity of the
great leaders of our country like Pandit Jawaharlal Nehru, Sardar Vallabh Bhai
Patel, Pandit Govind Vallabh Pant, Dr. Rajendra Prasad and Dr. B. R. Ambedkar is
to be seen in their decision to provide for Special safeguards which hardly any
other constitution of the world has given to its minorities.

An admirable thing about our constitution is that if not only gives to the
minorities, but also directs the state to set up machinery for investigation of
matters relating to the safeguards guaranteed to the minorities. Article 350-B
of the constitution provides for the appointment of special officer for linguistic
minorities. But no effective machinery was set up by the state for a long time
as a result of which there was no proper implementation of the safeguard
guaranteed to the minorities. Alternatively, minority's commissions were set up
at the central and state levels to look into the matters of minorities. But, then
the legal and constitutional authority of these commissions has been a subject
matter of discussion at various forums. It is observed by many that the reports
and recommendations of the minorities commissions have either not been
accepted or not implemented properly. In view of this, the problems of
minorities have assumed considerable significance and call for an academic
investigation into the system of protection to the minority’s importance at the
national and state level.

The problems faced by the minorities in the realization of the
safeguards guaranteed to them furnish the justification for a detailed inquiry into
the nature and scope of the rights guaranteed to them under Indian
Constitution. The various facts of the problem justifying a study relate to the
manner in which the minorities are seeking to avail the benefits of constitutional safeguards, the manner in which the authorities of the state are seeking to impose restrictions on the rights, and the manner in which the courts have tried to resolve the disputes between the minorities and the state. A study can alone can bring to light the deficiencies in the system of safeguards. It can help us unravel whether there is anything wrong with what is guaranteed under the constitution or there is lack of will in the proper implementation of the policies and programmes of the state, and whether there is misinterpretation of the provisions operating to the safeguards. A comprehensive approach can bring to light the fact whether the system has served the purpose for which it was introduced or it has suffered in its ideal.

In the constitution the word ‘minority’ is not defined in any whear while Article 30 contains the word ‘minorities’, Article 29 contains the words ‘any section of citizens’ but not the word ‘minorities’. When the omission of the ‘minority’ in Article 30 was objected by certain members of the constituent assembly Dr.Ambedkar explained that the word minority is used in a technical sense as we have been accustomed to use it for the purpose of certain police safeguards, such as, representation in the legislature, representation in the services and so on. The word ‘minority’ was used in the draft constitution not merely to indicate minority in the technical sense it was also used to cover minorities which were minorities in the cultural and linguistic sense.
The Central Government notified the following communities are covered by the provisions of the constitution entitling them to protection in matters of education and culture, namely, muslims, Christians, Sikhs, jains and Buddhists(Zoroastrians) subject of course to material test that they must be below 50% of the population of the state. However, minorities are not limited to these five religions and state are free to declared recognize others. Jains have been recognized as one of the religious minorities in nine States(1).

1.3. **Scope of Article.29**

The Article 29 has the under mentioned scope and extent of operation

i) The article applies to any section of citizens, residing in the territory of Indian or any part thereof.

ii) In order to claim the protection under this Article, the citizen must have a distinct language script or culture.

iii) The right guaranteed under this Article in clause 2 applied only to the citizen in their individual capacity and not as a class.

iv) The state can make reasonable regulations built if it takes away or abridges the Fundamental Rights guaranteed under this article, then such regulation will be invalid.

v) The right is only to any section of citizen to conserve their own language, script or culture. However, this can be done only by establishing educational institutions of their choice or the right can be meaningfully exercised by way of establishing of educational institutions and that is the reason why Article 30(1) is considered to be a necessary concomitant of Article 29.

vi) It is open to the Government or the University authorities to deny admissions to any student by making a reasonable classification or by providing reasonable reservations from some sections of the society.

vii) This article applies both to majority and minority community.

viii) Admissions can be denied on any other ground not mentioned in clause 2 of this Article.

ix) This article merely gives a right to the citizen to conserve their language, script or culture and not the right to claim that reservations shall be made for them exclusively on these grounds.

x) If a minority institution is receiving aid from the State, the non minorities or persons from other religion can also be admitted in such institutions. However, it is subject to the condition that they will not practice or propagate their religious affairs within the campus of such minority institution, without the permission of minority concern.
However, this article does not take away the right of minority institution to deny the admission on the basis of indiscipline or the grounds not mentioned in the clause 2 of the Article, provide the discretion exercised is not abused.

1.4. **Scope of Article 30**

In order to apply Article 30 and to seek benefits under this article, the following conditions must be fulfilled.

i) The community must show it is a religious minority.

ii) If the institution is established for the purpose of promoting the language, script or culture, then the community must show that it is a linguistic minority.

iii) That, the institution must be established by them. It means, the minority community must show that it is they, who have actually ‘founded’ the institution.

Without satisfying these conditions, no minority community can claim the right guaranteed under Article 30. If the conditions are satisfied the right will be available to the institutions established prior to the constitution also as well as the institution established after the constitution. On the other hand, if a religious minority has not established an educational institution it cannot claim the right to administer it, even though by some process it had been administering such institutions before the constitution came into force. The words established and ‘administered’ must be read conjunctively and if both the conditions are not present a law cannot be challenged as a violative of Article 30(1). To claim the benefit of Article 30(1) however it is not necessary
that the institution must seek to conserve the language, script or culture of such community but what is necessary is its establishment by the minority community. It may impart religious or secular education, wholly unconnected with the language, script or culture. It is also not necessary that the admissions into such institutions must be confined exclusively to the members of the minority community and not a simple member of the majority community or other minority communities should have its advantage.

1.5. **Other constitutional safeguards**

The other measures of protection and safeguard provided by the constitution in part III or elsewhere having a bearing on the status and rights of minorities are:

i) Freedom of conscience and free profession, practice and propagation of religion

ii) Freedom to manage religious affairs

iii) Freedom as to payment of taxes for promotion of any particular religion

iv) Freedom as to attendance at religious institutions or religious workshop in certain educational institutions

v) Special provisions relating to language spoken by a section of the population of a state

(1) Pandy.J.N.Constitutinal Law of India – 2011 at

(2) Article 25

(3) Article 26

(4) Article 27

(5) Article 28

(6) Article 347
vi) Language to be used in representations for redress of grievances
vii) Facilities for instruction in mother tongue at primary stage
viii) Special officer for linguistic minorities

1.6. Legal frame work for protection of Religious Minorities

Legislations such as the protection of civil Rights Act, 1955 (formerly known as untouchability (offences) Act, 1955) and Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been enacted by the Central Government to protect persons belonging to Scheduled castes and Scheduled Tribes from untouchability, discrimination, humiliation, etc.,. No legislation of similar nature exists for minorities through it may be argued that, unlike the latter Act, viz, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the former Act, viz, the Protection of Civil Rights Act, 1955 is applicable across the board to all cases of untouchability related offences regardless of religion. Therefore, if a scheduled caste convert to Islam or Christianity (or any other person)is subject to untouchability, the perpetrators of the offences may be proceeded against under the provisions

(1) Article 350
(2) Article 350A
(3) Article 350B
of the Act. However, no precise information is available in regard to the Act being invoked to protect of a person of minority community. The law enforcing agencies appear to be harboring a misconception that the protection of civil rights Act, 1955 has been enacted to protect only Scheduled Castes against the enforcement of untouchability related offences. The provisions of the Protection of Civil Rights Act need to be enforced vigorously with a way to ensuring that the law serves the purpose it has been enacted for.¹

With a view to evaluating progress and development of minorities, minoriting the working of safeguards provided to them under the constitution and laws etc. The Central Government has constituted a non-statutory minorities commission in 1978. In 1992, the National Commission for Minorities was set up under the Act in 1993.²

The functions of the commission include:

i) Evaluating the progress of the development of minorities under the union and states

ii) Minoriting the working of the safeguards provides in the constitution and in laws enacted by parliament and the state legislature

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(2) I bid P 8
iii) Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments

iv) Working into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities.

v) Causing studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal.

vi) Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities.

vii) Suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Government.

viii) Making periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them

A constitution amendment bill, viz, the Constitution (103 amendment) Bill, 2004, has been introduced so as to add a new article viz., Article 340A to constitute a National Commission for minorities with a constitutional status. A bill to repeal the National Commission for Minorities Act, 1992 has simultaneously been introduced.

In the absence of a definite time frame for laying the annual report of the commission, there has been considerable delay in tabling the annual reports in the parliament. The National Commission on Minorities has submitted twelve annual reports for the year 1992-93, 2004-05 and tabled in the parliament.
According to the provisions of clause (9) of Article 338 and 338 A, the union and every State Government shall consult the National Commission for Scheduled Castes and Scheduled Tribes on all major policy matters affecting the scheduled castes and scheduled tribes respectively such a consultation is mandatory and can be construed to be an important constitutional safeguard for scheduled castes and scheduled tribes. A corresponding provision does not exist in the National Commission for minorities Act, 1992. In the absence of such a provision the Government of the day may or may not consult the National Commission for minorities for major policy matters impacting minorities, depending on exigencies. Therefore, the National Commission for Minorities Act, 1992 needs to be suitably amended with a view to incorporating in it a provision analogous to the provision in Article 338(9) and 338A(9). This may instill a sense of confidence amongst minorities about protection of their interests. The scheduled castes and scheduled tribes Parliamentary Committees have been doing yeoman’s work towards safeguarding the interests of SC’s and ST’s. Such mechanism is expected to be an effective step for ensuring the welfare of religious minorities.

The National Commission for Minority Educational Act, 2004 was enacted to constitute a commission charged with the responsibilities of advising the Central Government or any State Government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institution of their choice. This Act was extensively amended in 2006 (Act 18 of 2006), interalia, empowering the commission to enquire suomoto or on a petition presented.
1.7. **Socio-Economic characteristics of Religious Minorities**

Indian social structure is characterized by unity as well as diversity. It has had numerous groups of immigrants from different parts of Asia and Europe. All the great religions of the world are represented in the country. People speak different languages. Diversity is seen in the patterns of rural urban settlements, community life, forms and land tenure, and agricultural operations and in the mode of living. Some eke livelihood out of hills and forests.

On 29th October, 2004 the Government of India resolved to constitute a National Commission. On 21st March 2005 the Government of India constituted the National Commission for Religious and Linguistic Minorities (NLRLM) under the Chairmanship of Justice Ranganath Mishra former Chief Justice and chairman, National Human Rights Commission with the following terms and reforms:

(a) To suggest criteria for identification of socially and economically backward sections among religious and linguistic minorities.
(b) To recommend measures for Welfare of Society and Economically backward sections among Religious and Linguistic Minorities.
(c) To suggest the necessary constitutional legal and administrative modalities required for the implementation of its recommendations.

1.8. **Criteria for Identification of Backward Sections among Religious Minorities.**

Equality before law is a basic Fundamental Right guaranteed under Article 14 of the Constitution. It places the strong and the handicapped on the same footing in the rate of life. It is a dictum of social justice that there is equality only among equals. To treat unequals as equals is to perpetuate inequality.
The humanness of a society is determined by the degree of protection it provides to its weaker, handicapped and less gifted members. In view of these considerations that our constitution makers made special provisions under Article 15(4), 16(4) and 46 etc., to protect the interest of Scheduled casts and Scheduled Tribes and educationally backward classes and weaker sections.

In order to suggest criteria for identifying the socially and economically backward among the religious minorities, it is important to examine the adequacy and effectiveness of the existing criteria in reaching out to them.

In keeping with the diversities of people and different causes for backwardness three distinct groups were recognized in the constitution for making special provisions for their advancement. These were:

i) Scheduled Castes
ii) Scheduled Tribes
iii) Socially and Educationally backward classes
iv) Any Backward Classes
v) Weaker Section

The groups at (ii) and (v) above were all inclusive and do not discriminate on the basis of religion or caste. Religious minorities form a part of these. Group at (1) is religion and caste based and arises out of the practices of untouchability among Hindus, Sikhs and Buddhists while even ignoring the same among Muslims and Christians. Different parameters were adopted

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(1) Article 15(4)
(2) Article 16(4)
(3) Article 46
for identifying them and for accelerating their progress through politics and programmes which can be termed “affirmative action” or “positive discrimination”.

1.8.1. Scheduled Castes:

The Scheduled Caste membering 429 recognized as a special group titled ‘Depressed Class’ in the 1931 censes were notified for the first time as ‘Scheduled Castes’ in the Government of India Act, 1935. The criteria adopted for purpose of specifying the scheduled case was based on the obnoxious practice of untouchability. The Test applied was the Social, Educational and economic backwardness arising out of the historical custom of untouchability. The first notification issued in 1950 included 607 communities which have now been raised to 1109 by 2002 which inclusion of 502 more castes. As against this 33 communities over the years have been excluded.

Specific provisions for the protection and development of scheduled caste are enshrined in Articles 16,17,46,243,330,332,334,335,338 and 341 of the constitution of India.

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(1) NLRLMC Commission 2004., Report P. 56
1.8.2. Scheduled Tribes:

The criteria for recognition of a separate category of “Scheduled Tribes” were the geographical isolation of tribes living inaccessible areas which lead to their backwardness.

The first notification specifying 240 communities as Scheduled Tribes was issued for 12 states in 1950 as on date the member of Scheduled Tribes Communities in India stands at 628 as against 240 in 1950. The increase is scheduled tribes lists during the last five decades is nearly 156 present or say one and half times and exclusions are barely 15 in number. Tribals inter-alia includes minorities as the criterion for identifying the scheduled tribes are religion and caste neutral. Christians, Buddhists in the NE and other tribal areas and Muslim residing in remote tribal areas are all entitled to the benefits available to the scheduled tribes.¹

For the protection, care and development of scheduled tribes, special provisions have been incorporated in the constitution of India in Articles 16, 46, 164, 243, 244, 275(1), 330, 332, 334, 335, 338A and 342.

¹ Ibid at P.67
1.8.3. Socially, Educationally Backward Classes

The constitution recognized that in addition to scheduled castes and scheduled tribes there may be another socially, educationally and economically backward classes who may require special attention under Articles 15(4), 16(4) and 46. Initiatives taken by the Government in this regard since 1953 since a clear picture of strategies and criteria evolved to identify the socially educationally and economically backward.

Under article 340, the constitution of India provided for the appointment of a commission to investigate the conditions of backward classes in accordance with the provision. The first backward commission headed by Kaka Saheb Kalelker was appointed by the Government of India in 1953 to determine the criteria for treating any sections of people, other than SC and STs, as socially and educationally backward. The commission submitted its report in 1955, laid down four criteria for indentifying socially and educationally backward classes. The Government of India not accepted the recommendations of the Kalelker Commission. The State Governments differed in their views and suggested criteria which varied substantially from each other. The suggestions included identification of backward areas rather than backward classes, adoption of economic backwardness as a criterian, continuation of the existing caste based list of OBCs etc.

The Central Government took the view that there was no legal compulsion to draw up an All India list of socially and educationally backward classes. The Central Government informed the State Governments in 1961 that they had ‘after careful consideration decided not to draw up any All India list of
backward classes (other than the existing list of Scs and STs’) and while the State Governments had the discretion to chose their own criteria for defining backwardness, it would be better to apply economic tests than to go by casts’. The State Governments were asked to prepare list of backward classes on the basis of their own criteria.

In pursuance of the above, State level commissions were appointed by several State Governments and their recommendations in determining the criteria for listing of OBCs were accepted. The criteria suggested by some of the commissions such as, Gajendragadkar Commission of Jammu & Kashmir Bakshi Commission in Gujarat and Havannur commission in Karnataka varied. But briefly they were following:-

i) Social backwardness, low caste status or inferiority associated with castes making difficult for them to have access to cultural training, religious and secular education, resulting in apathy for education etc.

ii) Economic backwardness, poverty-leading to incapability of owning land, house or other property, household income, employment status current occupation, traditional occupation considered inferior, unremunerative or unclear and whether depend only on manual labour.

iii) Educational backwardness

iv) Poor habitation and type of house, residence in rural, isolated and segregated areas, ownership of house site.

v) Participation of women in supporting family income.

vi) Families where child marriages are prevalent.
The lists prepared state wise of OBCs where religion and caste neutral minority communities such as neo-Buddhists, SC converted to Christianity and muslims in many States were included these lists.

The reports of the State Commission generated considerable litigation. In a number of cases the courts divided against their recommendations. In this background, the Government of India appointed a second backward class commission headed by Sri B.P.Mandal in 1979 to suggest the criteria to identify socially and educationally backwards other than SC’s and STs. This commission suggested ‘criteria’ or ‘indicators’, namely:

**Social**

i) Castes/classes considered as socially backward by others\(^1\)

ii) Castes/classes which mainly depend on manual labour for their livelihood.

iii) Castes/classes where at least 25% females and 10% males above the state average get married at an age below 17 years in rural areas and at least 10% females and 5% percent males do so in urban areas.

iv) Castes/classes where participation of females in work at least 25% above the state average.

\(^{1}\) Mandal Commission
Educational:

i) Castes/classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the state average.

ii) Castes/Classes where the rate of student dropout in the age group of 5-15 years is at least 25% above the state average.

iii) Castes/classes amount whom the proportion of matriculates is at least 25% below the state average.

Economic:

i) Castes/classes where the average value of family assets is at least 25% below the state average.

ii) Castes/classes where the number of families living in kutcha houses is at least 25% above the average.

iii) Castes/classes where the drinking water is beyond half a kilometer for more than 50% of the households having taken consumption loan is at least 25% above the state average.

The Mandal Commission gave separate weightage to the 11 indications in the social, educational and economic groups by giving weightage of 3 points to each of four ‘indications’ in the social group, a weightage of two points to each of the four economic ‘indications’. On the basis of the weightage given to the ‘indicators’ these castes/communities, which scored more than 50%, were listed as backward classes. Mandal Commission identified backward classes which included religious minorities as would be clear from the statement. Statement-State-Wise number of castes lists with religion wise
break up. The Government notified 1238 classes in the central list comprising of classes common to Mandal Commission.

In view of the several earlier judgments of the Supreme Court the setting up of a special bench of nine judges by the Supreme Court became necessary in the case of Indra Sawhney and others Vs Government of India 1 for finally setting the legal criteria relating to reservations. The bench opined that the backwardness contemplated by Article 16(4) is social backwardness, which leads to educational and economic backwardness.

By the directions of the Supreme Court in Indian Sawhney Judgment in 1992, Central and State Governments set up commissions/ committees to identify backward classes and prepared their own guidelines 2


The National Commission for backward classes was set up under the National Committees for backward classes (NCBC) Act, 1993 to investigate the conditions and difficulties faced by the socially and educationally backward classes and to make appropriate recommendations. The National Commission for backward classes formulated the guidelines for inclusion in the list of other backward classes on the basis of social, economical criteria.

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(1) A.I.R ., 1992
(2) Ibid
1.10. **Implementation of the existing criteria**

In compliance with the guidelines issued by the National Commission for backward classes and adopted by the State Governments with or without notifications list of backward classes including religious minorities were notified by the Central Government and States. The first notification specifying the lists of other backward classes was notified by the then Ministry of Welfare, Government of India on 13.09.1993 for 1238 communities. Classes belonging to religious minorities are included in many states.

(a) In central list with religion wise breakup the member is

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Religion</th>
<th>Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hindu</td>
<td>2123</td>
</tr>
<tr>
<td>2</td>
<td>Muslim</td>
<td>52</td>
</tr>
<tr>
<td>3</td>
<td>Christians</td>
<td>22</td>
</tr>
<tr>
<td>4</td>
<td>Sikhs</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>2159</strong></td>
</tr>
</tbody>
</table>

(b) State list with religion wise breakup is

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Religion</th>
<th>Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hindu</td>
<td>2123</td>
</tr>
<tr>
<td>2</td>
<td>Muslim</td>
<td>163</td>
</tr>
<tr>
<td>3</td>
<td>Christians</td>
<td>38</td>
</tr>
<tr>
<td>4</td>
<td>Buddist</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>2332</strong></td>
</tr>
</tbody>
</table>

P. 674

(2) The representation of Minority groups among the OBCs in the Central and State lists is not in proportion to the population
The effectiveness of the parameters prescribed depends on several factors

i) It must help the identifying the eligible and deserving which is the objective of the exercise. Parameters should, therefore, have a scientific basis which makes the process of identification rational and judicious so that the chances of abuse and advantages being taken by non-eligible is minimal.

ii) It must provide for a constant review and exclusion of those who are able to ‘rise’ above levels that determine backwardness.

1.11. Procedure for inclusion/exclusion of Minorities Under the OBC Category

The procedure prescribed for inclusion/exclusion is unscientific, adhoc and subjection. Procedure prescribed for inclusion of SC/STs differs from that applied to the OBCs. The common factor, perhaps is that the both cases it rests more on subjective assessments than scientific principles. In the absence of any large scale surveys, it needs to be mentioned that the only caste based date on backward classes is available 1931 census only. No record is available thereafter. Similarly, it would be difficult to accept the projections of the percentage of population made on the basis of date which is not available.

A review of the criteria laid down for the scheduled castes, scheduled tribes and backward classes reveal many inconsistencies, they are

i) Whereas identification of scheduled castes and scheduled tribes is made by the parliament and notification issued as constitutional order, in case of other backward classes, the resolution is notified an executive order.
ii) Whereas the lists of SC and ST can be modified by the parliament only, in case of OBC, changes can be recommended by the commission, known as backward class commission.

iii) Whereas SC and ST lists are State/Union Territory specific, there are two lists for OBCs, one State specific, and the other known as Central list. A community could be specified for a part of the State also.

The National Commission for backward classes was asked to review communities for exclusion as required under the Act, every 10 years. The Chairman of National Commission for backward classes in his letter dt.05.08.2003 address to the Union Ministry for social justice and empowerment observed

‘In the absence of the date the commission requires to identify castes/communities that have ceased to be backward, none of the castes/communities notified in the central lists may be declared at this stage’.

It is apparent that the number of casts/classes included for exceed those excluded from the lists. The point to be noted the number of OBCs has increased manifold. No assessment of population which is likely to be added is made while recommending inclusion. It is fact that the number of backward

classes in the lists has increased despite the investments in developmental activities and special provisions, initiatives and policy for positive discrimination in favour of scheduled castes and scheduled tribes other backward classes and minorities followed by the Government in the last several decades. This by itself is indicative of the fact that the considerations other than actual socio economic backwardness of classes are perhaps largely responsible for increasing tendency of communities and governments for recognizing new castes/classes. Political considerations clubbed with vested interest in remaining backward due to advantages available are perhaps largely responsible for this situation. Ordinarily, more ‘classes’ or castes and tribes becoming ‘backward’ should raise serious doubts about the efficacy of the strategies policies, programmes evolved and being implemented for raising the socio economic status of backward and weaker communities for the last 65 years. It is indicative of failure to reach out to the deserving’.

1.12. **Anomalies identification of backward classes**

Anomalies and loopholes in identification of the eligible due to procedure adopted were pointed out from the very beginning by various agencies.

Sri L.M. Shrikant had pointed out that the processes adopted for listing the communities included in the scheduled did not satisfy the criteria or had the requisite characteristics in the entire state in which they were scheduled. He also wrote that if the ultimate goal of classes less and casteless society is to be attained, the list of scheduled castes and scheduled tribes and even of other
backward classes will have to be reduced from year to year and replaced in due course by a list based on the criteria of income-cum-merit.\(^1\)

Parliament also observed that preference be given to the less advanced among the scheduled castes and scheduled tribes in provision of all facilities. The tendency on the part of some castes and tribes to get themselves listed as backward merely to get concessions in undesirable and must be discouraged\(^2\)

Sri B.N.Lokur\(^3\) pointed out that in several states, we have come across a multitude of organizations of castes and tribes whose main object is to secure or retain a place in the list of SC and STs and that the more advanced communities regard the reservation of seats in the legislatures as the most attractive of these facilities and also pointed out that more emphasis should be on the gradual elimination of the larger and more advanced committees

\begin{flushleft}
\text{(1) First Commissioner for Scheduled Caste and Scheduled Tribes, Government of India (1957-58)}
\end{flushleft}

\begin{flushleft}
\text{(1) Secretary to Government of India; Ministry of Law & Chairman of Lokur Committee}
\end{flushleft}

\begin{flushleft}
\text{(2) Estimate Committee – Forty Fourth Report for the year (1958-59) P.64}
\end{flushleft}
from the lists, and on focusing greater attention on the really backward classes, preferably by applying an economic yardstick.

Sri.P.Shilu \(^1\) suggested to be taken to de-schedule on the one hand the more advanced Tribal Committees and on the other, to exclude communities which ought never to have been included in the list of scheduled tribes. The committee suggested that a high powered commission, consisting among others, of anthropologists, social workers, administrators and legislators may be appointed, as and when necessary, to draw up a revised list of scheduled tribe on a scientific basis.

1.13. **Recommendation of Sachar Committee on Muslim Communities in India**

A High Level Committee, constituted under the Chairmanship of Justice Rajinder Sachar on 9\(^{th}\) March, 2005 to gather data/information for preparation of a comprehensive report on social, economic and educational status of the Muslim Community of India. The Committee \(^2\) submitted its report on 17\(^{th}\) November, 2007.

| (1)A.O of planning commission 1969 and member in team on Tribal Development Programme Committee on plan projects |
| (2) Popularly known as Sachar Committee |
This report was tabled in both the Houses of Parliament on 30th November, 2006. The Government took several decisions on the recommendations of the Sachar Committee and a statement in this regard was laid in both Houses of Parliament on 31.08.2007.

The decisions taken by the Government on the recommendations have been grouped under the following major areas:

i) Measures for affirmative action
ii) Skill Development
iii) Access to credit
iv) Special development initiatives
v) Wakfs
vi) Miscellaneous

The responsibility for implementation of these decisions has been given to the concerned Ministers/departments. The Secretary (Minority affairs) has been taking periodical review meetings in order to monitor the progress of implementation of the decisions of the Government on the follow up actions on the recommendations of the Sanchar Committee with the Nodal officer of the Ministers/Departments concerned.

**Salient Features**

(I) Targeted intervention is proposed for improvement of basic amenities and employment opportunities in 90 identified minority concentration districts which are backward in terms of various developmental parameters.
(II) Appropriate measures will be taken to improve the deficiency in civic amenities and economic opportunities in 338 identified towns and cities with a substantial population of minorities.

(III) An inter-ministerial group has been constituted to plan and monitor the implementation of comprehensive programme for skill and entrepreneurship development among the muslim community and for ensuring easy and smooth access to credit to the minorities.

(IV) Public sector banks will be open more branches in muslim concentration areas, financial institutions will promote micro-finance among the minorities, especially women.

(V) The outreach of upper primary schools will be explained, particularly for muslim girls, and where necessary, with girls only schools, more Kasturba Gandhi Balika Vidyalaya (KGUB) will be opened in areas with substantial muslim population living.

(VI) Scholarship schemes are proposed exclusively for the minorities i.e. pre-matric and post-metric scholarship scheme has been approved. A revised coaching and remedial tuition Fee scheme has been approved.

(VII) Discrimination of information regarding health and family welfare scheme will be alone in Urdu and regional language and in such districts blocks and towns with substantial minority population.

(VIII) A comprehensive amendment of the wakf Act is proposed to address existing deficiencies at the earliest.

(IX) Civil rights centres will be opened in universities, beginning Central Universities. It has been divided in principle to set up an equal opportunity

1The High Level Committee on Minorities-Report submitted on 17th November, 2006
commission (EOC) to look into grievances regarding discrimination.

1.14. **Reservation for Muslims in Andhra Pradesh**

The then Chief Minister of Andhra Pradesh Late Dr.Y.S.Rajasekhar Reddy Government had attempted to give 5% reservations through executive order\(^1\) but it was quashed by the High Court in 2005\(^2\). Following the courts advice, the State Government reconstituted the Backward Commission and directed it to conduct a detailed survey of the socio economic conditions of Muslims. On the recommendations of the Commission, the Government issued an ordinance in 2005\(^3\) and subsequently the Assembly passed legislation for 5% reservations. However, the High Court of Andhra Pradesh set aside the legislation on the ground that this would exceed the 50% limit, the government reduced the quantum to 4% and issued an order in 2007\(^4\) providing 4% quote in Government jobs and educational institutions for 15 socially and educationally backward classes among Muslims. The Government brought an ordinance, which was later replaced by a legislation passed by the assembly.

\(^{1}\) G.O.Ms.No.18 dt.25.06.2005

\(^{2}\) Archana Reddy & others Vs State of A.P. rep. by its Secretary, Law Dept., & Others ALT 2005(B) P.364

\(^{3}\) G.O.Ms.no.20 dt.30.06.2005

\(^{4}\) G.O.Ms.No.23, Backward Classes Welfare (C2) dt.7.7.2007.
The 4% quota was also challenged in the High Court. The petitioners argued that the Government argued that the Government identified backward classes without gathering scientific data. This was challenged by the petitioners in the Supreme Court. The Apex Court stayed implementation of the order but left it to the High Court to dispose off the bench of writ petitions.

The Andhra Pradesh High Court on February 8th, 2010 quashed the 4% reservation quota for Muslims. The High Court observed that this reservation was not sustainable and could not be implemented ‘the recommendations of the Backward Caste Commission are not sustainable so the enactment is also not sustainable’ the seven members bench observed.

The Andhra Pradesh Government on 25.03.2010 received a major boost with the Supreme Court, in an interim order, upholding the validity of 4% reservations provided to backward members of Muslim community in the State.

A bench of Chief Justice K.G.Balakrishnan and Justice Panchal and B.S.Chauhqn, however, referred the issue to Constitution Bench to examine the validity of the impugned Act since it is involved important issues of the constitution. The bench passed the directions will dealing with a Special Leave Petition (SLP) filed by the Government against an order of Andhra Pradesh High Court which had earlier struck down the provision as being unconstitutional.

The then Chief Minister of Andhra Pradesh Mr.K.Rosaiah has promised in Assembly ‘that the Government would take all required legal steps’ for implementing 4% reservations in jobs and education for backward class
muslims and also said ‘the Government should lead all party delegation to the Prime Minister to press for a constitutional amendment for providing reservation to backward class muslim’.

The creamy layer under category ‘E’ shall be such, as may be determined by the State Government and till such determination takes place the guidelines issued by the Government of India from time to time shall be followed.

1.15. **Non-Exclusion of Creamy Layer in OBC**

In India Sawhney Vs Union of India ¹ The decision in this case is a grading example flouted the law laid down by the Apex Court in Mandal case with regard to reservation of backward classes in Government jobs. In Mandal case a 9 judges bench of the Supreme Court had held that the reservation to backward classes in Government jobs could be given only after excluding ‘creamy layer in backward class. The Kerala State did not implement the directions of the Supreme Court for more than 3 years. Instead of implementing the Supreme Court directions, the State of Kerala passed an act which decreased that having regard to ‘known facts’ in existence of State of Kerala there are no socially advanced categories in any backward classes and would continue to be entitled to reservation under clause (4) of Article 16 of

the Constitution. The Nair services society of Kerala, challenged the validity of the State of Kerala Act and reinstated the Court to declare it unconstitutional and violative of Articles 14, 16(1) and 16(4) of the constitution. The Kerala State Government sought for extension of time for setting up a commission for identifying the creamy layer but did not do. The Supreme Court directed the Kerala High Court to appoint a committee to identify ‘creamy layer’ under the Chairmanship of a retired Judge of the High Court. The Supreme Court directed the State Government to extend co-operation to the committee. The Kerala High Court appointed the committee for identifying the ‘creamy layer’ under the chairmanship of Justice K.J. Joseph. The Kerala High Court submitted its report to the Supreme Court on 04.08.1997 identifying creamy layer. The Supreme Court held that the Kerala State Backward Classes (Reservation for appointment of posts in services) Act, 1995 is discriminating and violative of Articles 14, 16(1) and 16(4) and therefore, unconstitutional and invalid the ‘creamy layer’ in the backward classes is to be treated ‘on par’ with the forward classes, and is not entitled to the benefits of reservation, and if the ‘creamy layer’ is not excluded there will be discrimination and violation of Article 14 and 16(1) in as much as equals (forwards and creamy layer of backward classes) cannot be treated unequally. Likewise, non exclusion of creamy layer will also be violative of Articles 14, 16(1) and 16(4) of the constitution since unequals (creamy layer) cannot be treated as equals is to say that, equal to the rest of the backward class. The court held that any executive and legislative action refusing to exclude the creamy layer from the benefits of the reservation will be violative of Articles 14, 16(1) and 16(4) of the constitution.

(1)  http://legal services.com.in/articles
In Ashok Thakur Vs Union of India and others (2) the Union of India argued with regarding to exclusion of creamy layer in admissions under socially economically backward classes quota Mr.M.K.Parasaram, Senior Advocate for the Government contended that creamy layer exclusion is a bad policy. They argue that if you exclude the creamy layer, there would be shortage of candidates who can afford to pay for higher education. The agreement harms rather than helps the government.

Chief Justice K.G.Balakrishnan will write the judgment explaining the exclusion of the creamy layer. ‘They are excluded because unless the segment of castes is excluded from that caste group, there cannot be proper identification of backward class. If the creamy layer principle is not applied, it could easily be said that all the castes that have been included among the socially economically backward classes have been included exclusively on the basis of caste.

Justice Bhandari asked the Government to exclude the children of former and present MPs and M.L.As from the purview of OBC reservation. The Judges, however, clarified that the ‘creamy layer’ concept was not applicable to scheduled caste and scheduled tribes. There should be a panic review after five years on continuing with the OBC quota, they added.

(2) http://legal services.com.in/articles
(3) A.I.R. 2008,P.210